

## Institutional Problems of Spatial Policy during the COVID-19 Pandemic: A Polish Case

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Article history: Received: 26 June 2020 Received in the revised form: 22 August 2020  
Accepted: 9 September 2020 Published online: 11 November 2020

### Abstract

The COVID-19 pandemic and its economic consequences have caused several repercussions in various spheres, including real estate management and spatial policy. In Poland, public authorities (the government) was triggered to develop the so-called "Anti-Crisis Shields", a legal act introducing transitional solutions to various spheres of life. Some provisions also covered the sphere related to spatial policy. Consequently, new dilemmas have arisen regarding the way of applying spatial policy tools in the new situation. The article aims to isolate and evaluate new conditions and dilemmas related to spatial policy tools in the Polish spatial management system. After a brief description of Poland's spatial management system and its main problems, attention was paid to: (1) the emerging dilemma of what is more important in the conditions of a pandemic: the speed of planning processes or protection of critical values in the spatial management system; (2) new directions of activities related to the use of spatial policy tools, especially in the context of ensuring social distance and more comprehensive health protection; and (3) new conditions for public participation. Based on the analysis, a new direction of spatial policy changes caused by the pandemic crisis was proposed. The investigation covers a new problem of public authorities' inefficiency during a pandemic. From this perspective, we evaluated the spatial planning legislation introduced during the COVID-19 in detail.

*Keywords:* COVID-19 pandemic, Poland, spatial management, local spatial plans

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### 1.0 INTRODUCTION

Due to the pandemic's impact, significant restrictions were implemented upon the world's societies and economies. These regulations had to be applied to the social and economic life due to numerous concerns connected with pandemics' effect, development, and scope on citizens' lives and health. Because of the virus's spread, a vast range of activities connected with public policies had to be suspended for the time being. This also includes the process related to the implementation of spatial policies. From the perspective of functioning municipal authorities (that implement the spatial policy at the local level) and national authorities - new dilemmas and problems arose. The article aims to isolate and evaluate new conditions and dilemmas related to spatial policy tools in the Polish spatial management system. After a brief description of Poland's spatial management system and its main problems, attention was brought to:

- the emerging dilemma of what is more crucial during a pandemic: the speed of a planning process or further protection of fundamental values in the spatial management system;
- new directions of activities related to the use of spatial policy tools, especially in the context of ensuring social distancing and broader health protection;
- new conditions for public participation.

The regulations contained in the Act, as of 2 March 2020, pinpoints the specific solutions related to the prevention, resistance, and control of COVID-19, other infectious diseases, and the crises caused by them ought to be analyzed separately (Journal of Laws 2020, item 374 as amended - legal status for April 2020) (Kancelaria Sejmu RP, 2020).

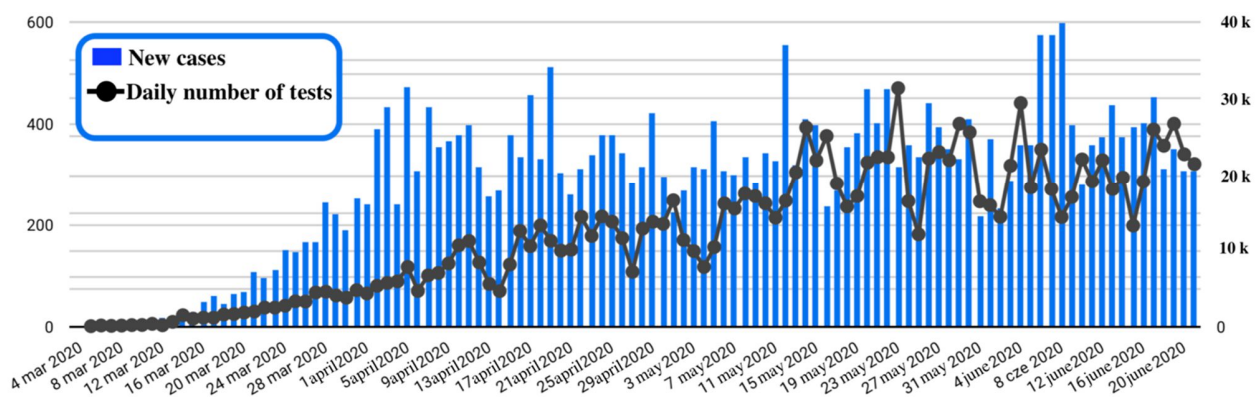
The focus (as the topic suggests) was primarily on selected institutional issues related to the spatial management system. The problems and complications that arose during the pandemic are related to some already detected issues in the Polish spatial management system, concerning spatial policy tools. Therefore, following Poland's pandemic development's essential characteristics, the Polish spatial management system has been distinguished. From that, the formal and legal changes, as well as their consequences, were indicated.

The addressed problem requires further presentation. For many years, there have been deliberate dilemmas in the Polish spatial development system. There is an ongoing discussion on how to effectively protect the spatial order and reduce public authorities'

disorganization in this scope. Unfortunately, the pandemic emerged new problems. Some of the new legal regulations regarding the use of spatial policies during the pandemic are a part of the formerly mentioned inefficiency of public authorities regarding the spatial management system.

## 2.0 DEVELOPMENT OF COVID-19 IN POLAND

The first confirmation of the SARS-COV-2 virus infection in Poland was on 4 March 2020, of a 66-year-old man who came to Poland from Germany. Accordingly, the Polish authorities have taken measures to introduce an epidemic emergency in the period from 14 – 20 March 2020, followed by introducing an epidemic status. With the introduction of the state of the epidemic, the economic and social activity has been significantly reduced. Actions were implemented to limit the movement of residents (both for personal and professional purposes), the functioning of state and local government offices was limited (e.g., handling administration manners personally in offices was banned and remote work of officials was introduced), social distancing and wearing face masks were ordered. The restrictions introduced for the economy were gradually implemented. Figure 1 shows the development of the COVID-19 pandemic in Poland.



**Figure 1** Coronavirus development in Poland from 4 March 2020 to 20 June 2020  
(Source: Forsal, 2020)

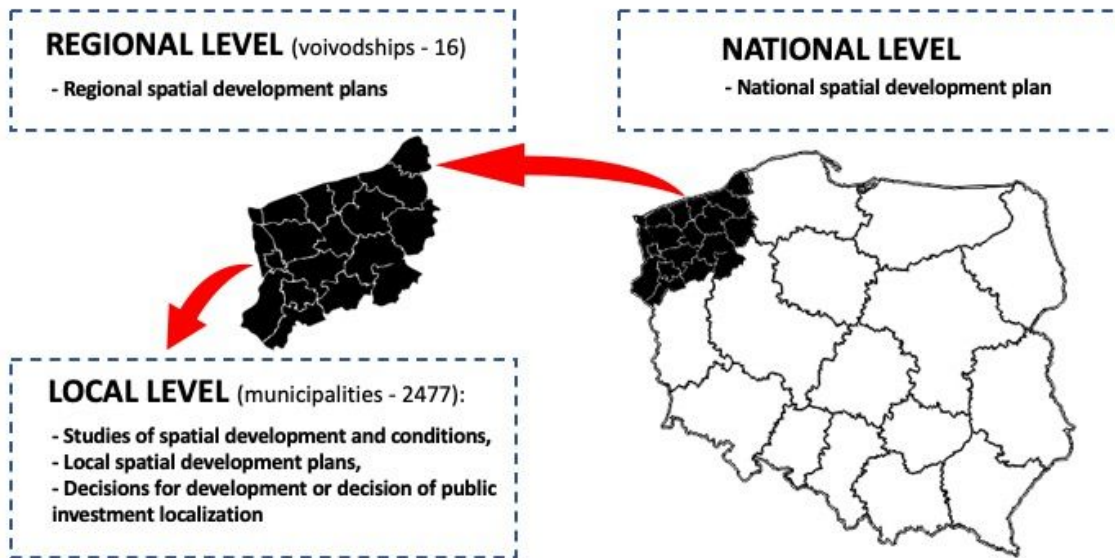
Simultaneously, to minimize the negative consequences of the economy's epidemic state, the government instantly introduced particular solutions (as part of the so-called anti-crisis shield) for the enterprises and facilitated public functioning institutions. The Act was adopted on 2 March 2020 and delineates specific solutions related to the prevention, resistance, and control of COVID-19 (Kancelaria Sejmu RP, 2020). This adjustment was then changed three times over the next three months. However, it is hard not to resist the impression that the speed of introducing such a large number of solutions does not always go hand in hand with the quality of their application. As a part of the anti-crisis shield, an introduction of various solutions that are highly debatable in terms of their impact on mitigating the effects of the impending crisis can also be observed - especially taking into account the development of a pandemic and the number of diagnosed cases (an increasing trend) concerning the introduced restrictions and their mitigation (Mickiewicz & Nowak, 2020). Of course, this only applies to non-medical activities, such as changing the law regarding the field of spatial planning (e.g., the possibility of non-permanent installment of 5G masts without a permit).

## 3.0 THE SPATIAL PLANNING SYSTEM IN POLAND

In Poland, there are three levels of the spatial planning system: national, regional, and municipal, for which different planning documents are made (in terms of concept, plans, study). They are adopted by an appropriate social representation, i.e., the parliament, regional councils, commune councils (Figure 2). The document about spatial planning drawn up at the national level is the concept of national spatial development policy at the regional level - voivodship spatial development plans. According to the Act from 27 March 2003, about spatial planning and development, the following policy tools may be distinguished at the local level:

- Studies of spatial development and conditions (SSDC) are directional acts. They are not binding directly, but they are to define the principles of space development in the entire commune. They are the reference point while adopting local land development plans;
- Local spatial development plans (LSDP) - regulatory acts directly binding to the investment's implementation, determining its development principles. These include buildings' height, intensity, biologically active area, the building line, and land usage.

If the municipal authorities do not adopt a local spatial development plan for a given area, the development decision shall be issued at the investor's request. It already refers to a specific investment (imposed by the investor) not always coordinated with the environment.



**Figure 2** Spatial system in Poland

(Source: Author's analysis)

The concept of the national spatial development policy (NSDP) is a record of the main directions of the state's spatial policy and a general vision of the country's spatial development (LEVEL I). Therefore, it primarily has a conceptual and strategic function. NSDP is the basis for voivodship spatial development plans (RSDP - LEVEL II). Similarly, RSDP is an act of internal management that binds the voivodship authorities and other public administration entities in respecting development priorities and conducting spatial policy by established directions (however, it does not constitute local law). Documents adopted at the national and regional level become, in a legal sense, an act of internal management, which means that their findings apply only to the administrative bodies that participated in the adoption procedure.

The voivodship spatial development plan is the basis for formulating conclusions to study conditions and directions of municipalities' spatial development, local spatial development plans, and their evaluation to achieve regional objectives. The plan also provides local governments and investors with information on what acceptable practices they should use in spatial management.

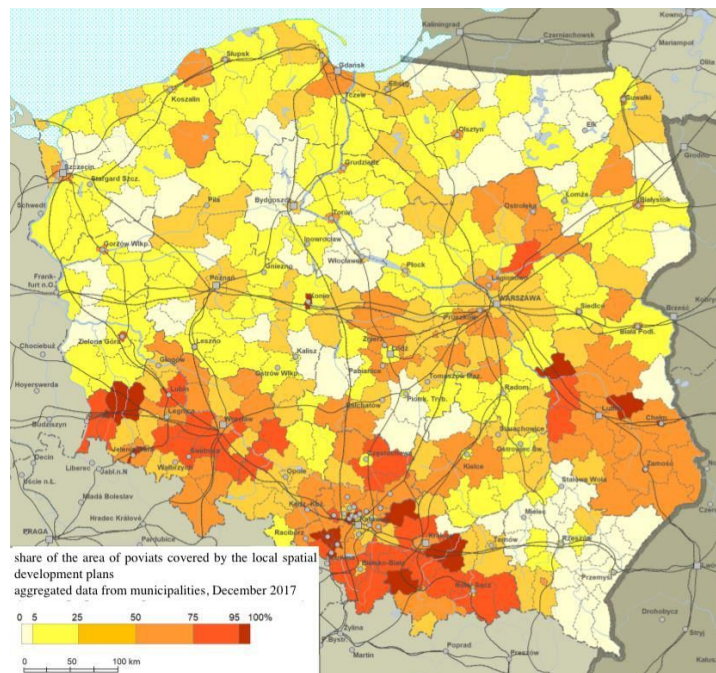
The basic principle of spatial planning in Poland assumes that plans at a lower level must be consistent with the higher level's assumptions. This principle ensures spatial planning consistency at the local level at the regional, and national levels (Mickiewicz et al., 2020).

At the local level, the study of spatial development conditions and directions (SSDC) is the basis for all actions taken in the commune in spatial planning and development. His findings are binding on municipal bodies when drawing up local spatial development plans. The study is a document based on which the municipality can formulate conclusions for the voivodship spatial development plan and verify the area's adopted arrangements. The provisions of the study are not an act of local law - for the local authorities are obligatory, but not for investors and private individuals (Baran-Zgłobicka, 2015; Nowak, 2019; Śleszyński et al., 2018a, 2018b).

The essential tool of spatial policy at the local level are local spatial development plans (LSDP) developed at the municipal level, because they are acts of local law introduce rigors of investment activity to space (full scheme of the procedure is presented in Appendix). The exclusive property of adopting local spatial development plans is by the law of the commune council (Gibas & Majorek, 2020; Krajewska & Pawłowski, 2019; Karwińska et al., 2018; Komornicki et al., 2018; Kowalewski & Nowak, 2018; Lityński, 2016; Lityński & Hołuj 2020; Solon, 2009). The local spatial development plan is an act of local law, which means that its arrangements are generally applicable in the commune and form the essential tool for implementing planning decisions. If the local plan is adopted, no other municipal regulations regarding spatial development may be issued.

Thus, the entire area of regulations concerning aesthetics of development, an architectural arrangement of buildings or landscaping, if not included in the local plan's arrangements, can only be enforced employing the construction law or other national laws (Kowalewski et al., 2014; Lorens, 2006; Mickiewicz & Nowak, 2019; Nowak, 2017; Nowak & Kreja, 2012; Ostrowska, 2017; Szulczewska et al., 2014).

It should be noted that although the local spatial development plan (LSDP) is the necessary tool for spatial development in a commune and constitutes a local law act, only about 30% of the country's area is covered by these plans (Figure 3).



**Figure 3** Share of the area covered by local spatial development plan in Poland  
(Source: Śleszyński et al., 2018b)

Such low coverage of the country's area by the local spatial development plans (after nearly 17 years of law) indicates a system problem. This is due to the following factors:

- Complicated and lengthy procedures for adopting plans (2-3 years on average);
- High costs associated with preparing plans;
- Lack of qualified staff dealing with spatial policy in offices;
- divergence of interests of residents - investors - local governments in the field of spatial development;
- the need to comply with provisions of the adopted plan (the procedure for changing the plan is as lengthy as its adoption);
- local governments do not want to adopt plans that could later limit their freedom of investment or result in pressure from landowners. Landowners want to change their lands' function from agriculture to development, and the local governments must pay for utility infrastructure.

#### 4.0 PUBLIC PARTICIPATION

Public participation is a critical issue that should be presented in the analyzed context. It has already been the subject of multiple analyzes. Of course, in the context of the spatial management system, it cannot be solely associated with the planning acts preparation stage. However, during this stage, the factors related to public participation are particularly noticeable from a formal and legal perspective. In addition to any other municipal authorities (understood as spatial policy entities) with spatial policy stakeholders, particular attention should be paid to:

- applications addressed to the commune authorities before preparing the draft planning act;
- comments addressed to the already prepared draft planning act.

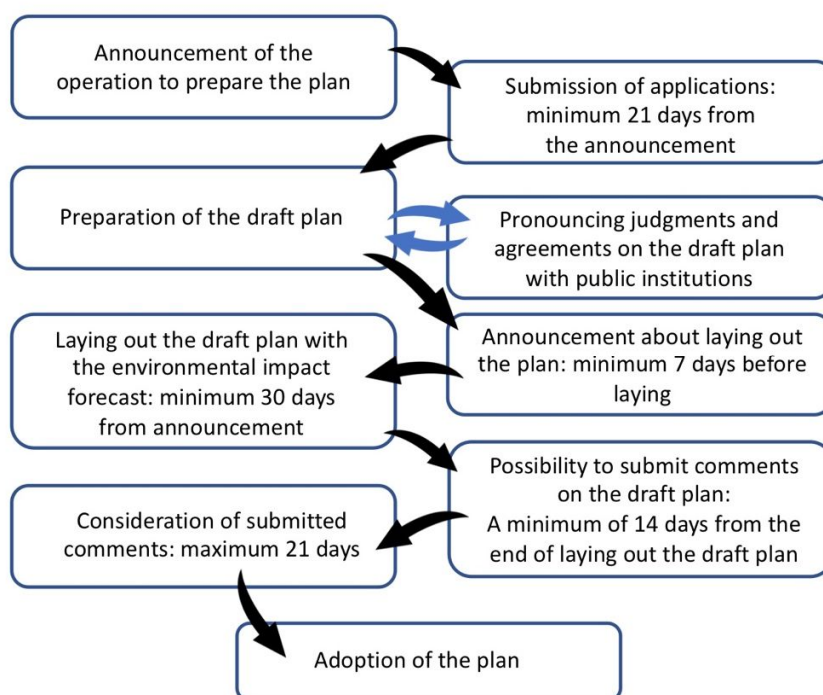
Especially the second matter has more elaborate regulations (Article 11 points 7-9, Article 17 points 11-14, Article 18 of the Act of 27 March 2003 on spatial planning and development, i.e., the Journal of Laws 2012, item 647, as amended) and a broader reference in the literature (not only legal) (Izdebski et al., 2013; Niewiadomski, 2011; Nowak, 2020; Sosnowski et al., 2014).

In the time of crises (such as the coronavirus pandemic), it ought to be remembered that the legislator does not, as a rule, impose a specific deadline for the resolution/change in the study of spatial development and conditions (SSDC), and the local spatial development plan (LSDP) (Kwaśniak, 2008; Małysa-Sulińska, 2008). This principle (sometimes abused as a basis for a very long procedure of a draft planning act) in the situations mentioned above turns out to be very useful. However, it is not equivalent to abandoning any planning activities in the commune, nor does it solve all commune authorities' problems.

Although there are no overall deadlines set out in the regulations for the preparation of planning acts, some activities during the planning procedure are already subjected to deadlines. For example, this applies to the study's presentation on the conditions and directions of spatial development / local spatial development plan (during which public discussion should be held) and the time limit for submitting comments. Solving the dilemma of what to do with the deadlines that have started before the crisis is not difficult. In this case, the municipal executive body has two options:

- repeat the same operation after finding that the crisis has stopped;
- the extension (or maybe even several extensions) of the previously indicated period.

In this context, it is also worth paying attention to the municipalities' executive bodies' statutory obligation to carry out a public discussion during the presentation of the draft planning act. The legislator does not define what is meant by public discussion. However, there is no doubt that such a discussion must be publicly available by its nature. The formula of such discussion adopted by the commune executive body cannot be exclusive, and even more so, carried out in the conditions endangering one's health (apart from the restrictions imposed on assembly by the central authority). There is no doubt then that public discussion during a crisis is impossible to prosecute. Public administrations should especially remember that any half-measures cannot replace it. Chart 4 presents the scheme of adopting the local spatial development plan. On the right side, the minimum deadlines related to public participation are connected with various stages of adopting the plan.



**Figure 4** Procedure scheme for setting up study of spatial development and conditions (SSDC)

As shown in Fig. 4, the preparation procedure of spatial policy management tools in Poland is, by definition, extensive, considering the stakeholder's perspective, as well as the cooperating authorities of the commune authorities. The changes introduced in June 2020 under the so-called "IV anti-crisis shield" apply to this procedure. They enable a public discussion on the outlined solutions through new tools of spatial policy, employing distance communication. It should be noticed that there are some doubts about the detailed interpretation of these new provisions. Nevertheless, according to the most widespread option, the commune authorities may decide that the public discussion upon a new spatial policy act may only be carried out online. Undoubtedly, this would accelerate the processing of spatial policy tools. However, that could lead to deepening the digital exclusion of some inhabitants in the communes, which is a severe matter.

The example above perfectly illustrates the currently occurring dilemma in the spatial planning system. The two goals are reconciled speed optimization of planning procedures and protecting the spatial management system's fundamental principles and values. Public authorities' actions lead to the conclusion that they solely care about the first of the indicated goals (which can be associated with underestimating issues related to the protection of spatial order for many years by the public authorities). During the pandemic, it displays as giving less care to the quality of public consultations.

## 5.0 THE IMPACT OF REGULATIONS CONTAINED IN THE SO-CALLED 'ANTI-CRISIS SHIELD' ON THE PLANNING PROCEDURES

The regulations contained in the Act of March 2nd, 2020, on the specific solutions related to the prevention, resistance, and control of COVID - 19, other infectious diseases, and the crises caused by them ought to be analyzed separately (Journal of Laws 2020, item 374 as amended - legal status for April 2020) (see Kancelaria Sejmu RP, 2020). That, as a rule, does not directly interfere in the sphere of spatial planning (the exception is Article 12 of this Act). The three regulations in this Act, introduced at the beginning of April 2020, are analyzed below. Not all dilemmas associated with them were taken into account, but only the context directly related to spatial planning. Articles analyzed:

- art. 12 of the pursuant Act to which, for the design, construction, reconstruction, renovation, maintenance, and demolition of buildings, including changes in use, concerning the prevention of COVID - 19, among others the provisions of the Act on spatial planning and development shall not apply;
- according to the art. 15 zzs. 8, the deadline for tacit settlement of the case, and a case where the authority does not express an objection issue a decision, order, or other resolution entitles the party or a participant of the proceedings to take action, affect the scope of the participant's rights and obligation. If the participant does not continue the action that has already begun, they can be suspended. Moreover, the same following paragraph. One of these articles concerns the time limits in other administrative proceedings. However, the authority may settle on a given matter or express its position;
- art. 15 zzx section 1 according to which, during the period of the state of epidemic threat or the state of the epidemic, constitutive organs of local government units and collegial bodies: executive bodies in local government units, in associations of local government units, in a metropolitan association, in regional accounting chambers and self-government appeal boards, may convene and hold deliberations, sessions, meetings, assemblies or other forms of action appropriate for these bodies, as well as make decisions, including resolutions, using means of distance communication or by correspondence (remote mode of proceedings). The above shall apply accordingly to collegial internal organs, such as committees and teams, operating in organs constituting a local government unit and in organs collaborating.

Each of these issues can be viewed from different perspectives. Art. 12 may be included in the context of the regulation of particular laws, creating extraordinary changes in the spatial management system (primarily focused on facilitating investment implementation possibilities). In this case, the change goes far, facilitating the rapid implementation of the investment. This is justified by the circumstances, with the proviso will not exceed the period of the epidemic and willfully fall within its associated scope. The premise of "connection with counteracting COVID - 19" as a justification for applying this regulation has been widely formulated.

An amendment to the Act introduced by the Act of April 16th, 2020, on the particular support instruments connected with the spread of the SARS-CoV-2 virus has already referred to spatial planning much more widely. It excluded the earlier provisions regarding the deadlines for administrative proceedings (as well as the tacit settlement of related matters and institutions) about:

- agreeing and giving opinions on draft studies of conditions and directions of spatial development, local spatial development plans, and the so-called advertising resolutions;
- deadlines for submitting applications for the studies and local plans;
- issuing a decision on building conditions;
- agreeing to draft decisions on building and land development conditions;
- deadlines related to drafting resolutions regarding investments based on the housing law.

These changes were aimed to enable planning activities during the pandemic (to a different extent than the one already mentioned). The legislator's reference to the arrangements and opinions was linked to previous practice, under which opinion and agreement bodies often did not express their views on specific planning acts within the required time limit, which was considered as their tacit agreement. The provisions of the previous wording of the "anti-crisis shield" prevented the continuation of such practice. At this stage, the speed of implementation of planning procedures does not seem to be the most crucial goal - significantly since the current planning practice, carried out under ordinary conditions, raised several doubts (a vital issue still arises in this context: the relation of planning procedures to values in the spatial management system). Bearing in mind the complexity of the spatial management system, it should be pointed out that these are the two institutions most harmful to the spatial order. The introduction of the possibility of their functioning even in crisis conditions, instead of streamlining procedures, as intended by the legislator, may lead to earlier negative consequences and further generation of spatial chaos. These decisions/resolutions may, under current conditions, be subjected to much less social control (even if such control compresses to the decisions on building conditions to the participation of owners/users of neighboring perpetual real estate as parties to the proceedings). Of course, one should consider the extraordinary situation (related to the pace of work on regulations) and the regulations' temporal formula. It should also be acknowledged that assuming a limited duration of this part of the so-called "Anti-crisis shield," they will, after all, have personal consequences. Nevertheless, it is worth emphasizing doubts with this direction of the legislator's actions during the crisis. The more so because it is not always associated with the desire to provide partial spatial analyzes (referred to in the previous subsection).

It should also be added that while the regulation is contained in art. 15 zzx refers to municipal councils' resolutions, including the adoption of a planning act (prepared earlier after meeting the procedural requirements), it does not take into account the "public discussion" referred to above. However, as indicated, this opens up a discussion to the broader digital modification of planning procedures.

Therefore, the pandemic's duration has more broadly highlighted the problem of the effectiveness of the solutions adopted in the Act of planning and spatial development. One of the more severe dilemmas was how to carry out the public consultation process of procedural planning acts. On the one hand, the authorities of many municipalities wanted to conduct these consultations as soon as possible (and the pandemic did not block specific local plans or changes in the study of conditions and directions of spatial development). On the other hand, there were voices that, on this occasion, there could be a situation in which at least part of the local community would be excluded from such consultations (conducted in electronic form). That would deepen the digital exclusion problem.

## ■6.0 CONCLUSION

The critical dilemma noticeable in Polish realities related to spatial planning during a pandemic is reduced to a conflict of two goals/values. On the one hand, one may distinguish the pursuit of rapid implementation of planning procedures - the rapid adoption of studies of conditions and directions of spatial development and local spatial development plans, even despite the uncomfortable circumstances (which was

ultimately to accelerate investment development). As shown by the authors' observation, there is noticeable protection of previous values, emphasizing related issues. In particular, issues the threats include digital exclusion and consultation methodology. In the authors' opinion, despite understanding the importance of planning procedures' efficiency, this goal cannot be achieved at the indicated values' expense. In the long term, this may prove to be defective and generate additional problems. It should be emphasized that the analyzed solutions require further research. In particular, it is necessary to analyze and evaluate in detail the activities of municipalities throughout Poland during the crisis. The assessment requires how individual regulations are applied and the extent of the problems encountered. However, this will be possible after a more extended period, at least in 2021.

Based on the conducted analyzes, it can be concluded that the crisis caused by pandemic significantly affects the spatial management system. Even though the long-term introduced and discussed changes might allow for more rapid implementation of procedural actions, they might also consolidate several negative tendencies. Therefore, it is necessary to already recommend the introduction of obligatory analyzes at the municipal level considering the state of spatial development during the pandemic to the public authorities (central level).

Such analyzes would create the basis for defining principal spatial challenges at the local level in the new conditions - especially in the context regarding the protection of primary values (apart from spatial order, public participation will have a crucial role). However, in the research-related context, it should be noted that no comprehensive data is allowing a detailed verification of the actions taken by all Polish municipalities during the pandemic at the present stage. After obtaining this data (no earlier than in 2021), the basis for extension to the presented issues will appear.

### Acknowledgement

This research would not be achieved without the support from Ada Mickiewicz.

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### APPENDIX Full procedure scheme of setting up local spatial development plan (LSDP)

