

# Act on Facilitation in the Preparation and Implementation of Housing and Accompanying Investments ("Lex developer") in the light of economic analysis of law

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**Abstract:** Like many countries in the world, Poland is struggling with a significant housing deficit, especially those available to people with lower incomes. For several years, actions have been taken at the government level to solve this problem. One was adopting the Act on Facilitation in the Preparation and Implementation of Housing and Accompanying Investments ("Lex developer"). The legislator's assumption was to improve the process of building new apartments by lowering the planning and administrative requirements. The study aims to assess whether the new regulations can be called efficient from the point of economic analysis of Law. The authors conducted an ex-post analysis because some years of operation of the new Act allowed for some conclusions of real results of implementation of the Act. The Authors used desk research in form of critical literature analysis, national and local legal acts analysis, comparative analysis, and case studies methods. The authors came to the conclusion that the collected material entitles us to conclude that the analyzed legal act does not meet the accepted criteria of effective law. The authors came to the conclusion that the collected material entitles to conclude that the analyzed legal act does not meet the accepted criteria of effective law.

**Keywords:** planning system, Poland, developers, housing, economic analysis of law

## I. INTRODUCTION

Economic analysis of law (more: Beldowski, & Metelska-Szaniawska, 2017; Guzik, 2017) allows you to see legal regulations in a new light. This view seems to create a new space for discussion between lawyers and economists, theorists

and practitioners, politicians, and all recipients and "users" of a given legal act. Focused considerations about the causes and effects of specific regulations are components of creating a logical and coherent institutional system. These considerations are necessary to understand the emergence, development, and disappearance of given processes, mechanisms, and phenomena. There is paucity of analyses of this type in Polish law-making practice, so the article's authors try to fill a significant research gap.

Law is a construct created in specific institutional, economic, and spatial conditions, written by politicians. It can support or hinder socio-economic development, generating pathologies, corruption, and abuses of interpretation. Such different impacts result from a discrepancy between the legislator's intentions and the effects of implementing the regulations being created. To reduce the scale of such phenomena, it is necessary, among others, to analyze from the point of view of the economic efficiency of law. Due to different approaches to efficiency, the term "legal efficiency" is also defined in various ways. Among the ideas, there is micro and macro efficiency (Rubin, 2005), and there are four ways of understanding efficient law; these are maximization of social welfare (more: Posner, 2014), improvement of the situation of one actor without deterioration of the position of others (cf. Pareto, 1897); the advantage of the benefits obtained by the actor over the losses of others (see: Kaldor, 1939; Hicks, 1939) and equalization, reduction of marginal costs (Coolter, & Rubinfeld, 1989). In the literature on the subject, one can find the conditions efficient law should meet, especially "common law" (Rubin, 1977; Posner, 1996;



Sokol, 2019). Works focusing more on comparing law with Roman roots and common law consider the differences of statutory law (Rubin, 1982; Wagner, 1992). The results of the studies allow for distinguishing several conditions whose fulfillment is essential to obtain efficient regulation (Stelmach, et al. 2007).

It is necessary to distinguish between the effectiveness and efficiency of regulation, an effective regulation could be inefficient. The efficient law should refer to cultural, economic, and social changes, anticipate them, and treat recipients as rational actors that maximize their benefits. When creating a new regulation and predicting its effects, the legislator should strive to maximize social utility, not forgetting about individual utility. The law should provide the basis for the optimal allocation of goods (with a specific interpretation of “optimal”); it should be understandable, concise, and without interpretation gaps. Moreover, despite the need to keep up with changes, it should consider existing cultural standards, traditions, and legal culture in a given area (Stelmach, et al. 2007).

Economic analysis of law is used in many different regulatory areas – it may concern specific court cases, individual regulations, or the entire legal system (cf. Araszkiwicz, 2015; Czarnicka, 2017; Nieborak, 2016; Schäfer & Ott, 2022). In this paper, the authors decided to deal with regulations belonging to administrative law. Therefore, it seems necessary to indicate essential features characteristic of this area of law, bearing in mind the definitional changes resulting from historical, political, and legal conditions (for more information: Blicharz, 2020).

According to J. Łętowski, Administrative Law regulates administrative processes in the state, the system of actors established to implement these processes, and the characteristic (primarily authoritative) legal forms of operation of these actors (Tarno, 1996). According to J. Zimmermann, Administrative Law is a part of Public Law that implements social goals, interests, welfare, and tasks and regulates the organization and activities of public administration (Zimmermann, 2022). Administrative Law is distinguished from Civil Law by, among others, that its regulations should be applied following the content of the standards and principles of interpretation without the possibility of modification (absolute law), and there is no reciprocity in the rights and obligations of the parties. Moreover, Administrative Law has an authoritative nature and is non-contentious. There is a controlling function of the court from the point of view of possible irregularities in a given administrative legal relationship (Zimmermann, 2022). Administrative law provisions should be precise and understandable and not raise doubts about interpretation (Guzik, 2017).

In light of the above remarks, the Act on Facilitating the Preparation and Implementation of Housing and Associated Facilities (the Lex developer) (Journal of Laws of 2018, item 1496), the content and results of which the authors analyze, belongs to Administrative Law. This legal act has a *lex specialis* nature concerning the standards in force regulating the spatial planning principles and location of new housing projects in Poland. This act aroused extreme opinions already in the draft

phase. According to the drafters, its adoption for ten years was to increase the supply of residential properties and the availability of apartments for lower-income households. The developer side also raised the need to issue such a regulation, while those opposed included representatives of local authorities, city planners, and lawyers. The authors decided to analyze the consequences of implementing the act in the light of the criteria of effective law presented earlier.

The study aims to assess whether the new regulations can be called efficient from the point of economic analysis of law. The Authors used desk research.

## II. REASONS FOR LEX DEVELOPER’S INTRODUCTION AND ITS LOGIC

### *Problems with the Polish spatial planning and housing development*

As a starting point, it should be noted that after the beginning of political changes in Poland in 1989, the regulations governing spatial planning and development underwent many changes that satisfied neither practitioners nor theoreticians. It has been argued that, in practice, the legal rules have led to a negative state from the perspective of spatial management (e.g., Dutkowsky 2018; Śleszyński, et al. 2018). The reasons were both irregularities in the legal framework, significant pressure from stakeholders in the spatial management system towards the broadest possible liberalization of the rules for the location of buildings, as well as the limited determination of municipal authorities to counteract this tendency (Śleszyński, et al. 2021). Failure to undertake broader actions to protect and shape the spatial order causes spatial chaos with measurable adverse effects and costs, e.g., related to suburbanization, low aesthetics, negative social consequences, and problems with the real estate market (Śleszyński, et al. 2018; Maćkiewicz, et al., 2018; Mantey & Pokojński, 2020). The supply of housing projects was limited by the low availability of land and its high prices in cities. The problems with the spatial planning system favored creating new projects not where it was justified by optimal location but where legally possible.

In response to widespread criticism, an amendment to the Spatial Planning and Development Act was passed in 2023, which profoundly reformed the existing system. It will be implemented in stages between September 25, 2023, and January 1, 2026. This amendment provides, among others, a new planning tool - a general plan, a document in the form of a local law act, which will be obligatory for the municipality.

### *A controversial legal act that gives developers special rights*

The quality of law results from the principles and culture of law-making; the creation process has a political nature. In Poland, the prevailing belief is that the real estate ownership is crucial, which should translate into construction freedom (Cherka, & Grecki, 2021). There are also problems of spatial conflicts and situations in which the specific content of the local zoning plan or the possibility of issuing a decision on development conditions is considered by an administrative court (Kowalewski, & Nowak 2018).

The Act on Facilitating the Preparation and Implementation of Housing and Associated Facilities came into force on August 22nd, 2018. The Act was adopted for a closed-end period of ten years. The Justification of the Act indicated that the provisions were intended to enable "corrections" of local plans to be made outside the amendment procedure, based, as a rule, on the conditions of the study. The municipality, an actor that was given prerogatives regarding local spatial policy many years ago, has been deprived of some of its decision-making power by giving developers who build residential buildings the right to act even against local law (Załączna, & Antczak-Stępnik, 2022).

The government motivated the introduction of this regulation by reducing administrative and legal barriers to housing construction for moderate-income households to significantly accelerate the preparation and implementation of housing investments and associated investments (the Justification of the Act). According to the new Act, a housing investment or an accompanying investment could be carried out irrespective of the existence or provisions of the local zoning plan [1], provided that it is not inconsistent with the study of the conditions and directions of the spatial development of the municipality [2]. The requirement of non-contradiction with the study did not apply to post-railway, post-military, post-production areas, or areas after postal services (this rule was changed later, however when the analysis were prepared it was valid).

According to the Lex developer, a housing project on a facilitated path should consist of (re)construction of multi-family residential buildings with a total number of residential premises not less than 25 or 10 single-family residential buildings. Associated facilities organized and paid by developer should be related to public roads, public transport infrastructure, cultural activities, childcare, nurseries, schools, daycare support, health care, daycare homes, sport and recreation, and green areas. These social and technical infrastructure should serve the residents of the housing project. The developer who wants to use the Act must prepare an application to determine the location of the housing project and begin negotiations with the municipality. The application must include the project's urban and architectural concept designed by the developer. The Act respects the principle that the local unit's planning authority rests with its residents and the municipal council. In the Act, there is a statement that the council may refuse to locate the housing project which conflicts with the needs and development opportunities of the municipality. However, the lack of details allows for various interpretations, primarily in minimizing the municipality's power, which is indicated later.

The Act defines the standards that housing projects must meet; they secure, among other things, access to technical infrastructure, including transport and access to educational institutions. The statutory standards apply unless the municipality determines the local urban planning standards through a resolution. The municipality's requirements cannot differ by more than 50% from the statutory ones. In the local urban planning standards, the city may specify the number of

parking spaces necessary for servicing a given housing and accompanying investment and the obligation to provide access to the heating network.

### III. MATERIALS AND METHODS

The economic analysis of law, discussed in the introduction, is often understood as applying economics, including econometric, methods to study the forms, structures, processes, and effects of law and legal institutions (Pomaskow, 2015). Legal provisions and standards are mechanisms that, like price, influence certain behaviors and activities, including decisions of various actors (Ulen, 2011). To analyze the "Lex developer" desk research, comparative analysis, and case studies were used. Authors compared the real outcomes of the implementation of the Act on voivodship (regional) level.

Desk research involves collecting and analyzing secondary data, which is much easier, faster, and less costly than primary research. It is a non-reactive method as content analysis, statistical data, and historical-comparative analysis (Babbie, 2002). Desk research is a combination of these methods. The sources of secondary data used in this method include public statistics, documents of various state and international institutions, results of social research, results of marketing research, as well as other data and information available online, such as documents, reports, industry analyses, websites, social media, etc. (Bednarowska, 2015).

As the name suggests, comparative analysis involves comparing different objects regarding specific features. This process allows for determining the existence of similarities or differences between the analyzed objects, people, or phenomena (Szarucki, 2010).

A case study has a lot of definitions, but from the point of view of this article, the most appropriate seems to be the one states that this is a comprehensive description of an individual case and its analysis (Starman, 2013). This article examines cases of resolutions adopted by municipalities under the Lex Developer.

The research was carried out in some stages:

- based on the official journals of individual voivodeships, resolutions adopted under the Lex Developer were selected and cataloged into positive and negative ones;
- in-depth analysis of the content of resolutions was prepared;
- based on the court decisions portal, judgments of administrative courts regarding the Act in question were identified, taking into account the division into voivodeships
- a detailed analysis of the judgments was carried out concerning the nature of the contested resolution, the reasons for its appeal, the complainants, and the court's decision.
- ultimately, this allowed for verification of the effectiveness of the discussed Act in terms of the conditions specified in the introduction.

The study covered Poland in the period from the entry into

force of the Act, i.e., August 2018, to March 31, 2023.

#### IV. EFFECTS OF IMPLEMENTING THE LEX DEVELOPER - RESULTS

From the entry into force of the "Lex developer" to March 31, 2023 more than 320 positive resolutions were issued in Poland, determining the location of a residential investment with accompanying infrastructure. Examining the total number of applications based on "Lex developer" is challenging because many applications were rejected, submitted again, and changed. Concerning some resolutions, complaints were filed, and supervisory decisions were taken that invalidated the resolutions in part or whole (table 1). Those annulled decisions were often re-enacted. Additionally, sometimes, supervisory decisions were appealed in the Administrative Courts.

Moreover, many negative resolutions also ended in court. The popularity of this legal instrument among developers was growing. However, there is a sizeable spatial differentiation in the discussed scope.

Developers submitted applications for location decisions, but many of these proposals were left without consideration due to formal reasons. It is impossible to determine their total number because they were not always published. The leader of positive resolutions on the location of housing investments and associated investments was the Mazowieckie voivodship (both in the capital and neighboring cities, almost 100), and the smallest number was issued in Lubuskie and Małopolskie voivodships (only 2 and 3). The negative resolutions were adopted in most cases in the Lubelskie, Mazowieckie, and Śląskie voivodships (21, 16, and 15, respectively). Developers whose application was refused very often appealed to a higher authority. Such cases went to court. Sometimes, positive resolutions were also appealed against.

According to the Lex Legal Information System, 187 court and administrative verdicts and decisions were issued by 31/03/2023, most of which were judgments of Administrative Courts (first instance authority). During the period under review, 24 cases ended with judgments of the Supreme Administrative Court (second instance), see Table 2.

TABLE 2. NUMBER OF COURT AND ADMINISTRATION JUDGMENTS REFERRING TO LEX DEVELOPER AS OF MARCH 31, 2023.

Type	Number
Administration verdicts	42
Court decisions in total	145
In this:	
Judgments +Decisions of the Supreme Administrative Court	24+10
Judgments +Decisions of the Provincial Administrative Courts	92+18
Decision of the District Court	1

Source: own study based on the Lex Legal Information System

Due to the number of resolutions (positive and negative) taken in the Mazowieckie voivodship, there is the most significant number of court and administrative judgments there. The next voivodships with the highest number are Świętokrzyskie and Śląskie.

TABLE 3. PROVINCIAL ADMINISTRATIVE COURTS JUDGEMENTS AND DECISIONS BY VOIVODSHIP

Voivodeship	Number of judgements
Łódzkie	3
Śląskie	10
Małopolskie	5
Wielkopolskie	8
Lubelskie	9
Świętokrzyskie	14
Żachodniopomorskie	3
Pomorskie	4
Podkarpackie	1
Podlaskie	6
Warmińsko-mazurskie	6
Mazowieckie	27
Kujawsko-pomorskie	7
Dolnośląskie	8
<b>Total</b>	<b>110</b>

Source: own study based on the Lex Legal Information System and provincial official journals

The judgments of the Provincial Administrative Courts and the Supreme Administrative Court have been analyzed a bit more broadly. The attention was paid to the actor complaining about the resolution, the reason for lodging the complaint, and the court's decisions. In case of positive resolutions, they were appealed against by various actors. Most often, they were the voivode or local citizens. If the voivode in a supervisory decision annulled the resolution, the municipality or the developer often filed a complaint to the Administrative Court.

TABLE 1. NUMBER OF RESOLUTIONS ADOPTED BY MUNICIPALITIES (NEGATIVE, POSITIVE, AMENDING) ALONG WITH SUPERVISORY DECISIONS

Voivodship	Number of positive resolutions						Number of negative resolutions						Number of other resolutions (supervisory decisions)*	Total
	2018-2019	2020	2021	2022	Till 31.03.2023	In total	2018-2019	2020	2021	2022	Till March 2023	In total		
Lódzkie	4	3	6	13	3	29	0	0	1	2	0	3	3	35
Śląskie	8	6	9	10	5	38	4	3	4	4	0	15	(2)	55
Małopolskie	0	1	0	2	0	3	2	2	1	4	0	9	0	12
Wielkopolskie	2	3	1	5	2	13	3	0	2	2	0	7	3(2)	23
Lubuskie	0	1	0	1	0	2	0	0	0	0	0	0	0	2
Lubelskie	4	4	4	5	1	18	6	6	3	4	2	21	1	40
Świętokrzyskie	2	6	6	3	1	18	2	2	0	0	0	4	2 (1)	24
Zachodniopomorskie	1	0	5	0	1	7	0	1	0	0	0	1	2	10
Pomorskie	3	6	2	5	2	18	0	1	1	2	0	4	4 (1)	26
Podkarpackie	1	3	1	3	0	8	0	0	1	1	0	2	0	10
Podlaskie	1	2	1	1	0	5	0	0	0	0	0	0	0	5
Warmińsko-mazurskie	2	4	7	1	1	15	0	2	1	1	0	4	(3)	22
Mazowieckie	21	14	28	30	5	98	10	2	1	3	0	16	2	116
Kujawsko-pomorskie	2	5	0	3	0	10	2	1	0	0	0	3	(1)	14
Opolskie	2	7	6	8	4	27	0	0	0	1	0	1	0	28
Dolnośląskie	2	3	3	5	0	13	0	0	0	0	0	0	1	14
<b>Total</b>	<b>55</b>	<b>68</b>	<b>79</b>	<b>95</b>	<b>25</b>	<b>322</b>	<b>29</b>	<b>20</b>	<b>15</b>	<b>24</b>	<b>2</b>	<b>90</b>	<b>24</b>	<b>436</b>

\*These are all resolutions - even those where, due to a decision or judgment, one was invalidated and then another one was positive.

Source: own study based on Voivodship Official Journals of Law

TABLE 5. EXAMPLES OF CONTESTED POSITIVE RESOLUTIONS

Lp.	Voivodship	An actor appealing to the Provincial Administrative Court	The reason	The result
1	Śląskie	An individual person	limitation of ownership rights to the neighboring plot	Invalidity of the contested resolution
2	Wielkopolskie	An individual person	Violation of the rules of social coexistence	A complaint dismissed
3	Wielkopolskie	An individual person	Contradiction with a local zoning plan and a housing supply is higher than a demand	A complaint dismissed
4	Lubelskie	A voivode	Contradiction with the study	Invalidity of the contested resolution
5	Świętokrzyskie	An individual person	Contradiction with a study and local zoning plan and not proper area and infrastructure for housing	Invalidity of the contested resolution
6	Świętokrzyskie	An individual person	Contradiction with the study	A complaint dismissed
7	Świętokrzyskie	A municipality (the voivode declared the resolution invalid)	No contradiction with the study, which was alleged by the voivode	A complaint dismissed
8	Świętokrzyskie	An individual person	Contradiction with a local zoning plan (economic activity area close to the housing location)	A complaint dismissed
9	Podlaskie	A voivode	Contradiction between the resolution and developer's application	Invalidity of the contested resolution
10	Mazowieckie	A voivode and an individual person / municipality	Contradiction with the study	Provincial Administrative Court Invalidity of the contested resolution The Supreme Administrative Court – complaints dismissed
11	Mazowieckie	A developer (the voivode declared the resolution invalid)	Contradiction with the Act [3]	Provincial Administrative Courts and the Supreme Administrative Court – complaints dismissed
12	Mazowieckie	A voivode	violation of the act on municipal self-government; formal deficiencies in the application	Invalidity of the contested resolution
14	Mazowieckie	An individual person	Contradiction with the study and the level of satisfaction of housing needs was not taken into account	A complaint dismissed

Lp.	Voivodship	An actor appealing to the Provincial Administrative Court	The reason	The result
15	Mazowieckie	A voivode (the voivode declared the resolution invalid) and a public prosecutor	adopting a resolution ordering the executive body to apply specific legal solutions and imposing the manner of dealing with a specific matter, without statutory authorization, in violation of the legal provisions regulating the procedures for adopting resolutions	Invalidity of the contested resolution
16	Mazowieckie	An individual person	Contradiction with the study and the level of satisfaction of housing needs was not taken into account	A complaint dismissed
17	Kujawsko-pomorskie	An individual person	Contradiction with the study, no environmental impact assessment	A complaint dismissed
18	Dolnośląskie	An individual person	Contradiction with the study	Provincial Administrative Courts and the Supreme Administrative Court – complaints dismissed

Source: own study based on the Lex Legal Information System and provincial official journals

Among the 18 cases examined, the most common reason for appealing against positive resolutions to the Administrative Courts was the inconsistency of the planned investment with the study of the conditions and directions of the spatial development of the municipality, although this category covers many issues. Another reason for complaints was "violation of the principles of social coexistence." The complainants mentioned in this category, e.g., limited sunlight, insufficient parking spaces, degradation of green areas around the investment, and concerns about the stability of the building due to the underground car park. In several cases, violations of the Act's provisions on municipal self-government or even the Constitution of the Republic of Poland were pointed out. The most common reason for the refusal to issue a positive resolution (the location decision) was that the planned project needed to be consistent with the study (more than half of the cases examined). These contradictions were usually related to the function of a given area, the lack of adaptation to the neighboring buildings, the decrease of the biologically active site, inappropriate building height, insufficient parking spaces, and inappropriate building density index. A frequent reason was also the non-compliance of the project with the local urban planning standards adopted by the municipality [7]. The negative opinions of the residents also played a significant role in several cases.

Some court judgments did not directly concern the adopted

resolutions determining the location of housing projects. Developers often raised inactivity and lengthy proceedings by the municipality. The high number of negative decisions proves the need for proper formal preparation of applications by developers and the reluctance of city councils to issue resolutions contrary to the implemented spatial policy; the latter is hardly surprising.

If the Provincial Administrative Court invalidated the resolution, in a few cases, complaints to the court of the second instance were lodged.

Most complaints were dismissed among the cases examined by the Provincial Administrative Court and the Supreme Administrative Court. In five cases, the Provincial Administrative Court issued a ruling invalidating the resolution, and these rulings were appealed to the Supreme Administrative Court. In two cases, the Supreme Administrative Court ruled in favor of the developer, finding that the municipality had wrongly refused to issue a positive resolution. In the following two cases, the Supreme Administrative Court annulled the Provincial Administrative Court's judgments following a complaint from the municipality. One case was slightly different because the voivode appealed against the positive resolution of the municipality to the Provincial Administrative Court - the resolution was invalidated, and the developer filed a complaint to the Provincial Administrative Court (it was dismissed).

TABLE 6 EXAMPLES OF CONTESTED NEGATIVE RESOLUTIONS

voivodship	Number of contested resolutions	A reason for refusal to issue a positive resolution	A result
Łódzkie	1	contradiction with the study	A complaint dismissed
Śląskie	5	More votes against - no substantive justification supporting housing project(1); contradiction with a local zoning plan (a contradiction with the study (3)	Invalidity of the contested resolution (2) A complaint dismissed (3)
Małopolskie	4	Contradiction with a local zoning plan [4]; a green area that is a habitat for many animal species (1); failure to meet local urban planning standards (1), negative opinion of the Urban and Architectural Commission, contradiction with the study (1), A different planning vision of the municipality (1)	Invalidity of the contested resolution (1) A complaint dismissed (3)

voivodship	Number of contested resolutions	A reason for refusal to issue a positive resolution	A result
Wielkopolskie	3	the investment may be implemented outside single-family housing areas (residents' comments); housing needs are met; Refusal despite compliance with the study [5]	Invalidity of the contested resolution (1) A complaint dismissed (2)
Lubelskie	6	Contradiction with a local zoning plan (1), compliance with the study (3), contradiction with the study and negative opinions of residents (1), met needs of the commune; negative opinion of the Urban and Architectural Commission and a small number of parking spaces (1)	Invalidity of the contested resolution (4) A complaint dismissed (2)
Świętokrzyskie	4	lack of demand for new housing construction areas among single-family buildings, negative opinions of residents (1); contradiction with the study; negative comments from residents (2) problems with the reconstruction of the street Dobrzyńska, too high development intensity, conflict with residents, negative opinions of institutions and residents (1)	A complaint dismissed (2) Invalidity of the contested resolution partly, a complaint dismissed in the rest (1) Invalidity of the contested resolution (1)
Zachodniopomorskie	2	contradiction with the study [6]; the municipality has reserves of land intended for residential development, including multi-family development, designated in the study, and the plot was intended for services	Complaints dismissed
Pomorskie	1	negative opinion of the Urban and Architectural Commission: failure to meet the requirements of Art. 6 section 1 of Lex Developer Act, lack of coherence of the planned development with the existing development, lack of safe communication with the area of the planned project	A complaint dismissed
Podkarpackie	1	It was not possible to carry out investments in a special economic zone	A complaint dismissed
Podlaskie	1	Contradiction with a local zoning plan	Invalidity of the contested resolution
Warmińsko-mazurskie	2	contradiction with the study (2)	Invalidity of the contested resolution (2)
Mazowieckie	12	Contradiction with a local zoning plan (1), contradiction with the study (8), failure to meet local urban planning standards (2), negative comments from residents (1)	A complaint dismissed (7) Invalidity of the contested resolution (5)
Kujawsko-pomorskie	3	contradiction with the study (2), failure to meet local urban planning standards (1)	A complaint dismissed (2) Invalidity of the contested resolution (1)
Dolnośląskie	1	contradiction with the study and the provisions of the climate change adaptation plan	A complaint dismissed
<b>In total</b>	<b>47</b>		

Source: own study based on the Lex Legal Information System

TABLE 6 EXAMPLES OF CONTESTED JUDGMENTS OF THE FIRST INSTANCE

Lp.	voivodship	decision issued by the municipality	A complainant and result in the first instance	A complainant and a Judgement of The Supreme Administrative Court
1	Śląskie	Negative - contradiction with the study	Developer, complaint dismissed	Developer, complaint dismissed
2	Śląskie	Negative	developer, resolution invalid	A municipality, complaint dismissed
3	Świętokrzyskie	Negative – no demand for new residential areas, no complaints from residents	Developer, complaint dismissed	Developer, complaint dismissed
4	Zachodniopomorskie	Negative - contradiction with the study	Developer, complaint dismissed	Developer, complaint dismissed
5	Podlaskie	Negative - contradiction with the local zoning plan	developer, resolution invalid	A municipality, a judgement of Provincial Administrative Court annulled
6	Mazowieckie	Negative - failure to meet local urban planning standards	Developer, complaint dismissed	Developer, complaint dismissed
7	Mazowieckie	Negative – nvalidated by the voivode's supervisory decision (inconsistency with the Act)	Developer, complaint dismissed	Developer, complaint dismissed
8	Mazowieckie	Negative - contradiction with the study	developer, resolution invalid	A municipality, complaint dismissed
9	Mazowieckie	Negative - contradiction with the study	developer, resolution invalid	A municipality, a judgement of Provincial Administrative Court annulled
10	Mazowieckie	Negative - contradiction with the study	Developer, complaint dismissed	Developer, complaint dismissed

Lp.	voivodship	decision issued by the municipality	A complainant and result in the first instance	A complainant and a Judgement of The Supreme Administrative Court
11	Mazowieckie	Positive	voivode, resolution invalid	Developer, complaint dismissed
12	Mazowieckie	Negative - contradiction with the study	Developer, complaint dismissed	Developer, complaint dismissed
13	Mazowieckie	Positive	resident, complaint dismissed	resident, complaint dismissed
14	Mazowieckie	Negative - contradiction with the study	Developer, complaint dismissed	Developer, complaint dismissed
15	Dolnośląskie	Negative - contradiction with the study	Developer, complaint dismissed	Developer, complaint dismissed
16	Dolnośląskie	Positive	Residents, complaint dismissed	residents, complaint dismissed

Source: own study based on the Lex Legal Information System

#### V. DISCUSSION - IS LEX DEVELOPER EFFICIENT IN THE MEANING OF ECONOMIC ANALYSIS OF LAW?

As presented in the introductory part, the law should be efficient, i.e., meet certain conditions. The first condition is effectiveness, understood as the possibility of actual application, causing specific effects and increasing social and individual utility. The second condition refers to the topicality of the problems being solved, and their anticipation by the regulations. The following condition focuses on the law recipients - they should be treated as rational actors that maximize their benefits. When creating a new legal framework and anticipating the effects of its introduction, the legislator should strive to maximize social utility, not forgetting about individual utility. Another issue is the correct allocation of goods implemented using the examined legal regulation. No less critical is the condition of transparency, completeness, and simplicity of the new standards. Moreover, when creating new rules, we must remember the cultural framework, adopted standards, and the culture of creating legal acts. Analysis of the use of Lex developer allows us to conclude its efficiency level – see table 7.

It was planned that reducing administrative and legal burdens related to housing projects' performance would diminish significant investment risks and thus increase the possibility of preparing such projects and carrying them out efficiently and effectively. The Act is applied in practice and brings results in the form of new apartments, but the analysis of its effects from the point of view of legal efficiency does not allow for a positive assessment.

The Act was intended to be an exception, planned for ten

years of operation, so it lacked systemic, long-term solutions. It privileges developers who try to exploit it and give the land the most profitable functions. Municipalities lose part of their planning power, what is discouraging them from creating local spatial policy. If they oppose developers' applications, they must bear the costs of appeal proceedings. Problems with the planning system in Poland, procedural delays, interpretation ambiguities, and thus the space for disputes between interested parties will not disappear from the statutory provision that the decision will be issued within 21 days under penalty of a fine. The result of the ongoing dispute over the land's possible development will be the investment process's lengthiness. Procedural problems are systemic and they last without a thorough system reconstruction. Maximization of social utility is debatable; it is possible to maximize the utility of individual developers. The optimal allocation of goods is highly controversial. The municipality, by definition, strives for the best possible allocation, but the lengthy procedures and inertia of the administration do not favour flexible adaptation to market changes. However, does implementing the developer's idea in a specific area allow for better development from the point of view of social utility? This answer requires an individual assessment in each case. As indicated by the analysis of the reasons for issuing negative resolutions, there were clear reasons for not having housing projects in specific locations.

The imprecise nature of the regulations allowed for many interpretations of the provisions and resulted in the costs of numerous administrative and court hearings. This imprecision of the Act has been repeatedly emphasized by administrative courts in their judging because it means space for interpreting specific conditions, also limiting the will of municipalities.

TABLE 7 THE CONDITIONS AND MANIFESTATIONS OF EFFICIENCY OF LAW IN LEX DEVELOPER

Conditions	Manifestations
effectiveness	Used in practice, however in low scale, there are significant spatial differences.
Keeping up with changes, staying ahead of problems	Lex developer as <i>lex specialis</i> is <i>ad hoc</i> action, it was adopted for 10 years, it does not solve long-term problems or anticipate them
Recipients are rational and maximize their benefits	The justification for the act assumed that developers would sell their products cheaper than on the market, but no mechanism was used to ensure this result, so developers maximize their benefits. Municipal authorities may act contrary to their previously prepared and paid local zoning plans and studies or respond negatively to the

Conditions	Manifestations
	developer's application. They need to evaluate individual conditions of spatial reality and planning needs (remembering about problems with planning system). Municipality must be ready for the appeal procedure and associated costs when issuing negative resolutions.
Maximizing social and individual utility	The Act enables the developer involved in the project to maximize individual utility - he could buy the land as unsuitable for residential development and pay a lower price, and then apply for a positive resolution and thus obtain additional profit from the project due to the low cost of the land. Maximizing social utility is highly debatable; on the one hand, the developer can pay for the new technical and social infrastructure himself; he has to create an area development concept accepted by the municipality, he gives new supply of housing units but on the other hand, his actions may contribute to increasing spatial chaos and increasing negative externalities for the investment's neighbors.
Optimal allocation of goods	The optimal allocation of goods is highly debatable. On the one hand, different spatial functions or development methods have been previously decided for given land. Assuming that the municipality seeks the optimal possible use of the land, any action to the contrary will not allow for better allocation. However, on the other hand, the lengthy nature of planning processes discourages changes that should be made in local plans and studies. Faster processing based on Lex Developer may facilitate better allocation. It could be the most important for post-industrial land, neglected area.
Transparency, completeness, simplicity of regulation	The large number of court cases in such a short time after the Act entered into force indicates gaps, multiplicity of interpretations, and inconsistency of the Act and its connections with the legal system. Analyzing the reasons for filing appeals indicates severe problems with the recipients' understanding of the Act, which results from the low level of legislative technology.
Based on the existing cultural framework, adopted standards, and law-making culture	The nature of <i>lex specialis</i> gives rise to specific implications, actions contrary to existing solutions, and the controversial nature of mechanisms and norms for recipients, not only for municipalities but also for developers.

Source: own elaboration

## VI. CONCLUSIONS

The study focus on Lex Developer, whether this regulations can be called efficient from the point of economic analysis of law. Undoubtedly, the Polish spatial planning system is malfunctioning on many levels, and in-depth reform is necessary. Attempts were made before, incl. a draft of the urban and construction code. The works lasted several years, but instead of comprehensive reform, Lex developer was introduced in 2018 as a kind of patch in the system. The current amendment to the Spatial Planning and Development Act profoundly reforms the existing system and shortens the time limit of Lex Developer.

When summarizing the results of the implementation of Lex developer from the point of view of the economic analysis of law, attention should be paid to several elements. Administrative law has unique features; judicial review does not provide a substantive solution, and the case returns to the actor issuing the administrative act. The municipality then deals with the matter again, which allows for correcting mistakes previously made by each party, but the process is extended in time. The specific nature of administrative issues relating to planning procedures encourages the use of appeal procedures, but the costs increase, which, given the potential profits of developers, does not discourage them from taking action. The municipality must bear costs without obtaining benefits, assuming that the developer's activity interferes with the optimal allocation of goods. If allocation is improved (in particular for brownfield and neglected area), the fragmentation of a single project does not solve the long-term problems. Often

a developer wants to develop greenfield or an area with low development intensity. For him, it is cheaper and less complicated than dealing with post-industrial land. However, this often creates planning chaos, impoverishes green areas, and favors urban sprawl. According to the authors, correcting the possibility of applying Lex Developer only to brownfield areas would significantly increase the efficiency level of the examined regulation.

## VII. FOOTNOTES

- 1) The municipality's local zoning plan is essential for realizing its planning powers. It is not obligatory; its range depends on the municipality's decision. It may refer to a part of the street but a much larger area. Due to the cost of preparation for municipalities and procedural requirements, the plans cover 31.7% of the country's territory (CSO BDL 2021).
- 2) The study of the conditions and directions of spatial development is an essential tool for a municipality to define the principles of its spatial development. It always covers the area of the entire local unit; it is obligatory but not legally binding. The local plan should be consistent with the study.
- 3) in accordance with the act, the number of newly built apartments is at least 25, and the planned investment concerns the transformation of 7 commercial premises in a building with apartments. Therefore, the voivode decided that the investment did not meet the statutory requirements.
- 4) The developer indicated that the local development plan is inconsistent with the study.

- 5) The developer wanted a multi-family development among single-family buildings. Although the study allows, there are local zoning plans around the area only for single-family buildings and this would cause spatial chaos.
- 6) The developer showed that it was a post-production area because there was a brickyard there about 100 years ago. Meanwhile, since 1994, the area has been included in the Ecological Urban Greenery System.
- 7) The local urban standards were issued in many municipalities. These standards presented the local conditions and needs, very often they contained a significant increase in requirements for developers, taking into account national standards.

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