

# PMR CONSTRUCTION INSIGHT: POLAND

#1  
(262)

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# Legal opinion

## REITs and vacant properties in Polish law – part 2

**This is the third and last installment in our series that looks at new or planned measures in Polish law designed to increase the supply and affordability of housing. Having discussed attempts to introduce a REIT-type instrument into the Polish legal framework<sup>1</sup>; and having looked at the so-called Emergency housing act of 2018<sup>2</sup> and at recent changes to the Act of 26 October 1995 on certain forms of support for housing construction<sup>3</sup>, with a particular focus on the so-called Social Rental Agency (abbreviated as SAN)<sup>4</sup>, we now turn our attention to a legislative proposal – officially titled Draft Act on the repurposing of certain non-residential buildings for housing, and referred to informally as the draft Vacant properties bill – that the government intends to submit before Parliament in 2023. The legislation is currently at the cabinet legal committee level. The full text is available on the Government Legislation Centre (RCL)'s website, dated 12 August 2022 and 30 December 2022.**

The purpose of the draft Vacant properties bill, as explained repeatedly by the Ministry of Development and Technology, and as stated explicitly in its explanatory memorandum, is to help communes provide sufficient housing for war refugees from Ukraine.

<sup>1</sup> The article can be found in the issue #260 of PMR Construction Insight: Poland (2022)

<sup>2</sup> The Act of 5 July 2018 on facilitating housing projects and ancillary projects (Journal of Laws 2021, item 1538).

<sup>3</sup> The Act of 28 May 2021 amending the Act on certain forms of support for housing construction and some other acts (Journal of Laws 1243), which came into force on 23 July 2021.

<sup>4</sup> The article can be found in the issue #261 of PMR Construction Insight: Poland (2022)

The bill seeks to do so by enabling swift conversion of unutilised non-residential properties into housing. More specifically, its provisions apply two types of non-residential properties: office buildings, and retail buildings bigger than 2,000 m<sup>2</sup> of selling area. The new regulations would kick in quickly: the proposed period between the bill's enactment and entry into force is just 14 days. But they would be temporary, remaining in force for a period of two years. (Importantly, too, existing rules would continue to apply to change-of-use processes initiated before the bill's coming into force.)

The draft Vacant properties bill thus introduces only temporary changes to the Emergency housing act, which remains the main source of law in this area; nor does it invalidate key, systemic pieces of legislation, such as the Construction Law or the Spatial Development Act.

### **I. Conversion of office and retail spaces**

Unlocking the housing potential of an empty office building or retail building requires two things, a formal change of use to residential, and redevelopment works to make it fit for the new purpose. The draft Vacant properties bill relaxes rules concerning both.

Under the proposal, changes to the building's interior partitions that are not structural are to be exempt from the requirement to obtain a building permit or to file a construction works notice. As the explanatory memorandum notes, however, "The above means that, in principle, changes to the building's exterior walls and structural elements will require obtaining a building permit and preparing project documentation". Also, the relaxed rules would not apply to buildings and areas subject to some form of historic-monument protection<sup>5</sup>. And the project owner will still be obliged to ensure that it complies with technical regulations (notably the executive ordinances of the Construction Law) and with construction standards.

<sup>5</sup> Whether under Article 7 of the Act of 23 July 2003 on the protection and care of historic monuments, or as part of the commune's register of historic monuments.

Second, the proposal amends the Emergency housing act to give communes the power to approve housing projects on properties containing office buildings, or retail buildings bigger than 2,000 m<sup>2</sup> of selling area, even in contravention of the provisions of the local development plan (MPZP), or the commune's study of land use conditions and directions. (At the moment, this is only possible with respect to sites previously used for railway, military, manufacturing, or postal services purposes.)

## **II. Using private sector developers to boost a commune's housing stock**

Under the Emergency housing act, a project owner who plans to implement a housing project in a commune asks the local council – via the mayor or president – to approve its location, and the council has 60 days to adopt a resolution approving the location, or refusing to do so. The draft Vacant properties bill introduces important changes here whose objective is to enable communes to create or expand their own housing stock by working with private sector developers. The idea is to create a win-win situation in which, on the one hand, empty properties are unlocked for housing development, and on the other hand, the supply of cheap housing for low-income residents is increased.

Thus, the project owner will be required to offer to the commune, at a preferential price, housing units representing at least 5% of the total stock in the repurposed building, to be used as affordable council housing. Failure to make such an offer will render all and any agreements to sell, rent out, or loan out housing units in the project null and void.<sup>6</sup>

Importantly, however, the bill does leave some discretion, both to the commune and to the project owner. It accepts that the commune may not be interested in acquiring units in the project. In such a case, the resolution approving the project can include a stipulation waiving the project owner from having to offer units to the commune, or reducing the proportion of the total space that must be offered. The project owner,

<sup>6</sup> As the explanatory memorandum states: „It should be noted that the mechanism being introduced here is not a form of levy that the commune charges from the project owner in return for approving the project. Rather, it is a way to ensure that low-income residents, too, have a share in the benefits that will flow from the derogation of local planning laws. Thanks to this mechanism, the project owner together with the commune will create rental units for such households.”

meanwhile, can offer to the commune housing units in other projects, provided that they are located within the commune or have never been occupied.

As already alluded to above, and in another reflection of its win-win rationale, the draft bill imposes an upper limit on the price at which the project owner can offer homes to the commune. It may not exceed 50% of the current replacement cost of 1 m<sup>2</sup> of usable area in a residential building, calculated based on provisions on replacement costs in the Act of 20 July 2018 on state support for housing expenses during the first years of renting a home<sup>7</sup>.

The commune will have 3 months to accept or reject the project owner's offer. The commune will also be required to notify the competent minister in charge of construction and planning about the received offer.

**Time for some concluding remarks. The aim of our series was to discuss important recent developments, actual or proposed, in the Polish legal framework pertaining to housing construction, drafted in response to circumstances including housing market pressures, the Covid-19 pandemic, or the war in Ukraine. We have seen that attempts to introduce a REIT-type instrument into the Polish legal framework have so far failed, but that the Emergency housing act of 2018 has become a law of systemic importance. The Social Rental Agency came into existence only in 2021, and it will be several years before its effectiveness can be evaluated. We will have to wait and see, too, if the draft Vacant properties bill becomes law and, assuming that it does, whether it proves effective at encouraging the repurposing of empty non-residential buildings for housing.**

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<sup>7</sup> Journal of Laws 2021 item 2158 and Journal of Laws 2022 item 1561. The provisions in question are in Article 2, point (14) of the Act.