

LEGAL NEWSLETTER



Revolutionary changes in spatial development regulations

The Polish parliament decided to put an order in the spatial management rules. Therefore, significant changes to the Act on Spatial Planning and Development entered into force at the end of September 2023. First of all, municipalities will be obliged to adopt a municipal development strategy, which was one of the milestones set out in the National Recovery and Resilience Plan. Communes will also be obliged to adopt general commune plans, which will be acts of local law. By the end of 2025 at the latest, they will replace the current study of commune's conditions and directions of spatial development.

Significant changes will also affect decisions on development conditions. Such decisions will have to be consistent with the general plan regarding investment parameters. In addition, the possibility of issuing a decision on development conditions will apply to areas located within the development area. Moreover, decisions on development conditions will expire within 5 years from the date when they became final.



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The information in this Newsletter is of general information nature and is not legal assistance.

Due to the possibility of changes in the law, an analysis of the current legal situation as at the time of making a decision is recommended. We suggest contacting our advisers before taking appropriate action.



Will changes in geological law drive away investors from purchasing land?

It is recommended that when buying the land (especially in the areas of mining municipalities) investors check whether there are minerals underground. If there are mineral deposits, it will not be possible to construct houses on such land, even if it has been intended for construction in the local zoning plan. This will concern not only such raw materials as coal or metal ores, but even deposits of sand or gravel.

The above results from changes in geological and mining law, the aim of which is i.a. to increase the protection of mineral deposits. For example, the minister competent for environmental matters will be able to block the possibility of development on the land which contains the so-called strategic deposits (the changes will introduce their definitions), i.e. mineral deposits significant for the economy or the safety of the country. So far, both natural persons and municipalities have been able to appeal against unfavourable decisions resulting from the geological and mining law. The amended act does not provide for an administrative way of appealing against a minister's decision, neither for owners nor for self-governments. In such case, only a civil way of appeal will remain.

The majority of changes is to enter into force on 28 October this year, and the remaining ones – at the turn of 2023 and 2024.



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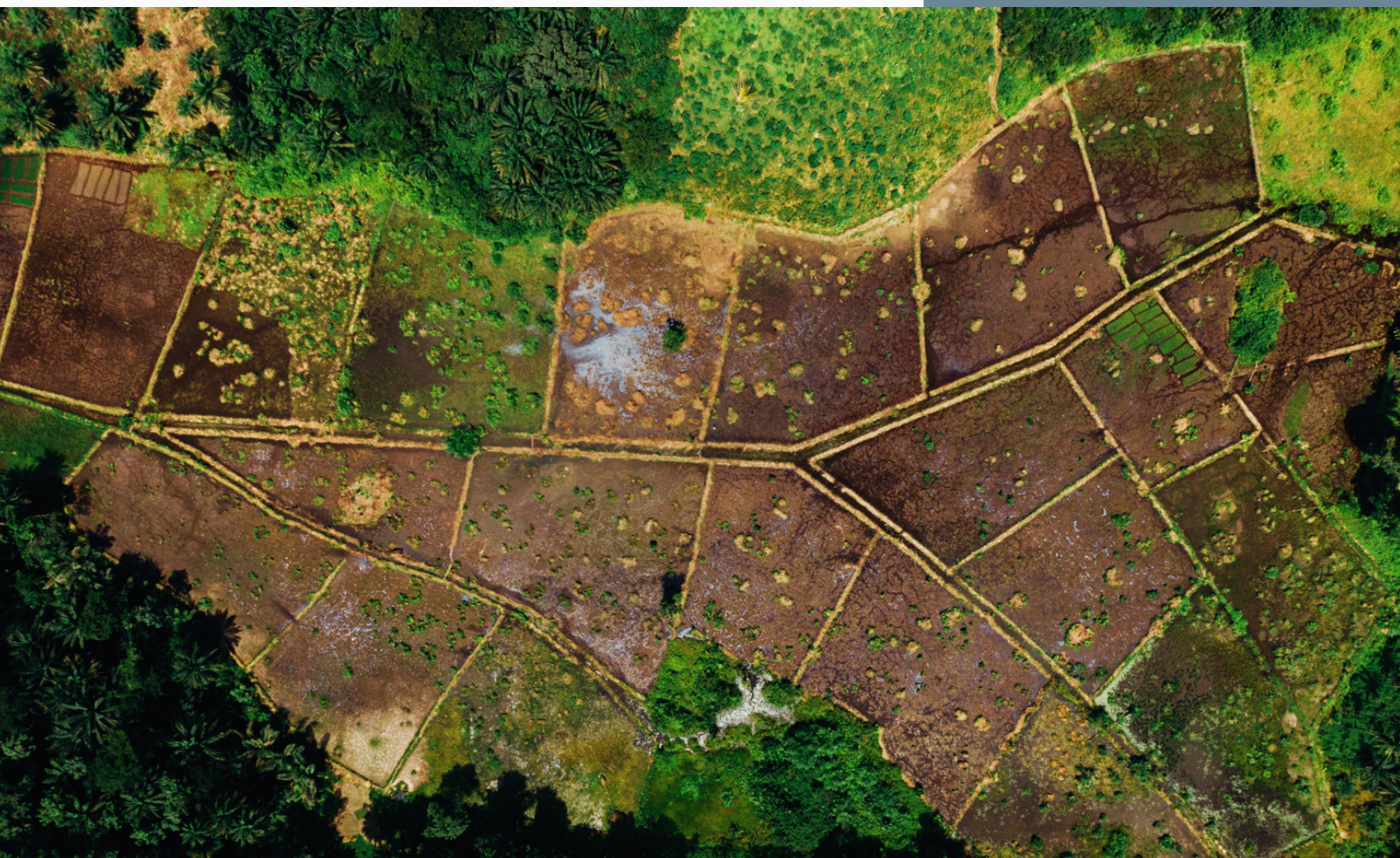
Facilitations in trading in agricultural land

As of 5 October, trading in agricultural land is slightly easier for some, and for others it became limited. The changes i.a. expand a catalogue of entities which are not individual farmers entitled to purchase agricultural land. This concerns commercial companies established as a result of transformation from civil companies (there will be no obligation to obtain a consent of the KOWR Director). In turn, family foundations purchasing agricultural land will not be able to benefit from facilitations in trading in agricultural land.

The changes in the regulations on usucaption of agricultural land and on close persons have additionally facilitated trading in agricultural land.



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Insurance of foreign investments of Polish entrepreneurs, including in Ukraine

28 September is the date as of which amendments to the Act on export insurance guaranteed by the State Treasury are binding. The aim of the guaranteed insurance is to i.a. enable Polish entrepreneurs the participation in international trade and the increase of their activity on the international stage.

The amendment expands a catalogue of entities which may benefit from KUKE (Korporacja Ubezpieczeń Kredytów Eksportowych S.A., Insurance Corporation of Export Credits) insurance protection i.a. by:

- Polish branches of foreign entities which export domestic goods and services,
- subsidiaries of Polish entrepreneurs having their seat outside of Poland, and
- private or public entities concluding contracts or making investments which are to be performed in the territory of Poland and enable the commencement, continuation or development of business activity making an important contribution to climate change mitigation.

KUKE insurance may also cover investments taken up for the performance of “export contracts” – if the damage is a consequence of events specified as a political risk.

It is worth noting that changes in regulations will give the possibility of reinsurance by KUKE of risks covered by insurances, provided that the risks in question did not occur in the territory of Poland, and at the same time are of an extraordinary nature (e.g. insuring risks assumed by Polish entrepreneurs carrying out transport to the territory of Ukraine in which acts of war are taking place). In situations justified by a significant economic interest, the government will each time specify the scope of risk by insurance type and define the events covered by the scope of the extraordinary risk taking into account its type. This may give the possibility to reinsure of insurance companies in case the insurance market is not able to guarantee insurance protection due to outstanding risk (e.g. acts of war) or lack of possibility to obtain reinsurance on the commercial market.



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Cooperation with entrepreneur does not mean losing of consumer status

More and more often large companies, as part of their activities, invite consumers to cooperate within recommendation systems. Such systems make it possible to reap “certain financial benefits” owing to the fact that a given consumer, or other persons participating in this system, purchases goods and services from trading partners of this company, as a result of the consumer’s recommendation.

The Court of Justice in the judgment of 8 June 2023 on OZ/Lyonesse Europe AG (Case C-455/21) ruled that EU regulations should be construed in such a manner that the term “consumer” should also include a natural person joining the system kept by a commercial company. The condition is that the natural person acts for purposes not related to their own business or professional activity. In such case, the natural person does not lose their consumer status only because of the fact that they have become a service intermediary of trade partners in such system and reap “certain benefits” in this regard.



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Amendments to RES Act supportive for biogas in Poland

Amendments to the RES Act entering into force on 1 October this year provide for further support for this dynamically developing sector. Strong pressure to increase the share of renewable energy, as observed for some time, is reflected both in the EU and Polish legislations. This is expressed in new amendments to the RES Act, including those introducing the provisions of the RED II Directive and Energy Law. This is good news for the biogas industry. To justify the amendments, the legislator indicates strengthening of the use of biogas and agricultural biogas for the production of biomethane, and consequently, the development of biomethane plants. Significant changes include, among others, introducing of a statutory definition of biomethane and regulating the rules for conducting activities related to biogas or biomethane.



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Changes in energy law: direct line

On 7 September, an amendment to the energy law entered into force, modifying the rules regarding consent to a direct line. The hitherto regulations did not enable the creation of any investment of this type, which simply consists in connecting a recipient (e.g. a large industrial plant) with a producer of electricity. A direct connection takes place with omitting of the distribution and transmission networks. However, the distribution and transmission networks are necessary for a proper operation of the country's energy system and is maintained by recipients. This is why a solution has been introduced, according to which using a direct line will involve an obligation to pay a solidarity fee and a fee for covering costs of maintaining the energy supply system to the benefit of a network operator.





After the change in the regulations, the entrepreneur will no longer apply for a construction permit to the President of the Energy Regulatory Office. They will only be obliged to make a notification. The notification should include information on the parameters of the line and an expert opinion on its impact on the national power grid. In some cases, including the case of small energy sources up to 2 MW, no expert opinion will be required.

Thus, the possible success of new solutions will be decided by technical condition of the power grid and the profitability of this solution after determining the above-mentioned fees.



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