

(Still) Open debate on restricted areas

In the previous edition of 'Remarks', we looked at the main elements of a law that will change the way strategic defence investments are implemented in Poland. We pointed to the decision authorising implementations of strategic investments for purposes of the state defence. The draft of the new special law (*specustawa*) has many other interesting threads, so we continue our analysis this month as well.

Let's look at the key concept of 'closed areas' and their specifics. These are not areas physically protected from access, but areas whose use is strictly subordinated to particular state purposes - in this case: country defence. It should be noted that the Polish legal system knows also closed areas with other purposes, in particular designated for railway or maritime use.

The designation of a closed area is at the discretion of the competent minister and heads of central offices by way of an administrative decision. Closed areas in relation to defence are designated by the Minister of National Defence.

Investments on closed areas may be realized with application of simplified procedures to reduce bureaucracy and streamline the implementation of investments. The characteristic feature of a closed area is 'exemption' from standard development rules. A good example is the transfer of jurisdiction to issue environmental decisions for such areas from the municipal level to the Regional Director of Environmental Protection. Moreover, these developments do not require the preparation of local spatial plans or decisions. Another important element is the introduction of protection zones in closed areas. These are restricted-use areas that are intended to ensure safety and adequate conditions for the implementation of defence activities. For example, the law defines permissible noise levels - higher than in civilian areas - which allows for intensive military training. The bill also includes investments under the National Deterrence and Defence Programme - *Tarcza Wschód*. This strategic initiative focuses on the modernisation and expansion of military infrastructure in the eastern regions of Poland, which are crucial for national security. It also introduces exemptions on development conditions.

Not all military investments will be implemented on properties owned by the Ministry of Defence. It is often necessary to acquire plots of land from the resources of the National Agricultural Support Centre (*Krajowy Ośrodek Wsparcia Rolnictwa*) or the State Forests (*Lasy Państwowe*), or even from private owners. The draft law simplifies these processes and, in addition, introduces exemptions from civil law transaction tax for transactions related to the acquisition of land for defence purposes.

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The new rules also provide for special exemptions from the Public Procurement Law (*Prawo Zamówień Publicznych*, "PZP"). In special cases where national security requires it, more flexible selection of contractors will be possible. The regulations provide that the protection of essential interests of state security may justify a waiver from the application of the PZP, for example in situations requiring the protection of state secrets or the application of special security measures. However, it should be noted that military investments related to the presence of allied troops in Poland are already often realised outside the procedures of the PZP, especially on the basis of existing international agreements. The introduction of new grounds for exemptions from the PZP is aimed at facilitation of the implementation of projects of key importance for the state's defence and security.

Enclosed areas, although restricted by definition, are becoming a space for Poland to open up to major changes - from simplified administrative procedures to dynamic investments responding to contemporary challenges. This is what we wish not only for the military, but also for civilian investments. Because in the end, we all wish Poland to be a safe and investor-friendly country. May the increased military investments fulfil this function and guarantee the stability so needed by "civilian" investors. Have a Safe New Year!

Do you want to know more? Contact us!

Weronika Własienko, Counsel
weronika.wlasienko@ngllegal.com

Katarzyna Duda, Junior Associate
katarzyna.duda@ngllegal.com