



CHOSEN PRINCIPLES OF PROPERTY ACQUISITION FOR PUBLIC PURPOSE INVESTMENTS - **GERMANY, NORWAY, POLAND** COMPARATIVE STUDY

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AGENDA




1. **Legal basis** for land acquisition in our countries
2. What does **„public interest„** mean?
3. What are the **public purposes** in our countries?
4. The **way of land acquisition** for public purpose
5. Land acquisition **procedures**
6. Expropriation **compensation rules**:
 - Estimation of property market value
 - Exchange property compensation
7. **Case studies**
8. Conclusions and reflections

1. Legal basis for land acquisition / expropriation

BASIC ACTS

<p>POLISH CONSTITUTION 21st article</p> <p>THE REAL ESTATE MANAGEMENT ACT</p>	<p>NORWEGIAN CONSTITUTION 105th article</p> <p>European Convention on Human Rights and Fundamental Freedoms</p> <p>Istanbul Declaration on Human Settlements</p>	<p>GERMAN CONSTITUTION 14th Article</p> <p>Expropriation Acts of the States (16) (procedure and compensation)</p>
		

Other special ACTS

<p>THE DETAILED PRINCIPLES OF PREPARING AND EXECUTING PUBLIC ROAD CONSTRUCTION INVESTMENT PROJECTS ACT</p>	<p>EXPROPRIATION ACT</p> <p>EXPROPRIATION COMPENSATION ACT</p> <p>VALUATION COURT ACT</p>	<p>Federal Building Code (expropriation and settlements)</p> <p>Many acts (federal and states' level) according to public infrastructure</p>
		

2. What is „public interest”?

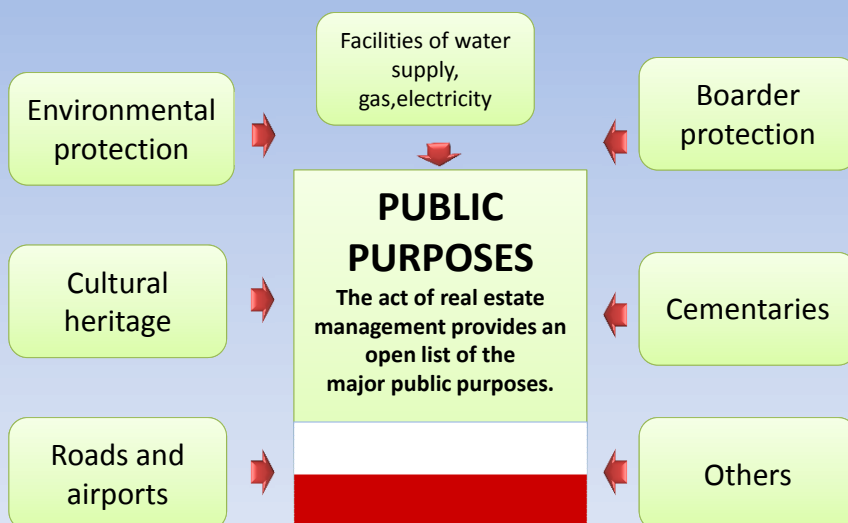
Public interest, usually identified with **public good** or **social good** is a notion that has a fuzzy character, belonging to so called general clauses. In the juridical literature many authors have taken up the identification of its' meaning in terms of the content.

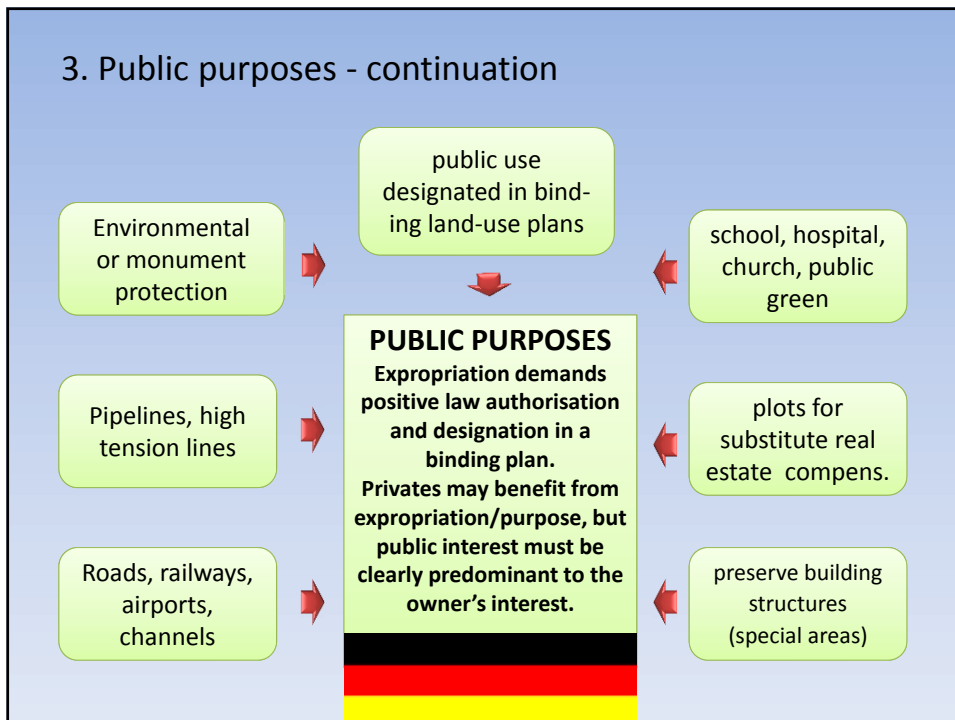
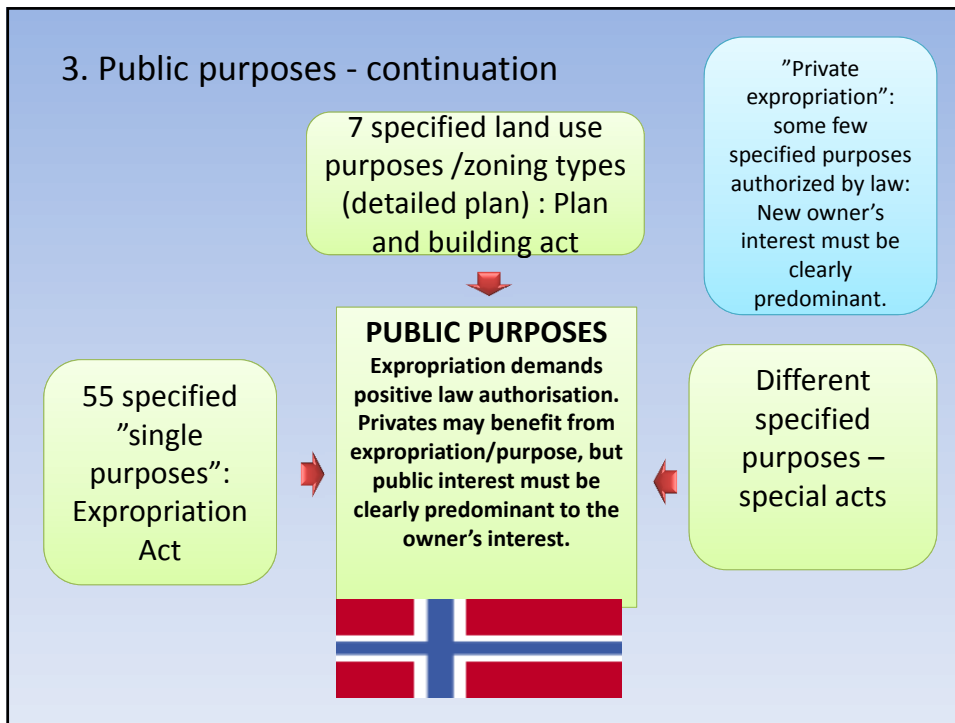
One of the many definitions that can be found in the literature says:

“relation between an objective state and the appraisal of that state from the point of view of the benefits that it gives or can give to the society”

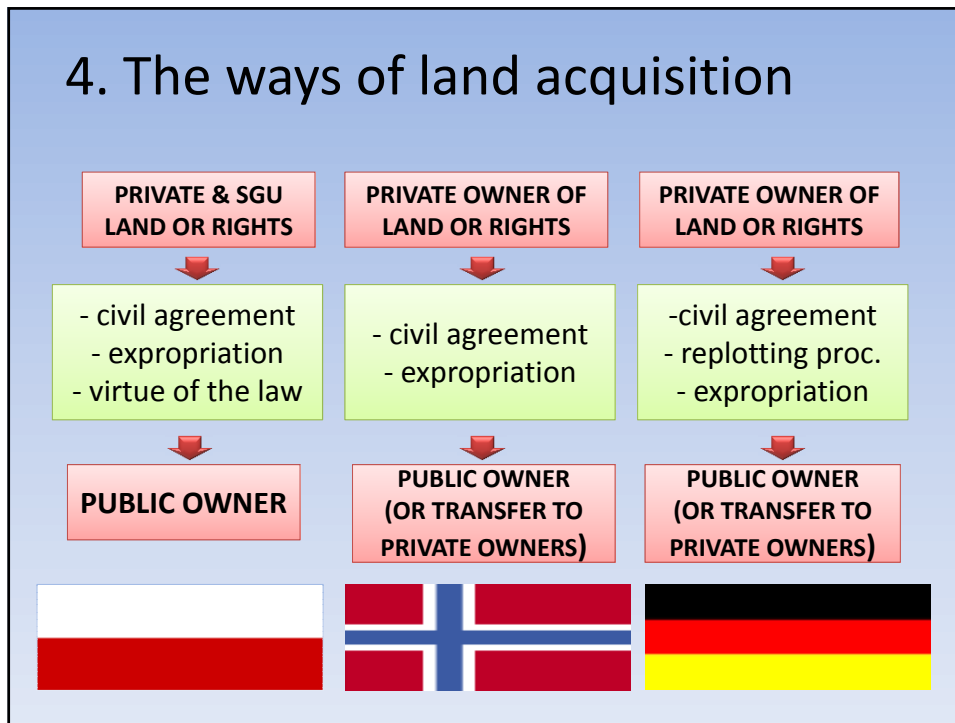
(LANG J., 1997)

3. Public purposes

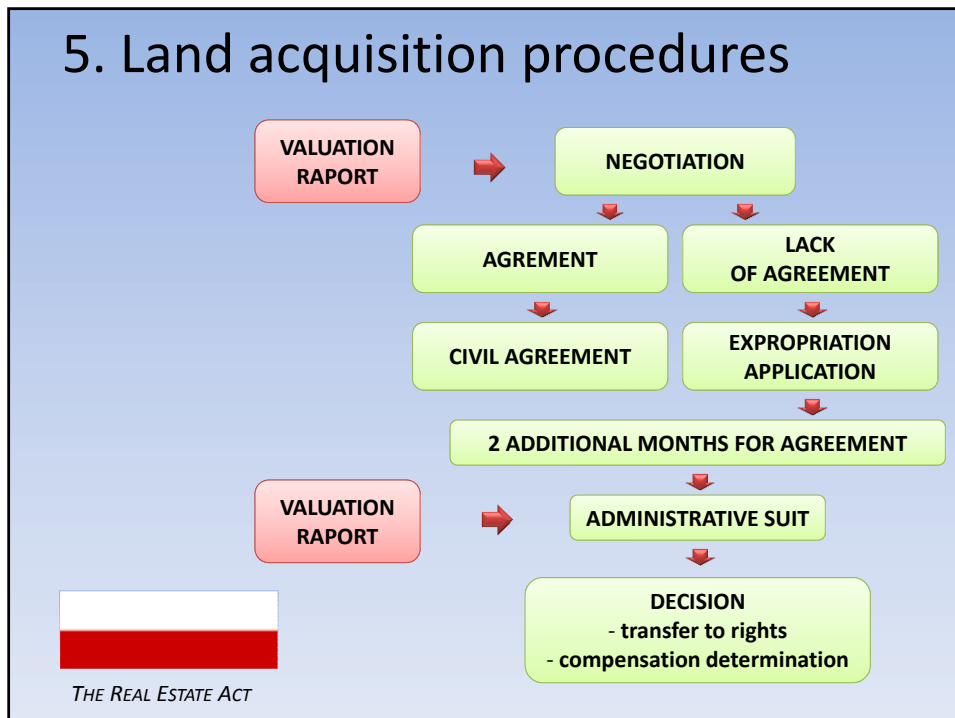




4. The ways of land acquisition



5. Land acquisition procedures



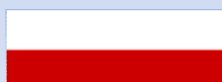
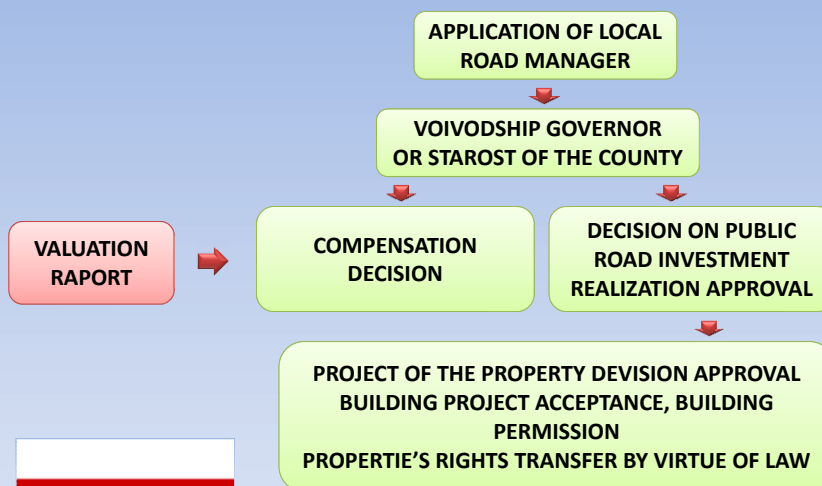
**THE TIME OF PROCEDURE REALISATION ON THE
EXAMPLE OF PUBLIC ROAD CONSTRUCTION
INVESTMENTS – according to The Real Estate Act**



Procedure stages	2005				2006			
	Quarters				Quarters			
	I	II	III	IV	I	II	III	IV
Road location decision (legally valid)	■							
First offer of purchasing real estate		■						
Negotiation report			■					
Next offer of purchasing real estate				■				
Application for expropriation								
Additional 7 days for agreement								
Information about the beginning of procedure								
Decision on taking property over								
Application for Expropriation notice in Land Register								
Court trial								
Expropriation refusal decision.								
Information about evidence collection								
Expropriation decision								
Account number and compensation payment								

SOURCE: OWN STUDY

5. Land acquisition by the virtue of law



THE DETAILED PRINCIPLES OF PREPARING AND EXECUTING
PUBLIC ROAD CONSTRUCTION INVESTMENT PROJECTS ACT

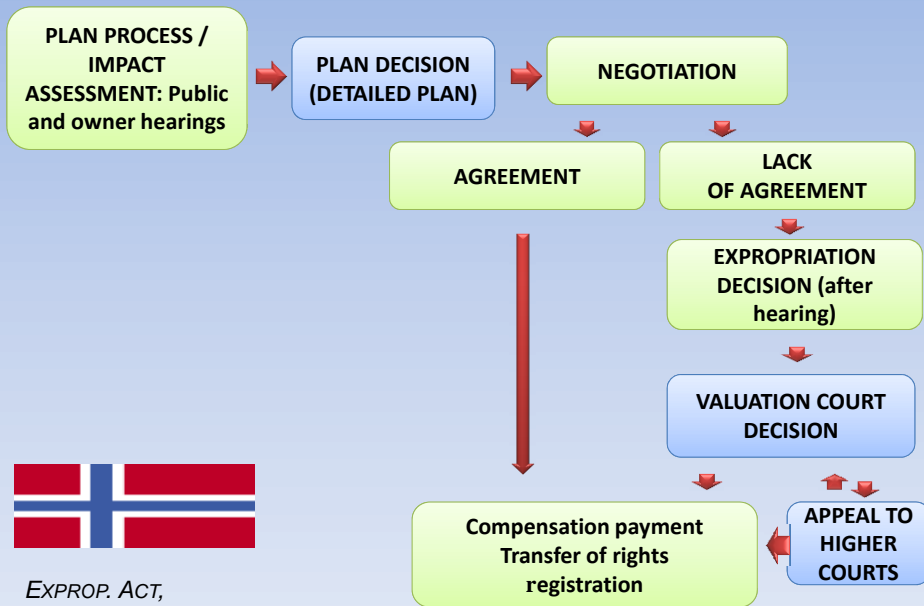
**THE TIME OF PROCEDURE REALISATION ON THE
EXAMPLE OF PUBLIC ROAD CONSTRUCTION
INVESTMENTS**



Procedure stages	2008											
	V	VI	VII	VIII	IX	X	XI	XII				
Location decision (final.)	■											
Application for changes in Land Register				■								
Application for compensation determination				■								
Information about the beginning of procedure				■								
Information about evidence collection + VALUATION RAPORT									■			
Account number for transferring money											■	
Compensation decision (final)												■
Compensation payment												■

SOURCE: OWN STUDY

5. Land acquisition procedures



**THE TIME OF PROCEDURE REALISATION ON THE
EXAMPLE OF PUBLIC ROAD CONSTRUCTION
INVESTMENTS (EXAMPLE)**

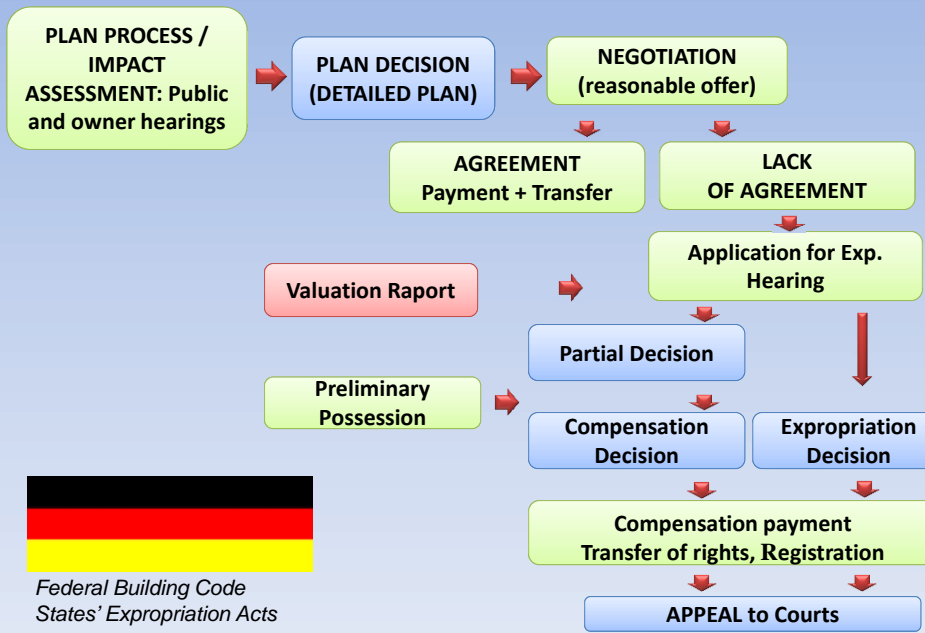


Procedure stages	2005				2006			
	Quarters				Quarters			
	I	II	III	IV	I	II	III	IV
Road location decision (legally valid detail plan)	█							
Negotiations		█		█				
Expropriation decision process (imp.ass., hearing)								
Expropriation decision			█	█				
Application for Court trial								
Court trial preparations (maps, technical, facts, valuation data)								
Court trial (legality test, valuation)								
Court decision								
Compensation payment							█	█
Land subdivision and transfer registered								
Land possessed								
Prepossession (application, process, decision) possible	█	█	█	█	█	█	█	█

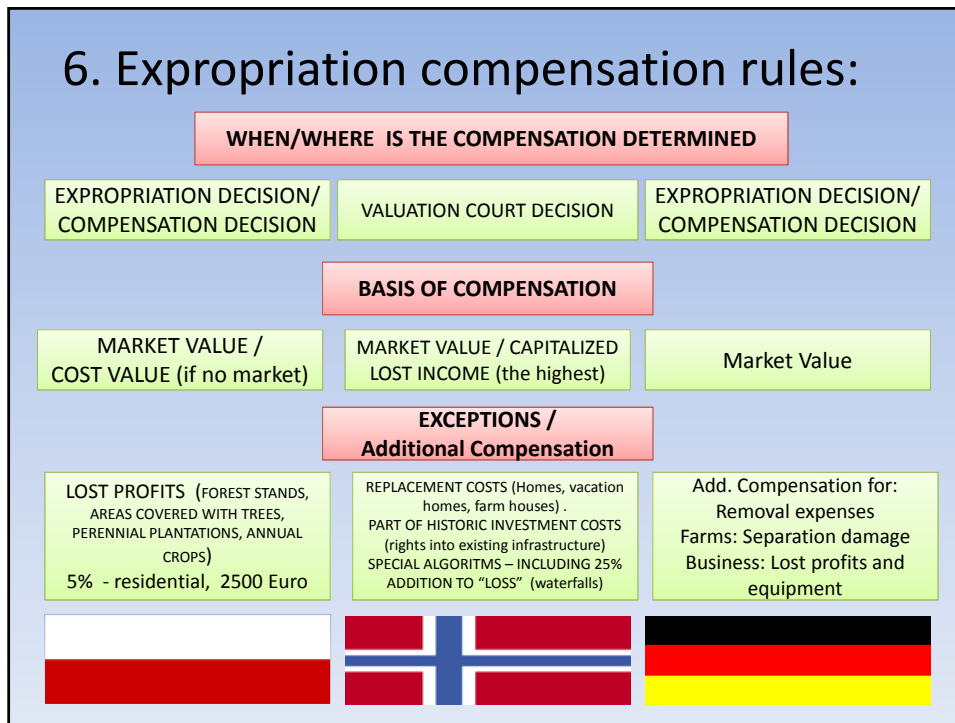
█ Possible delay (complaints, appeals)

SOURCE: OWN STUDY

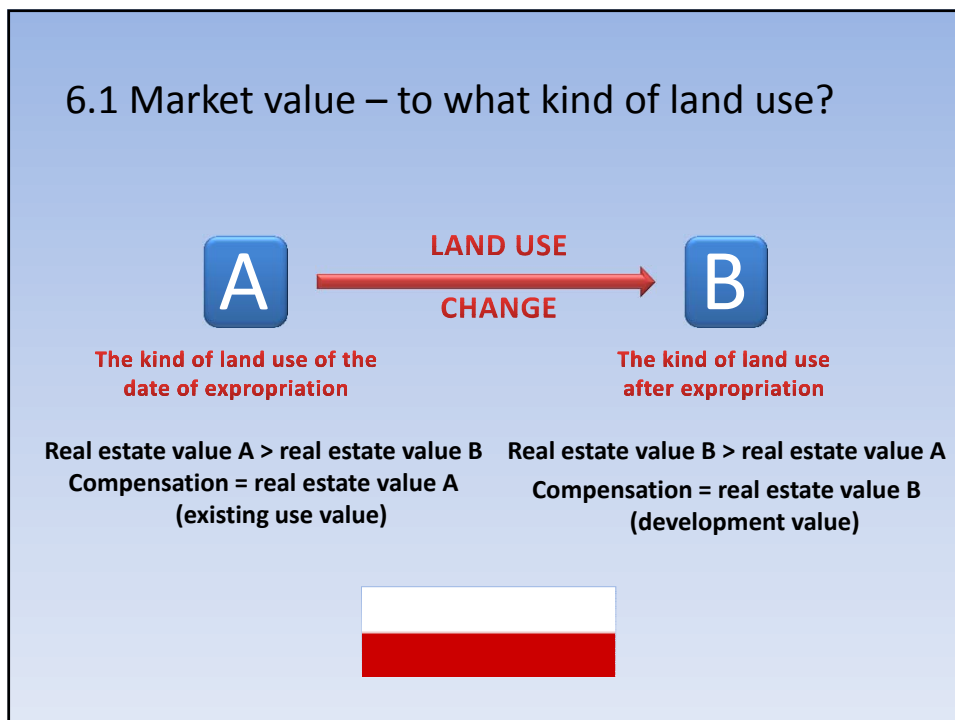
5. Land acquisition procedures



6. Expropriation compensation rules:



6.1 Market value – to what kind of land use?



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“PROBABLE LAND USE AS IF NOT ACQUIRED”

1. Land use after expropriation if expropriation purpose alternatively could add to market value on owner's hand (industry, housing etc).

2. Probable future legal development of land use (developments' effect on market value on date of expropriation). Not accepted if the purpose is to prevent development (conservation, parks etc.)

3. Present land use at date of expropriation:
If not 1 or 2.



6.1 Market value – to what kind of land use?

- Relevant is the kind of land use which was probable before the public purpose was fixed = destination prior to expropriation.
- In case of development areas: Probable future legal development of land use (developments' effect on market value on date of expropriation is included as far as market reflects on it).
- Compensation should enable the expropriated party to buy the taken kind of land use again.



6.2 Substitute property compensation

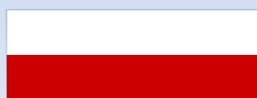
Compulsory purchase compensation in all of the countries can in some cases be given in a form of substitute property.



Similar: area, destination in land use plan, location etc.

6.2 Substitute property compensation

- Substitute property is granted from the State Treasury resources, in case the expropriation is for the benefit of the State Treasury, or from the relevant local government unit resources, in case the expropriation is for the benefit of that unit.
- The difference between the amount of compensation determined in the decision and the value of the substitute real estate is balanced with a supplementary payment in cash.
- The substitute real estate is appraised by a real estate appraiser.



6.2 Substitute property compensation

- Substitute property can be dedicated (compulsory land exchange) by Land Consolidation Court only, as part of a property improvement plan.
- Substitute property can be offered during negotiations.
- Replacement costs (not connected to a concrete substitute property): basis for compensation for the property's function as owners personal home, vacation home or (farm) industry facility if re-establishment is probable and such compensation necessary (if market value is not enough to recover the function).



6.2 Substitute property compensation

- Land owner has to be compensated in substitute property if livelihood depends on property.
- Substitute property can be offered during negotiations.
- Substitute property should be provided by the applicant.
- Value is estimated by public valuer.
- Differences in value are balanced with a supplementary payment in cash fixed by expropriation authority.



6.3. The role of valuers in expropriation



The amount of compensation is determined on the basis of the report prepared by licensed real estate valuer.



Valuers have no formal position in the process. Land Consolidation Judges are by profession valuers. Valuers (public officers) negotiate directly with landowners. Consultancy valuers contribute – also in Courts.



The applicant's last offer should be based on a report of a licenced valuer or the Valuation Committee. The Expropriation Authority is obliged to do so. Additional compensation sometimes requires specialized valuers.

7. Case study



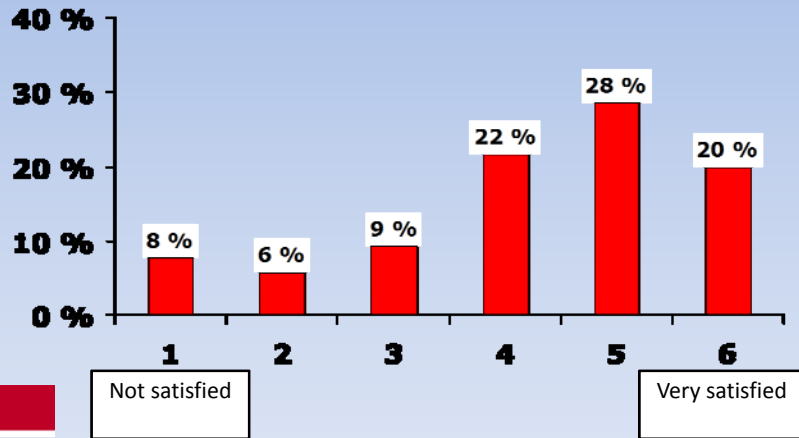


7. Polish case study: Norwegian principles

Only direct effects of the land taking are compensated. The loss in business (restaurant income) comes because the traffic (customers) are directed to another road. This loss has no relation to the taking of a distant plot of agricultural land/forest from the property, and will not be compensated.

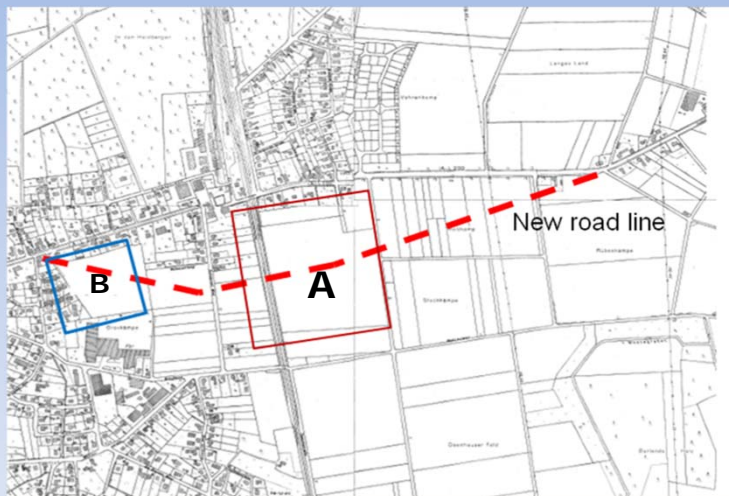


Questionnaire to landowners:
 How satisfied are you with land acquisition process
 (Public road)?



Norwegian Public Road Authority

7. Case study



(Source: Ruzyzka-Schwob 2009, own variations)

7. Case study

Site A :

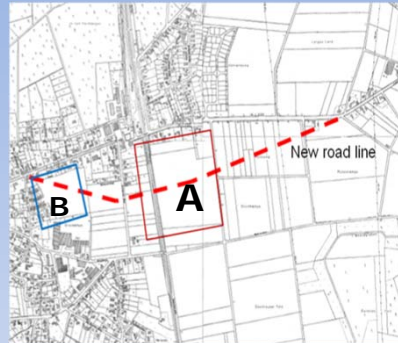
Market value of real asset loss:

- Land use before road planning fixed:
designated for agricultural use
- Result: 2,50 €/qm; Total: 5.000 €

Consequential damages

- the handicaps to cultivate the remaining two parcels
- The transection compensation amounts to 2.750 €.

Compensation in total (2.000 qm): 7.750 €



7. Case study

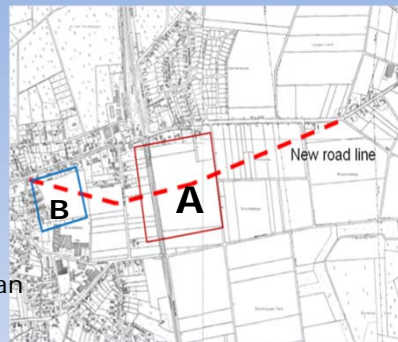
Site B :

Market value of real asset loss:

- Land use before road planning fixed:
designated for development land
(1. Stage: preparatory land-use plan)
- Probable development is mentioned

- Result: 30 €/qm;
- No consequential damages

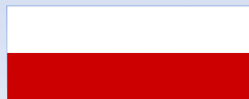
Compensation in total (1.500 qm): 45.000 €



8. Conclusions

Similarities in the involved countries:

- The countries can not abandon (need) expropriation to persue public interest
- The less expropriation is used the better the system is balanced
- The public purposes are manifold but very similar
- The bodies responsible for the compensation procedure are public institutions, but not responsible for the public purpose realisation.
- In general compensation is based on market value.



8. Conclusions continuation

Differences in the involved countries:

- Expropriation in favor of private parties generating a public purpose is not possible in Poland.
- The expropriation procedure in Norway includes already a court decision.
- Additional compensation of consequential damages is not used in Poland.
- Market value in Poland is not determined according to highest and best use.
- Instruments to avoid expropriation are used in different extend.



8. Final reflections

1. Successful acquisition demands well performed plan processes.
2. Considering what should be the conditions for expropriation in favor of private investors.
3. One should pay more attention to the negotiation stage.
4. Why shouldn't one provide secure advance payment in case of expropriation of residential properties
5. There are problems to recruit students for this professions.
6. More international comparative research on expropriation principles and practices should be performed.

