

## Analysis of legislation on the designation of sites and routes on agricultural land

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(Manuscript received 5 June 2019; accepted for publication 20 September 2019)

**Abstract.** *The article deals with aspects of the Bulgarian agricultural and ecological legislation, which regulate the processes of location of sites and routes on the agricultural lands in carrying out construction and other spatial planning activities. The purpose of the study is to identify some legal imperfections in this area and to justify the need for their correction, reversal or development. To achieve the goal, a methodology based on Bulgarian legal-order tracking of regulations and the analysis of the actions of the subjects implementing them is used. Expected results in this regard are associated with ignoring the negative impact of the imperfections of the legal base on the sustainability of agro-development measures.*

**Keywords:** agricultural land, agricultural and ecological legislation, sites, routes

### Introduction

The change of the purpose of agricultural land for non-agricultural needs in Bulgaria, as well as the realization of investment intentions, by building sites on agricultural lands in certain cases requires the identification of sites and trails. The change of the purpose of the agricultural land for non-agricultural purposes is regulated in Chapter 5 of the Agricultural Land Conservation Act (1996). These sites and routes are directly related to the process of building the site on agricultural land and the management of the planning process along the whole technological chain - from the change of the purpose of the agricultural land for non-agricultural needs to the final construction of the site. However, in the presence of certain situations and in order to facilitate the process of management and regulation of such an organizational event on agricultural land, such as the construction of specific sites, there are legal norms in the legislative plan, which abolish the necessity of designation of sites and trails on that land. For example, according to art. 17a, par. 2 of the Agricultural Land Conservation Act ([www.lex.bg](http://www.lex.bg)), the establishment of sites and trails for designing and changing the use of agricultural land for the construction of linear objects of the technical infrastructure is not required when:

- a) they are not located on the surface of the terrain;
- b) the required area of each of the adjacent facilities located on the terrain is: up to 15m<sup>2</sup> for linear power transmission facilities with a voltage level of 110kV; higher when the required area of each element of the linear object is up to 100m<sup>2</sup> and for crane assemblies, cathode protection stations, candles, control-measuring devices and electrical equipment to gas pipelines with an area of no more than 300m<sup>2</sup>.

It is also not required to carry out a procedure for the validation of a site or a route for design, according to art. 17a, par. 3 of the Law in two more cases:

- a) when the change of the purpose of the agricultural land for non-agricultural purposes is provided by an enforced master plan;

- b) upon execution of a concession contract.

The purpose of the study was to identify some legal imperfections in the area of determination of sites and routes on agricultural land and to justify the need for their correction, reversal or development.

### Material and methods

For the purposes of the study, the following valid regulatory documents of the Republic of Bulgaria were used:

- Agricultural Land Conservation Act (ALCA), 1996;
- Spatial Development Act (SDA), 2001;
- Black Sea Coast Spatial Development Act (BSCSDA), 2008;
- Biological Diversity Act (BDA), 2002;
- Rules for Implementation of the Agricultural Land Conservation Act (RIALCA), 1996.

Legal regulations of laws that have a legal relationship with the structural and agricultural legal norms in the area of land and site validation but on agricultural lands were also used.

The methodology of the study included mainly elements of legal analysis including legal-relational analysis and elements of comparative analysis. The applicability of these types of analysis is based on the in-depth examination of the relevant legal regulations and the position of the expected results of their application in the spatial planning practice of the agrarian sector.

### Results and discussion

*Institutions and authorized persons responsible for determining sites and routes on agricultural land*

According to the wording of Art. 18 of the Agricultural Land Conservation Act /ALCA/ (1996), interested parties may request both the designation and the validation of a site and/or a route and change of the purpose of the land. Such a request should be based on the emerging need to build sites on agri-

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cultural land. In addition, these sites will not be related to land use as intended in the regulation of Art. 2 of the ALCA (1996), namely: the purpose of the agricultural land is for the production of plant produce and grazing of livestock.

Who are the entities having the right and the obligation to initiate proposals for the approval of a site or a route for designing and changing the designation of agricultural land?

According to the regulation of Art. 19 of the ALCA (1996), such proposals may be made by:

- the Minister of Regional Development and Public Works;
- The Regional Governor;
- The mayor of the municipality.

When the establishment of a site or a route for designing and modifying the purpose of agricultural land is related to state needs, the proposal is made by the Minister of Regional Development and Public Works. In addition, the territorial scope in such cases is in the range of more than one area. For sites and facilities on the territory of the respective area, the proposals are made by the Regional Governor. The mayor of the municipality makes proposals related to municipal needs.

According to Art. 21 of the Agricultural Land Conservation Act (1996), for each site that is proposed to be built or extended on agricultural land is determined the necessary site with a plan of the property or a plan project when the site is part of the property, with specified boundaries and area determined by the geodetic coordinates and the determining points.

For the linear objects of the technical infrastructure, a route with a preliminary project under Art. 126, par. 6, item 1 of the Spatial Development Act (2001) shall be determined. According to this text, the exploration and design works for the elements of the technical infrastructure beyond the boundaries of the urbanized territories are carried out in two phases, the first of which is a preliminary project in which the route options are being developed.

The above mentioned regulations also require the existence of validated decisions or opinions issued under Chapter Six of the Agricultural Land Conservation Act (1996).

Environmental assessment and environmental impact assessment is under Art. 31 of the Biological Diversity Act (2002). The text of Art. 31 stipulates that a mandatory assessment of the compatibility of plans, programs and investment proposals with the subject and purposes of the protection of the protected zones shall be made. Together with the main site or route, the necessary auxiliary and additional sites and routes shall be identified for the provision of transport access by means of a permanent pavement road, temporary land use and other related to the construction and/or use of the site.

Where land of first to sixth category is concerned, according to the regulation of Article 4, at least two sites or routes are designated for the site. Exceptions are allowed for land that is offered for extraction of underground resources. In the cases and under the hypothesis of Art. 4, the sites are defined with a plan of the property or a plan-project, when the site is part of the property with specified boundaries and an area determined by the geodetic coordinates of the defining points and the routes for the linear objects of the technical infrastructure - with a preliminary draft with variants of the route in the above-mentioned

Art. 126, para 6, item 1 of the Spatial Development Act (2001).

What are the bodies that validate the sites and routes?

According to Art. 22, par. 1 of the ALCA (1996), the sites and the routes of the sites under Art. 21 (ALCA, 1996) shall be approved by decision of the following committees:

- a) Commission to the Regional Directorates "Agriculture";
- b) The Agricultural Land Commission at the Ministry of Agriculture, Food and Forestry.

The applicants are: the owner of the land and the investor of the site.

The decision shall be issued within one month of the filing of the written request. Upon a valid decision for validation of the final site/route, the stakeholder may request permission for elaboration of a detailed development plan under the order of the Spatial Development Act (2001).

A detailed development plan for the approved site or route or approved terrain for inclusion within the boundaries of the urbanized territories, according to the regulation of Art. 35, par. 2 of the Rules for Implementation of the Agricultural Land Conservation Act (1996) by the owner of the land or by the investor of the site for acceptance by the expert councils under Art. 3, 4 and 5 of the Spatial Development Act [www.lex.bg], namely:

- National Expert Council on Spatial Planning and Regional Development;
- Regional Expert Planning Board;
- Municipal (Area) Expert Territorial Planning Board.

The approval of a detailed development plan shall be carried out in accordance with Art. 129 of the Spatial Development Act (2001):

- By decision of the municipal council on a report by the Mayor of the municipality;
- Mayor of the municipality;
- The Regional Governor;
- The Minister of Regional Development and Public Works, according to the scope of the detailed development plan.

The complexity of the legal matter with regard to the technological process for determining sites and routes creates a complexity of the interrelations between legal entities. This complexity is also influenced by the termination of processes, which can cause complexity in the legal environment and the need to resolve conflicts, by applying administrative and penal norms.

#### *Characteristics of site and route*

The sites and routes, in terms of legal regulations, have a number of specific features. According to Art. 27, par. 2 of the Rules for Implementation of the Agricultural Land Conservation Act (1996), the range of sites and routes in relation to their species diversity include:

- a) Sites for all types of new sites whose construction has not begun;
- b) Dams, power stations and other hydropower and power plants, railway station platforms, container terminals, airports, ports, landfills and other waste treatment sites;
- c) The trails for:

- Auto-mills, roads, railways, floating, oiling, drainage channels and other routes of technical infrastructure sites located on the surface of the site;

- Terrains for the creation of new areas for resort and villa construction, as well as extension of industrial, production and commercial sites, hospitals, sports grounds and parks, including cemeteries and waste treatment sites, as well as other terrains for inclusion within the boundaries of settlements and settlement formations;

- Terrains for inclusion in the innermost zone "I" of sanitary protection zones around water sources and facilities for drinking water supply and around the water sources of mineral waters used for healing, prophylactic, drinking and hygienic needs;

- Terrains for inclusion in protective and easement areas, sites and facilities where such land cannot be used to produce agricultural produce.

The listed sites and routes must meet two basic conditions, according to the regulation of par. 3, namely:

- a) be located on agricultural land outside the boundaries of the settlements and settlement formations defined by the detailed development plan and beyond the boundaries of the forest areas;

- b) be located on non-agricultural land (ravages, gullies, slopes and abandoned spaces) within the boundaries of agricultural territory.

The routes and the sites also have other specific characteristics, regulated in the norm of Art. 28, par. 4 and 5 (RIALCA, 1996), namely:

- a) the lengths of the linear objects are determined in principle alongside the minimum allowable distance from the existing linear and other objects and take into account, if possible, the property boundaries in order to reduce the size of the required area for the site and to create the least difficulty in using the agricultural lands;

- b) when defining routes for roads and railways, only land within the road is taken into account in accordance with the Roads Act (2000) and the Railway Transport Act (2000);

- c) the sites for all auxiliary and auxiliary objects outside the easement are identified, coordinated and proved separately as separate objects;

- d) a site or runway, regardless of the land category, may be designated for water use, extension of linear and other sites, and when a change in the use of agricultural land to natural and legal persons for their own needs is requested.

As a specific aspect of the legal characteristics of the procedure for designation and validation of sites and routes, the regulation in the norm of Art. 32, par. 3 of the Rules for Implementation of the Agricultural Land Conservation Act (1996) may also be qualified.

In the above-mentioned regulation, the circumstances giving the legal possibility to the Commission to refuse the validation of a site or a route for the design of the site are fixed, namely:

- a) where there is an opportunity for the site to be built on other lands on the land of the same locality that is less produc-

tive or unfit for agricultural use, with the exception of the conditions of Art. 28, par. 7 (RIALCA, 1996), which states that a site or route, regardless of the land category, can be determined for water use, extension of linear and other sites, and when a change is made to the use of agricultural land for natural and legal persons for their own needs;

- b) the site or activity envisaged will have a negative impact on the environment as established by the relevant Ministry of Environment and Water;

- c) the proposed site or route does not comply with hygienic and construction requirements or restrictions imposed by law;

- d) the sites for roadside objects are located in the easement of roads on the national road network; in the easement is allowed only the construction of road links to the objects;

- e) for the construction of sites for production of electricity from solar energy there is a denial of connection issued by the respective power grid operator or there is no opinion on the conditions and the way of connection by the respective operator of the electric grid.

The purpose of the sites and the routes is the basis of the rich range of legal characteristics that the normative regulations affirm. A positive and at the same time a legal risk and a legally complicated moment is the right of the commit-tees to refuse the approval of a site or a route. In this way, a legal environment has been created which, under certain conditions, can provoke manifestations of subjectivism that would defeat the basic purpose of the rule of law.

## Conclusion

The legal norms relating to the designation of sites and trails on agricultural land as a whole regulate the complex relationship between land-use actors and management of land-use planning on agricultural land. At the core of the legal regulations is the main objective of managing not only these processes but also the agrarian sector as a whole: conservation and conservation of agricultural land resources as a national treasure. An illustration of this is, for example, the text of Art. 31, par. 2 of the Rules for the Implementation of the Agricultural Land Conservation Act (1996), which highlights the mandatory requirement in the proposal for sites for state and municipal needs, to indicate the size and location of the possible sites of which at least one is on land of low to productive or unfit for farming use from seventh to tenth category or uncategorized. The analysis of the legislation package does show that it suffers from some imperfections caused by complicated legal regulations and references which in some cases are contradictory and create conditions for subjectivism and subjective interpretation of the rule of law. In this connection, it is necessary to revise the legal package and to draw up a special regulation for the establishment of sites and routes, which will create a precise and preventive legal order for this procedure.

## References

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[www.lex.bg](http://www.lex.bg).