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I. National competition law

1.1. Are there in your country general national anti-trust provisions with regard to the prohibition of cartels, the control of abuse of dominant positions and merger control?

In Poland, anti-trust and competition law is regulated mainly by the Act of 16 February 2007 – Competition and Consumer Protection Act. This Act sets out the conditions for the development and protection of competition, and the principles for the protection of the interests of undertakings, and of consumers, in the general public interest. The Act also contains anti-trust provisions with regard to the prohibition of cartels, the control of abuse of dominant position and merger control. The Act is exercised by the President of the Office of Competition and Consumer Protection.

Prohibition of cartels and other anti-competition formations is set forth in Article 6 of the Act. The Act states that any agreements which have as their object or effect the prevention, restriction or other distortion of competition within the relevant market shall be prohibited, in particular those which: 1) directly or indirectly fix purchase or selling prices or any other trading conditions; 2) limit or control production, market sale, as well as technical development or investments; 3) share markets for the sale of goods or sources of supply; 4) apply dissimilar or onerous contract terms to similar transactions with third parties, thereby placing them at a competitive disadvantage; 5) make the conclusion of contracts subject to the acceptance or fulfilment by the other party of other obligations that by their nature or according to the customary usage have no connection with the subject of such contracts; 6) restrict access to the market to undertakings not covered by the agreement, or eliminate them from the market; 7) fix the terms and conditions of bids proposed by undertakings entering a tender, or by those undertakings and the undertaking that organises a tender, including, in particular, the scope of works or price (bid rigging).

The Act states that such agreements are invalid, in whole or in part. The Act also forbids the abuse of a dominant position within a relevant market. The terms are very similar to those stipulated for anti-competition agreements and cartels.

The Act also introduces control over merger of companies in Section III Chapter 1 of the Act, titled Control of Concentration. The control is exercised by the President of the Office of Competition and Consumer Protection who may allow or prohibit a merger by means of an administrative decision.

1.2. Does your country's Constitution contain provisions on privileges for agriculture under anti-trust law? If yes, what is the content of these provisions?

The Polish Constitution has been adopted on 2 April 1997. It does not contain specific provisions regarding privileges for agriculture under anti-trust law. It does contain a general provision imposing a duty on the State to protect competition and consumers (article 76). The scope of the protection is to be determined by a statute (the aforementioned Act of 16 February 2007 – Competition and Consumer Protection Act).

Additionally, the Constitution contains a provision that international legal acts properly ratified become a part of the Polish legal system (article 87 of the Constitution). Therefore any provisions in European Union law and the *acquis communautaire* regarding the privileged position of agriculture under anti-trust law, such as Title III of the Treaty on the functioning of the European Union which contains provision regarding altered principles of competition for agriculture, become applicable in the Polish law. Therefore, though the Constitution does not expressly create additional competition rules for agriculture, such rules are adopted into the Polish legal system through the European Union treaties which are an integral part of the Polish legal system.

This largely means that certain sectors of agriculture enjoy some privileges regarding public aid. Also in Poland, certain government agencies may be in certain cases legally obliged to purchase goods from agricultural manufacturers.

Additionally, certain markets have been exempt from the application of the Competition and Consumer Protection Act, such as the milk market, based on Milk and Milk Products Market Organization Act of 20 April 2004 (consolidated text Journal of Laws of 2016 no. 155). A similar exemption has been granted to the markets of fruits and vegetables and hop based on Fruit, Vegetable and Hop Market Organization Act of 19 December 2003 (consolidated text Journal of Laws of 2016 no. 58).

1.3. Is there in your country a specific national anti-trust law for the agricultural sector? If yes, what is the content of these provisions and where are they laid down?

There is no specific national anti-trust law for the agricultural sector in the Polish law. The applicable provisions may stem from the law of European Union. The law of European Union becomes a part of the Polish law based on article 87 of the Polish Constitution. Therefore, even though Polish legal acts do not contain specific provisions regarding the agricultural sector, such provisions may be applied in Poland via European Union law, especially Title III of the Treaty on functioning of the European Union and the common agricultural policy and other acts.

Additionally, certain markets have been exempt from the application of the Competition and Consumer Protection Act, such as the milk market, based on Milk and Milk Products Market Organization Act of 20 April 2004 (consolidated text Journal of Laws of 2016 no. 155). A similar exemption has been granted to the markets of fruits and vegetables and hop based on Fruit, Vegetable and Hop Market Organization Act of 19 December 2003 (consolidated text Journal of Laws of 2016 no. 58).

1.4. Is in your country the application of agricultural anti-trust law entrusted to specific authorities?

The application of agricultural anti-trust law is not entrusted to a specific authority in Poland. The anti-trust and competition law is mainly regulated in Poland by the Act of 16 February 2007 – Competition and Consumer Protection Act. This Act does not contain specific provisions regarding the agricultural sector. The authority that exercises the Act is the President of the Competition and Consumer Protection Office. The President of the Office has been created by article 29 of the Act. It is a central government authority competent in the matters of competition and consumer protection. The President of the Office is overseen by the Prime Minister. In his/her actions, they are supported by Vice-Presidents who are appointed and dismissed by the Prime Minister at the request of the President of the Competition and Consumer Protection Office.

The scope of the actions undertaken by the President of the Competition and Consumer Protection Office are very broad and include, among others, 1) controlling compliance with the provisions of this Act by undertakings; 2) issuing decisions on practices that restrict

competition, on concentrations between entrepreneurs, on deeming provisions of an agreement model illicit, and on practices harmful to the collective interests of consumers, as well as other decisions provided for in this Act; 3) analysing the level of concentration of the economy and the market behaviour of undertakings; 4) prepareing draft government programmes for the development of competition and draft government consumer policy; 5) co-operating with national and international authorities and organisations competent in competition and consumer protection.

Therefore all anti-trust issues related to agriculture are also handled by the President of the Competition and Consumer Protection Office. The President of the Office acts with the aid of the Office of Competition and Consumer Protection which includes the Head Office in Warsaw and branch offices in Bydgoszcz, Gdańsk, Katowice, Cracow, Lublin, Łódź, Poznań, Warsaw and Wrocław, and laboratories supervised by the President of the Office.

1.5. Were there in your country in the last decade particularly important national administrative or judicial procedures underpinning agricultural anti-trust law (prohibition of cartels; control of misuse of dominant positions; merger control)?

If yes, what was the content of these procedures and were the decisions taken on the basis of national or Union law?

There have been no particular relevant administrative or judicial procedures underpinning agricultural anti-trust law. Some cases that the President of the Competition and Consumer Protection Office have handled in the past included:

- potential price rigging regarding the sale of cherries (summer of 2016) – the prices of cherries have been unusually low causing a lot of damages to the farmers. The Minister of Agriculture urged the President of the Office to launch an investigation into the issue;
- potential price rigging regarding the sale of currant (summer of 2014) - the prices of cherries have been unusually low causing a lot of damages to the manufacturers. The Minister of Agriculture urged the President of the Office to launch an investigation into the issue – the President of the Office investigated and found no evidence of foul play;
- cartel/division of market in the cattle feed market (winter 2017) – the President of the Office launched an investigation into whether three producers divided this market, worth millions, between each other between 2015 and 2016. The investigation has not reached a conclusion yet.

1.6. Are there in your country legal provisions or a non-binding code of conduct on unfair trading practices in the food chain (for example with regard to the pricing of agricultural products)? Would you consider it reasonable to regulate such unfair practices and if yes, what should be the content of such regulation?

December 15, 2006 saw the enactment of the act on counteracting the unfair use of contractual advantage in trading agricultural and food products in Poland[1]. In order to protect the public interest, the act establishes the rules and procedure of counteracting practices that involve taking unfair contractual advantage by the purchasers of agricultural or food products or the suppliers of those products, if such actions result or are likely to result in an impact on the territory of the Republic of Poland. The Act applies to agreements for the purchase of agricultural or food products concluded between purchasers of those products and their suppliers if: the total value of turnover between them in the year of initiation of the proceeding regarding taking unfair contractual advantage, or in any of the 2 years preceding the year of initiation of the proceeding exceeds PLN 50 000 and the turnover of the purchaser or the supplier, who took unfair contractual advantage, and if they belong to a capital group, the turnover of this group in the year preceding the year of initiation of the proceeding, if it exceeds PLN 100 000 000.

The act considers it forbidden for the purchaser to make use of unfair contractual advantage against the supplier and vice versa. A contractual advantage within the understanding of the act is the purchaser's situation with regard to the supplier, where there is no sufficient and actual opportunity for the supplier to sell agricultural or food products to other purchasers, and there is a considerable disparity in the economic potential that favors the purchaser or supplier against the purchaser, wherein there are no sufficient and actual opportunities to purchase agricultural or food products from other suppliers and there is a considerable disparity in the economic potential that favors the supplier. In addition, the Polish legislature points out that the use of contractual advantage is unfair if it is contrary to good morals and jeopardizes the significant interests of the other party or violates such interests. According to art. 7 sec. 3 of the act, unfair use of contractual advantage involves in particular: unreasonable termination of the agreement or threat of termination of the agreement; granting only one party the right to terminate, withdraw from or cancel the agreement; making the conclusion or continuation of the agreement dependent on the acceptance or fulfillment by one of the parties of another service,

[1] Act on counteracting the unfair use of contractual advantage in trading agricultural and food products (Journal of Laws of 2017 no. 67).

which has no substantial or customary connection with the subject of the agreement; unreasonable prolongation of payment deadlines for the delivered agricultural or food products.

Unfair competitive practices are recorded by the President of the Office for Competition and Consumer Protection. The President of the Office may impose on the supplier or the purchaser, by way of a decision, a fine not exceeding 3% of the turnover achieved in the financial year preceding the year of imposition of the fine if the supplier or the purchaser, unintentionally or not, violated the prohibition specified in the act.

Acts of unfair competition[2], as well as the violation of the obligation to provide consumers with fair, true and complete information, and unfair market practices are included in the act from February 16, 2007 on competition and consumer protection[3].

II EU anti-trust law

2.1. In your country how many producer organisations, associations of producer organisations and interbranch organisations have been recognised in accordance with Regulation (EU) No 1308/2013 (broken down by sectors, as appropriate)?

Are there official statistics or a publicly accessible register on such recognised agricultural organisations?

In Poland, agricultural producer organizations are approved in accordance with regulation no.

[2] T. Skoczny, *Przeciwdziałanie praktykom monopolistycznym w świetle orzecznictwa*, Warszawa 1994; idem, *Zakres i kierunki dostosowania polskiego prawa antymonopolowego do europejskich reguł konkurencji*, Warszawa 1993.

[3] Act on competition and consumer protection (Journal of Laws of 2017 r. No. 229); P. Czechowski, *Proces dostosowania polskiego prawa rolnego i żywnościowego do prawa Unii Europejskiej*, Warszawa 2002, p. 202 and next.; E. Tomkiewicz, *Wspólna polityka rolna po reformie z 2003 r.*, „Studia Iuridica Agraria", Białystok 2005, vol. V, p. 211–220; F.G. Snyder, *Common Agricultural Policy of European Economic Community*, London 1990, p. 79–201; A. Jurcewicz, B. Kozłowska, E. Tomkiewicz, *Polityka rolna Wspólnoty Europejskiej w świetle ustawodawstwa i orzecznictwa*, Warszawa 1995, p. 139–193; P. Czechowski, M. Korzycka-Iwanow, S. Prutis, A. Stelmachowski, *Polskie prawo rolne na tle ustawodawstwa Unii Europejskiej*, Warszawa 2002, p. 206–223; E. Tomkiewicz, *Limitowanie produkcji w ustawodawstwie rolnym Wspólnoty Europejskiej*, Warszawa 2000, p. 74–128; P. Czechowski, *Proces dostosowania polskiego prawa rolnego i żywnościowego do prawa Unii Europejskiej*, Warszawa 2001, p. 201–246; A. Jurcewicz, B. Kozłowska, E. Tomkiewicz, *Wspólna polityka rolna. Zagadnienia prawne*, Warszawa 2004, p. 103–135; P. Czechowski, *Dostosowanie polskiego prawa rolnego i żywnościowego do prawa wspólnotowego po akcesji do Unii Europejskiej*, Warszawa 2005, p. 38–49, P. Wodziczko, *Wymiana towarowa na rynku mleka w ramach Wspólnej Polityki Rolnej (WPR)*, „Prawo i Podatki Unii Europejskiej" 2007, No. 1, p. 34; B. Majczyna, *Zasada niedyskryminacji we wspólnej polityce rolnej w orzecznictwie Trybunału Sprawiedliwości Wspólnot Europejskich*, „Europejski Przegląd Sądowy" 2006, No. 7, p. 57; A. Czyżewski, A. Henisz, *Aktualne tendencje na światowych i unijnych rynkach rolnych. Wnioski dla Polski*, RPEiS 2000, No. 1, p. 11; P. Pytlak, *Znaczenie i charakter umów w systemie mechanizmów regulujących branżowe rynki rolne*, „Rejent" 2006, No. 3, p. 93; E. Tomkiewicz, B. Kozłowska, A. Jurcewicz, *Zasady ogólne prawa europejskiego we wspólnej polityce rolnej*, „Europejski Przegląd Sądowy" 2006, No. 4, p. 39; No. 5, p. 28; A. Jurcewicz (ed.), *Prawo i polityka rolna Unii Europejskiej*, Warszawa 2010.

1308/2013, divided into sectors. At the same time, several executive acts were issued which specify the conditions of legibility, the documentation needed for recognition.

Investments undertaken by the producer group and implemented through changes must be necessary/needed to meet the criteria for recognition as a producer organization as referred to in art. 152, art. 153, art. 154, art. 160 of the regulation of the European Parliament and of the Council No 1308/2013 and the ordinance of the Minister of Agriculture and Rural Development dated September 19, 2013. In addition, the producer group is required to indicate the method of financing the investment and a schedule for implementation, the appropriateness of the duration of the PDU, the eligibility of the proposed investments, the legitimacy of the expenditures related to them and the period of membership of the manufacturer in the producer group.

Investments related to changes in the approved recognition procedure plan must be adjusted to the volume of production of the fruits and vegetables purchased by the group from its members (in terms of investments associated with collection, storage and warehousing) or sold to outside customers (in terms of investments associated with preparation for sale), not exceeding the volume of production planned for the last year of implementation of the approved recognition procedure plan.

There are several official government registers kept. Pursuant to art. 2b sect. 1 of the act from December 19, 2003 on the organization of fruit and vegetable markets and the hops market (Journal from 2016 item 58), the body responsible for keeping the register of pre-approved producer groups, approved producer organizations and their associations and transnational producer organizations and their associations is the President of the Agricultural Market Agency. This register contains a list of 341 pre-approved organizations and producer groups.

The Agricultural Market Agency also keeps a register of agricultural producer groups (http://www.arr.gov.pl/organizacje-producentow/4730-rejestr-grup-producentow-rolnych). It also keeps a register of agricultural producer group associations. Pursuant to art. 38k sect. 3 of the act from March 11, 2004 on the Agricultural Market Agency and the organization of some agricultural markets (Journal of Laws from 2016 item 401 as amended), the body responsible for keeping registers of: producer organizations, interbranch producer organizations[4]. From September 1, 2017 these registers will be kept by the President of the Agency for Restructuring

[4] J. Szachułowicz, *Spółki grup producentów rolnych spółkami użyteczności publicznej*, „Studia Iuridica Agraria", Białystok 2005, vol. V, p. 197–210; S. Prutis, *Formy prawne organizacji producentów rolnych*, in: A. Stelmachowski (ed.), *Prawo rolne*, s. 275 and next.

and Modernization of Agriculture.

Such a register is also available at the Ministry of Agriculture and Rural Development. It is possible to derive information about statistical changes in these registers on the basis of these registers and comparative analyzes from previous periods. Currently, one can observe the closure of existing agricultural producer groups and the creation of new entities taking their place in accordance with regulation no. 1308/2013.

At the same time, legislative works on regulating the functioning of agricultural cooperatives are carried out in Poland. At present, a draft of such an act is in the Parliament.

2.2 Do you consider that agricultural organisations recognised in accordance with Regulation (EU) No 1308/2013 are only exempted from the prohibition of cartels under Article 101 TFEU or are they also exempted from any national prohibition of cartels?

If they are not exempted from national prohibitions of cartels, does this pose a problem and if yes, how is this issue addressed by national law?

Recognized trade organizations are excluded from the cartel prohibition in accordance with art. 101 TFEU in connection with art. 209 and 210 of the regulation 1308/2013. In Poland, European regulations apply directly in this regard and are not subject to a separate special regulation at the national level in the agricultural sector. The exclusions specified in regulation 1308/2013 appear to be sufficient for interbranch organizations. Apart from these exclusions, art. 101 TFEU applies directly and does not find significant national exceptions.

Of course, there is a general statutory regulation on competition and consumer protection. This act prohibits agreements, the purpose or effect of which is to eliminate, limit or otherwise violate the competition on the relevant market, consisting in particular of:

- establishing, directly or indirectly, the prices and other conditions for the purchase or sale of goods;
- limiting or controlling the production or sales and technical progress or investments;
- dividing output or purchasing markets;
- utilizing onerous or uneven contractual terms in similar agreements with third parties that give them differentiated conditions of competition;
- making the conclusion of an agreement depend on accepting or fulfilling by the other party of another service, which has no substantial or customary connection with the subject of

the agreement;

- limiting the access to the market or eliminating unregulated traders from the market;
- arrangement by entrepreneurs entering a tender, or by those entrepreneurs and an entrepreneur being the organizer of the tender, of the terms of the offers made, in particular the scope of the works or the price.

2.3 Do you consider the quantitative ceilings in Articles 149, 169, 170 and 171 of Regulation (EU) No 1308/2013 to be reasonable?
Are these provisions used in practice in the sense that the jointly managed volumes are actually reported as required in the said provisions?

The principles and the limits specified in art. 149, 169, 170 and 171 of regulation 1308/2013 should be considered separately due to the varied status of the individual sectors in Polish agriculture. Among them there are dominant sectors, such as the milk sector, as well as those of marginal importance for Polish agriculture, such as the production of olives.

The caps specified in art. 149 of regulation 1308/2013 regarding the milk market are slowly becoming less important because of the abolition of milk quotas[5]. In the initial period, Poland exceeded the milk quotas as one of the largest milk producers in the world. Undoubtedly, the negotiation caps for milk producers seem to be sufficient at present. On the other hand, the exact economic and organizational effects on the milk market after the abolition of the milk quota system are not yet known. It may turn out in the future that the limits set out in art. 149 are too small for Polish producers and there is a need to increase them. Therefore, the current assessment of the caps specified in art. 149 should include a certain degree of uncertainty.

Art. 169 has no major effect on Poland, since no production of olives on a larger scale is present in the country.

Without a doubt art. 170, which concerns contractual negotiations in the beef and veal sector, is one of the most important regulations regulating the functioning of this sector in Poland. The

[5] M. Sznajder, *Skutki likwidacji kwot mlecznych dla mleczarstwa polskiego*, Opinie i ekspertyzy. Kancelaria Senatu, Warszawa 2010; B. Czyżewski, M. Śmigala, *Instytucjonalne przesłanki rozwoju gospodarstw mleczarskich w Polsce*, in: „Journal of Agribusiness and Rural Development", 2012, No. 3(25), p. 81-99.

limits specified in this provision, in particular 15% of domestic production, appear to be sufficient in the current state of beef production.

The principles specified in art. 171 have a significant impact on the Polish cereal market. In terms of rye and wheat, the limits set out in this regulation could be increased. This would encourage the creation of larger producer organizations that could provide more income to their members.

2.4 What is your assessment of the specific time-limited exemptions of cartels in the dairy sector as provided for by Regulation (EU) No 2016/558 and by Regulation (EU) No 2016/559?

Do you consider such exemptions to be an appropriate instrument for dealing with market crises?

Regulations 558/2016 and 559/2016 containing temporary solutions allowing for increasing market consolidation are a response to the rather precarious economic situation in this sector, resulting from the abolition of the quota system. Such solutions are only temporary help and cannot ensure a long-term development policy for the milk sector in Europe. Poland is particularly interested in the development of this sector as one of the leading milk producers. Without a doubt the regulations allowing for the "temporary use" of other principles for certain dairy organizations may violate the equality of entities on the market and significantly affect competition.

This type of temporal law is not conducive to the planning of investment processes in agriculture. It is a response to the apparent turbulences in the milk market caused by the abolition of the milk quotas. It is important to look at the milk sector in the long term and to develop comprehensive principles in effect on this market.

The creation of temporary exemptions through regulations 558/2016 and 559/2016 from art. 209 of Regulation 1308/2013, where the article itself is an exception to art. 101 TFEU, is not conducive to clarity of law. It is also not a remedy to the economic problem on the milk market.

2.5. Is there exercise in your country of the option to make decisions of recognised agricultural organisations extended to non-members and to provide for obligatory contributions of non-members to the financing of agricultural organisations (Articles 164 and 165 of Regulation (EU) No 1308/2013)? Do you consider this instrument to be reasonable and fit for application in practice?

The national legislation currently does not lay down any specific provision with regard to the approval by competent authorities of the extension of rules of recognized POs' agreements to non-members. Similarly to what observed in relation to the extension of rules Poland do not have any national provision with regard to the extension of fees to non-members.

Recognized PO's in Poland are relatively week, the process of recognition started in fruit and vegetable sector 10 years ago. The instrument might be very useful in the future and fit for application in practice, enabling for instance the effective elaboration of standard contracts and monitoring of their use, the development and dissemination of statistical information and market trends and the adoption of labelling rules for the provision of country-of-origin information, developing promotion campaigns.

2.6. Should, in addition to recognised agricultural organisations, agricultural cooperatives and other agricultural groupings also enjoy privileges under anti-trust law? If yes, do you consider the provisions in the second subparagraph of Article 209(1) of Regulation (EU) No 1308/2013 to be sufficient?

Entities composed of the collective and organised activity of agricultural manufacturers and acting for the benefit of its members should be treated equally regardless of their legal form or status. This produces the need to exclude from anti-trust laws both recognised manufacturer organisations and other entities who associate farmers for economic purposes, including agricultural cooperatives and manufacturer groups.

The provisions of Article 209 (1) of Regulation no. 1308/2013 are sufficient and should not undergo any modification. Since there are many forms of cooperation between agricultural manufacturers in EU states, the provision specifying the economic essence and main objectives of the said entities was entered justly. Organisations/manufacturer groups/cooperatives are

entities established under the initiative of agricultural manufacturers and aim mainly to improve the economic efficiency of member farms, predominately by adapting production and sales to market conditions. These are organisations, whose the main objective of which is commercial release of products manufactured by member farms and consequential provision of maximum benefits for its members, proportionally to the quantity of products sold by the group and not to invested capital. These entities are owned, developed, monitored, and managed by their members – manufacturers in a way providing them with specific benefits.

2.7. What is the understanding in your country of the meaning of the provision in relation to charge an identical price in the third subparagraph of 209(1) of Regulation (EU) No 1308/2013 and do you see a need for further clarification?

The agreements between farmers or associations of farmers must not involve an obligation on the farmers to charge identical prices for their products. Arrangements whereby farmers agree to sell through a co-operative and take whatever price the co-operative realises in the market should, however, be acceptable.

Further clarification in the context of PO's might be needed.

2.8. What is the understanding in your country of the meaning of the provision in relation to the exclusion of competition in the third subparagraph of 209(1) of Regulation (EU) No 1308/2013 and do you see a need for further clarification?

The ex-clusion of competition in the third subparagraph of 209(1) of Regulation (EU) No 1308/2013 is understood by all agreements or collaborative arrangements between direct competitors in the farming sector which seek to share markets and/or customers. Similarly, agreements to limit supply of production to keep prices high or where the co-operation allows the parties to maintain, gain or increase market power and thereby to cause negative market effects with respect to prices, output, innovation, or the variety or quality of products. Examples of this exclusionary behaviour include excessively low prices to try to drive competitors out of the market or activities which unduly limit or foreclose competitors' access to the market.

Further clarification in the context of PO's might be needed.

2.9. Is the option to regulate contractual relations (Articles 148 and 168 of Regulation (EU) No 1308/2013) used in your country? If yes, which agricultural products are subject to such regulation?
Do you consider this instrument to be useful?

Seeing a need to enforce its position as an agricultural manufacturer in the food chain, Poland adopted the provisions of Regulation (EU) no. 1308/2013 of the European Parliament and of the Council, concerning appropriate contractual relations (art. 168 of Regulation (EU) no. 1308/2013 of the European Parliament and of the Council).

1. The law of 10 July 2015 on amending the law on the Agricultural Market Agency and organisation of certain agricultural markets and certain other laws (Journal of Laws of 2015 item 1419).

The provisions of the act within scope of the responsibility to establish written agreements for all deliveries of agricultural products to the first buyer (agricultural products belonging to the sectors discussed in art. 1 section 2 of Regulation no. 1308/2013, including cereals, sugar, dried fodder, seeds, hop, tobacco, fruits and vegetables, processed fruit and vegetable products, milk and dairy products, beef and veal, pork, lamb and goat's meat, eggs, poultry meat, bee products, wine, and ethyl alcohol of agricultural origin) – with exception of direct sales – by manufacturers and groups of manufacturers of the said products, manufacturer organisations, or manufacturer organisation associations took effect on 3 October 2015. If the first buyer is not a processor, the agreement between successive buyers is also established in writing.

2. The law of 15 December 2016 on preventing dishonest contractual advantage in sales of agricultural products and foodstuffs (Journal of Laws of 2017 item 67), amending the law of 11 March 2004 on the Agricultural Market Agency and organisation of certain agricultural markets.

From 11 February 2017, it has been possible to penalise purchases of agricultural products that do not have a written agreement with the manufacturer. The new provisions introduce cash fines for products purchased under flawed agreements or with no written agreements, for the delivery of agricultural products. The entity authorised to control this process and impose fines

will be the director of the Agricultural Market Agency's regional branch that is appropriate to the registered seat or place of residence of the purchaser.

The agreement for the delivery of agricultural products must be drafted in writing before delivery and should include the following elements:

1. The price for delivery.

The price specified in the agreement is permanent, or calculated through a combination of various factors that are specified in the agreement; this may include market ratios that reflect changing market conditions, delivered quantity, and quality or composition of the provided agricultural products.

2. Product quantity and quality.

The agreement should specify the quantity and quality parameters of the agricultural products provided as well as the delivery deadline.

3. Agreement duration.

The agreement can be established for a specific or indefinite period of time. It should include clauses governing agreement termination. The parties to the agreement establish its duration through bilateral negotiations.

4. Specifics concerning payment procedures and deadlines.

5. Arrangements concerning the receipt or delivery of the agricultural products.

6. Provisions that are applicable in the event of force majeure.

All elements of agreements for the delivery of agricultural products established by manufacturers, recipients, processors, or distributors, including the aforementioned elements, are subject to free negotiation between the parties.

If the agricultural products are delivered by a manufacturer of the buyer operating in the form of a cooperative, of which the manufacturer is a member and with statute of the cooperative or its bylaws and decisions contained within, or resulting from it, include provisions of similar effects as requirements towards agreements resulting from the law, an agreement is not required.

Purchases of agricultural products by entrepreneurs without the required or sufficient agreements are subject to sanctions imposed by the Agricultural Market Agency in the form of cash fines in the amount of 10% of the value of the products purchased in effect of a flawed agreement.

First of all, it should be noted that entrepreneurs can be protected from practices involving dishonest competitive advantage under a law that is already in effect in Poland. Specifically, the following laws serve this purpose: 1) the Civil Code law dated 23 April 1964; 2) the law on business freedom dated 2 July 2004; 3) the law on preventing dishonest competition dated 16 April 1993; 4) the law on payment deadlines in commercial transactions dated 8 March 2013; and 5) the law on competition and consumer protection dated 16 February 2007.

However, even though access to the tools is unrestricted, they are present in the Polish legal system are not commonly used by trading partners (specifically by providers) to establish equivalent conditions of agreements throughout the agreement's duration. It should be noted that the claims that providers are entitled to are of a private-legal nature and may be pursued only through the courts, thus, consequentially, the providers have to cover the high process costs and endure the required processing time, which may take several years.

Simultaneously, the providers do not want to risk counterclaim from the chain in the form of the termination of cooperation in situations when the lawsuit is filed as the agreement binding the parties is still effective; because of this, providers usually wait until the agreement expires to file their claims. As the providers are economically dependent on commercial chains, they usually do not risk losing its agreements if they are bound by the long-term cooperation with the recipients..

The law on preventing dishonest contractual advantage in the sales of agricultural products and foodstuffs, and the law on preventing dishonest competition, refer to separate modes: they concern the public-legal and private-legal protection of entrepreneurs respectively. The effectiveness of the law in question does not eliminate the option for entrepreneurs to file civil law claims with common courts. The act on preventing dishonest competition will still be applied in the judging of disputes between entities with similar bargaining power in a private-legal mode.

3. General questions

3.1 Has in the last decade a public discussion taken place in your country regarding the question as to whether the legal position of agriculture in the marketing chain should be strengthened?
If yes, what was or is the content of this discussion? Did it lead to reforms or reform proposals?

The issue of protecting farmers' interests in the supply chain was a subject of debate in Poland. The direct incentive were signals regarding the deteriorating standing of food producers compared to other participants of the market. One of the examples in the discussion was that supermarkets may enforce reducing prices on suppliers and also impose additional fees which deteriorates the financial standing of food manufacturers. Another problem is extending payment deadlines which particularly harms farms which are doing poorly financially.

Discussed proposals included setting a maximum payment deadline or allowing the farmers to file anonymous complaints against the chains. It was raised that the farmers, for fear of being excluded from the circle of suppliers, were reluctant to tell on much larger entrepreneurs applying unfair practices. Another idea was creating a position of authority – an arbiter office who would deal with disputes between recipients and suppliers of goods or imposing the duty of only concluding agreements in writing which would be beneficial for the farmers. The lack of such agreements is particular adverse in some industries such as manufactures of perishable foods, such as fruits. Recipients – who see the prices decline and that the products may not be preserved – strong-arm the suppliers into further concessions.

Some experts noticed that since agreements for supply of goods are usually concluded several months in advance and imposing the duty to conclude the agreements in writing would allow to better monitor price trends.[6] Price fluctuation is not only a problem for the farmers, but for governments and EC as well since sudden price drops cause difficulties for many farms which then require aid. In order to improve the situation, experts encouraged to increase the transparency of the market, impose the duty of price reporting and ensure a faster access to more uniform data regarding the situation on the market. During the discussion it was also raised that futures contracts, allowing the farmers to conclude agreements for future supplies at fixed prices, need to be promoted.

As a result of the discussion certain legislative solutions have been adopted – mainly described in detail in pt. 2.9 above.

Seeing a need to enforce its position as an agricultural manufacturer in the food chain, Poland adopted the provisions of Regulation (EU) no. 1308/2013 of the European Parliament and of

[6] A. Babuchowski of the University of Warmia and Mazury in Olsztyn who was one of the experts of the task group preparing a report for the European Commission

the Council, concerning appropriate contractual relations (art. 168 of Regulation (EU) no. 1308/2013 of the European Parliament and of the Council). As a result, the following acts were adopted:

1. The law of 10 July 2015 on amending the law on the Agricultural Market Agency and organisation of certain agricultural markets and certain other laws (Journal of Laws of 2015 item 1419).

The provisions of the act within scope of the responsibility to establish written agreements for all deliveries of agricultural products to the first buyer (agricultural products belonging to the sectors discussed in art. 1 section 2 of Regulation no. 1308/2013, including cereals, sugar, dried fodder, seeds, hop, tobacco, fruits and vegetables, processed fruit and vegetable products, milk and dairy products, beef and veal, pork, lamb and goat's meat, eggs, poultry meat, bee products, wine, and ethyl alcohol of agricultural origin) – with exception of direct sales – by manufacturers and groups of manufacturers of the said products, manufacturer organisations, or manufacturer organisation associations took effect on 3 October 2015. If the first buyer is not a processor, the agreement between successive buyers is also established in writing.

2. The law of 15 December 2016 on preventing dishonest contractual advantage in sales of agricultural products and foodstuffs (Journal of Laws of 2017 item 67), amending the law of 11 March 2004 on the Agricultural Market Agency and organisation of certain agricultural markets.

From 11 February 2017, it has been possible to penalise purchases of agricultural products that do not have a written agreement with the manufacturer. The new provisions introduce cash fines for products purchased under flawed agreements or with no written agreements, for the delivery of agricultural products. The entity authorised to control this process and impose fines will be the director of the Agricultural Market Agency's regional branch that is appropriate to the registered seat or place of residence of the purchaser.

The agreement for the delivery of agricultural products must be drafted in writing before delivery and should include the following elements:
1. The price for delivery.

The price specified in the agreement is permanent, or calculated through a combination of various factors that are specified in the agreement; this may include market ratios that reflect changing market conditions, delivered quantity, and quality or composition of the provided agricultural products.

2. Product quantity and quality.

The agreement should specify the quantity and quality parameters of the agricultural products provided as well as the delivery deadline.

3. Agreement duration.

The agreement can be established for a specific or indefinite period of time. It should include clauses governing agreement termination. The parties to the agreement establish its duration through bilateral negotiations.

4. Specifics concerning payment procedures and deadlines.

5. Arrangements concerning the receipt or delivery of the agricultural products.

6. Provisions that are applicable in the event of force majeure.

All elements of agreements for the delivery of agricultural products established by manufacturers, recipients, processors, or distributors, including the aforementioned elements, are subject to free negotiation between the parties.

If the agricultural products are delivered by a manufacturer of the buyer operating in the form of a cooperative, of which the manufacturer is a member and with statute of the cooperative or its bylaws and decisions contained within, or resulting from it, include provisions of similar effects as requirements towards agreements resulting from the law, an agreement is not required.

Purchases of agricultural products by entrepreneurs without the required or sufficient agreements are subject to sanctions imposed by the Agricultural Market Agency in the form of cash fines in the amount of 10% of the value of the products purchased in effect of a flawed agreement.

3.2 When you look at your national agricultural competition law or EU agricultural competition law as a whole, do you consider that there is a need for reform? If yes, which points should the re- form concentrate on?

It seems that the current state of regulations should be deemed appropriate and any potential changes should be tightly correlated with an evolution of EU law provisions.

Solutions adopted in the Polish Constitution pursuant to which ratified international agreements

become a source of law in the Polish legal system (article 87 of the Constitution) cause that EU law provisions and the *acquis communautaire* regarding the privileged position of agriculture in competition law, such as title III of the Treaty on the functioning of the European Union, containing provisions on separate rules of competition regarding agriculture which have thus become binding provisions of Polish law. In this manner, despite a lack of express provisions in the Constitution in this matter, such principles have become an element of the Polish legal system via the European Union treaties. This solution has another advantage – it allows for a harmonious evolution of laws in Poland in tight connection with EU law provisions.

Referring to the issue of whether EU law needs to be further amended in this respect, two factors should be taken into consideration. First, the need to ensure stable conditions for agricultural activity whilst maintaining the general principle of competition which is key not only for production growth but also to maintain the appropriate quality. Restrictions on the application of competition rules in agriculture should be only introduced with great caution.

At last, external circumstances of the functioning of European agriculture should not be overlooked which is always under a strong pressure of competition via trade relations from non-EU countries. These relations have a legal dimension, globally (WTO) as well as in bilateral relationships (CETA, TTIP and the particularly relevant from the Polish point of view trade agreement of 1 January 2016 concluded between European Union and Ukraine – DCFTA). Changing these circumstances would undoubtedly be a relevant factor.

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