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SGAR Schweizerische Gesellschaft für Agrarrecht
SSDA Société Suisse de Droit Agraire
Sekretariat, Laurstrasse 10, 5200 Brugg

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National report for Poland

Prof. dr Roman **BUDZINOWSKI**
Adam Mickiewicz University in Poznań

Dr Izabela **LIPIŃSKA**
Pozna University of Life Sciences

Resume

The development of agricultural law and subsequent judicial decisions since the last Congress in 2011 have been determined by a number of different factors, both of international (global) significance and of regional, local character. They include, in particular, the global economic crisis and consequent market instability, the negotiations at the WTO forum, the manner in which the European Union agricultural law is created in an ordinary law-making procedure, and the need to work out a legal framework for the CAP for the financial term 2014-2020. Evaluation of the legislative work done in the last two years must also account for the work performed on the preliminary drafting of the basic legal acts that will govern the future CAP.

The passing period has brought about a number of different regulations of which some were more, and some much less successful. This very fact must have been also noted by the EU legislative bodies, who subsequently created and implemented new laws in different areas of application. The past experience as well as the current and future demands have constituted the grounds for drafting of seven acts outlining the legal framework for the CAP in the period 2014-2020. It is a good thing that the basic shape and the Community character of CAP will be continued unchanged in the future, although it is a pity that those acts have not yet been passed, which is also an indicator of the difficulties that needed to be overcome in making those laws. Working out compromises was not easy, mainly due to the global situation (especially the WTO negotiations), the economic crisis, or the different needs and interests of member states. Generally speaking, the CAP has defended itself, but certain accents in its legitimisation have been shifted around. The economic crisis and the potential food deficiency showed once again how important food safety is, and emphasised the need to ascertain proper supply of agricultural products at proper prices, produced in proper conditions, respecting environmental demands and food safety requirements.

The legislative work on food law undertaken within the EU as well as in Poland is certainly noteworthy, as new regulations aimed to enhance food safety (protecting human and animal life) and to promote quality food have been implemented in both. On the positive side is also the strengthening of the position of direct payments as the basic instrument supporting Community agriculture, in aid of farmers' income

as well as public wealth. Another positive development includes further support extended to rural areas and the financing of rural development (even if certain detailed regulations may trigger off discussions). It was also a right decision to retain the possibility of using risk management instruments and other instruments for market intervention to secure the safety net if need be.

A less successful change, or a clear weakness of the European Union agricultural law, is (also from Poland's perspective) a failure to ensure adequate agricultural incomes, which is one of the CAP's objectives. There is a certain concern that the introduction of the greening component to direct payments may deepen the inequalities that already exist among member states. Thus it would seem more effective to tie allocations of funds under direct payments to the size of arable land.

Regarding the evolution of agricultural law, in this Report, like in the one of 2011, we note a number of general directions, or tendencies of development directions. The recent years have shown that substantive regulations pertaining to agriculture grow in numbers and complexity. They become international or European, ecological or environmental, as well as expansive, public or institutional. The development tendencies, such as expansion of agricultural law, the rural focus, or an environmental approach are also present. What is also noteworthy is the more 'regulatory' not 'interventionist' character of the European Union agricultural law.

The European legislation which accounts for international legislation as well as European jurisdiction substantially determines the development of agricultural law. The EU law has become the driving force of Polish agricultural legislation. Consequently, it develops especially intensely in the areas covered by the Common Agricultural Policy. Areas not covered by the CAP show a decidedly lower dynamics, so characteristic of the EU law. The work on development of new concepts and new regulations in agriculture is also noteworthy. What is still missing is legal acts of broad scope of application (as they exist eg in France or Italy) which could effectively lay grounds and set directions for the development and modernisation of agriculture in Poland.

Regarding the functioning of the CAP after 2013, there are certain hopes but also concerns. The Polish government's stand in that respect was clearly articulated in October 2011, based on the presented drafts of basic laws that are to apply in the future. A detailed analysis of the key instruments of the future CAP made from the Polish perspective,

identifies some positive but also some negative features of the new proposals.

Different interests of individual member states, and of particular member states groups (eg. the Old-UE members, or the Eastern-Central Europe members) are not identical. Hence a compromise must be sought. In the over 50-year history of the EU, different views and opinions have been a norm, and yet, the scope and significance of the Common Agricultural Market has continued to grow in size and importance.

A. Legal developments since the last Congress (September 2011)

1. The main legal developments

The development of agricultural law and resulting from it judicial decisions issued since the last Congress in 2011 have been determined by a number of different factors, both of international (global) significance and of regional, local character. In particular, the following must be mentioned: the last Congress in 2011 have been determined by a number of different factors, both of international (global) significance and of regional, local character. In particular, the following must be mentioned:

a) global economic crisis and consequent market instability. In this context, the continuation of the Common Agricultural Policy also in the future seemed highly justified. Food security has become one of the key factors shaping the CAP for the next period of 2014-2020, which must account not only for the global reality and conditions, but also for the increasing, in the future, demand for food in light of the new challenges resulting from the necessity to meet the requirements of climate protection and bioenergy production, or the use of agricultural produce for non-consumption purposes (biofuels, biomass), to mention a few;

b) negotiations at the WTO forum. The suspension of the WTO negotiations has moved further in time the CAP liberalisation, and subsequent reduction of agricultural intervention. Full implementation of the WTO proposal might substantially change the CAP and in consequence lead to the liquidation or fundamental reorganisation of its Pillar I. The European Union has already drastically restricted 'trade-distorting' subsidies and intervention, while the CAP policy has been amended in advance to prepare for the future consent to be achieved under the WTO. The legislative proposals outlining the CAP framework for the coming financial term have also been determined, which is a proof that the CAP and its existing pillars are intended to remain intact at least in the near future.

c) creating the European Union agricultural law in an ordinary law-making procedure. This is a manner in which not only the current EU rural law is made; it is also the legal framework in which the CAP for the period 2014-2010 has been designed. It is certainly more difficult to work out an agreement and consent for taking actions, or to achieve a

compromise. The new procedure has not only strengthened the need for greater legitimisation of the actions taken under the CAP, but has also contributed to greater legitimisation of the EU agricultural law;

d) the necessity of working out the legal framework for the CAP for the financial term 2014-2020. The existing legal acts that constitute the legal and financial framework of the CAP in the current financial term will expire at the end of 2013. Therefore, the assessment of the last two years legislation cannot not include evaluation of the work related to the preparation of the drafts of future laws.

1.1. Rural economic and structural law

The limited scope of this report renders it impossible to include in it a broad presentation of all EU legal regulations concerning agricultural law and formulating a detailed assessment of each. Therefore, only the basic regulations applicable in specific fields will be discussed. Regarding the EU economic and agricultural law, the legislative efforts to regulate the agricultural market and direct payments are certainly noteworthy.

Traditionally, the main, basic regulation of the EU agricultural law concerns the functioning of the agricultural market.

On 14 March 2012, the European Parliament and the Council issued Regulation (EU) No 261/2012 amending the Council Regulation (EC) No 1234/2007 on contractual relations in the milk and milk products sector, so-called 'milk quota'¹. Its purpose was to secure a stable future of the milk sector after the completion of the milk quota system currently in place, i.e. after 2015. This is to be achieved through increasing the milk producers' competitive edge in the food production chain, by, *inter alia*, creating milk producers' organisations mandated to negotiate prices on their behalf. A real advantage of that regulation is that member states will enjoy a certain freedom in determining the time span of its implementation, and they will be allowed to design certain additional, voluntary instruments to enhance milk producers protection. The same act is also believed to improve the functioning of the cheese market.

¹ O. J. UE, L 94 from 30.3.2012, p. 38-48.

By the Act of 23 May 2012 Poland amended its law on the organisation of the milk and milk producers market², and repealed the provisions that obliged milk collection units to collect certain amounts in advance towards possible penalty payments in case individual milk quotas assigned to wholesale suppliers have been exceeded. The incorporation of the above mentioned EU Regulation into the Polish legal system will nevertheless require further amendments of the domestic law.

Regarding the organisation of the wine market, works are being carried out on the drafts of amendments to the currently binding law on the production and bottling of wine products, trading in those products and the organisation of the wine market. The aim of the amended law is to incorporate the EU provisions on the common organisation of the market for wine and to enhance the system of wine certification.

There were also a number of essential amendments to Polish and EU law regarding direct payments. On 21 November 2012, the European Parliament and the Council Regulation (EU) No 1028/2012 of 25 October 2012 entered into force, amending the Council Regulation (EC) No 1234/2007 regarding the regime of the single payment scheme and support to vine-growers. Pursuant to that Regulation, until 1 December 2012 member states had been free to support their vine-growers and grant them subsidies under direct payments, if they were not tied to the production volume. Another revised EU law concerned Poland directly and was implemented by the Commission Implementing Regulation (EU) No 537/2012 of 22 June 2012 amending Regulation (EC) No 1121/2009 laying down detailed rules for the application of the Council Regulation (EC) No 73/2009 on the single area payment scheme for farmers in Poland³. The reason behind that Regulation was the fact that it was found that as at 30 June 2003 the area of usable land kept under good agricultural practice was lower than formerly estimated. Because of that, the EU decided to reduce the area of the single area payment from 14 337 000 ha to 14 000 000 ha.

On 15 March 2012 a Law of 27 January 2012 amending the law on the regime of direct payments and some other laws came into force. Pursuant to that law, *inter alia*, additional payments to good quality tobacco were introduced.⁴ Such additional payments became available to

² Act of 13 April 2012 on the changes in the organisation of the milk and milk products market and amendments to the Law on the organisation of milk and milk products, O. J. 2012, item 574.

³ O. J. UE. L 164 from 23.06.2012, p. 5.

⁴ O. J. of 2012, item 243.

farmers who already received direct payments and who had entered into contracts for tobacco growing or a contract for a supply of a certain quantity of tobacco (*'kontraktacja'* production) with an approved tobacco processing company. The same revised Act amended the principles upon which direct payments are to be granted to producers of soft fruit which, as of 2012, has not been regarded as related to production. Payments to former growers of strawberries and raspberries will be effected in the years 2012-2013 and be made to those who grew them in 2008.

The Act of 25 January 2013 amending the above mentioned law on the regime of direct payments and some other payments entered into force on 15 March 2013⁵. The solutions adopted in that Act harmonise the provisions of Polish law with those of Regulation of the European Parliament and the Council (EU) No 671/2012 amending Council Regulation (EC) No 73/2009 in the scope of direct payments to farmers in respect of 2013. Pursuant to article 133a added to Regulation No 73/2009, Poland may grant in 2013 temporary national support on the same terms and conditions as it granted national complementary payments for the year 2012. Such payments are made to farmers growing, among others, grains, oil plants, high protein and leguminous plants, plants for fodder cultivated on permanent grasslands, and those growing hops, potato starch and tobacco.

It is also noteworthy that Poland is currently preparing a draft law on farmers co-operatives, and a draft law amending the law on the national register of agricultural producers, agricultural farms and direct payment applications register.

The idea behind the draft law on farmers cooperatives is to facilitate and accelerate the transformation of the existing structures and the development of new ones, in the form of production and trading cooperatives. Doing this will enable placing the already existing as well as the newly formed co-operatives under a factual supervision of agricultural producers. The solutions and regulations included in the draft law create possibilities of an implementation of manager's contracts in co-operatives, and those will be then run based on the criterion of professionalism, not membership. It is also proposed that in the cooperative member - cooperative relationship, cooperatives are exempted from paying an income tax.

The reasons for drafting the law on the national register of agricultural producers, agricultural farms and direct payment applications

⁵ O. J. of 2013 item 311.

register arises from the need to simplify the procedure and precise the detailed principles of assigning register numbers to agricultural producers, including farmers who are spouses of the former but run their separate agricultural businesses, and entering them respective registers.

Another legislative work includes the drafting of a law by virtue of which the Agency for Agricultural Market will be liquidated. The same law will also amend some other legal acts. The Agency for Agricultural Market is to be taken over by the Agency for Restructuring and Modernisation of Agriculture. Thus there will remain only one paying agency with a factual influence on the realisation of the agricultural policy.

1.2. Rural environmental law

Environment protection law in agriculture is a focus of attention of the EU as well the domestic legislators in each member State. However, the protection of arable (agricultural) land as a means of production has not as yet been regulated in any comprehensive way. Only soil is subject to protection against industrial waste, whereas work aimed to provide overall soil protection against other risks and dangers continues to be in the development phase.

An interesting development in Polish legislation is an Act of 8 March 2013 on plant protection agents, which implements the European Parliament and the Council (EU) Directive No 2009/128 of 21 October 2009 establishing the common framework for Community actions to achieve a balanced use of pesticides, and to enable implementation of the provisions of Regulation No 1107/2009 (EC) concerning the placing of plant production products on the market and repealing Council Directives No 79/117/EEG and 91/414/EEG. Pursuant to that Act new principles governing the trading in and application of plant protection agents, including technical efficiency tests of the equipment used for their spreading as well as relevant training on spreading technique and plant protection rules have been determined. They put on professional users of plant protection agents an obligation to observe, as of 1 January 2014, the principles of integrated plant protection.

1.3. The law governing agricultural aspects of the food chain

Other essential changes in domestic as well as European Union law regulating various aspects of agriculture have been implemented with food security in mind.

As so, a high level of the protection of consumers' right to food information has been enshrined in Regulation of the European Parliament and the Council (EU) No 1169/2011 of 25 October 2011 on the provision of consumer food information, amending Regulation of the European Parliament and the Council (EU) No 1924/2006 and Regulation (EC) No 1925/2006, and repealing Commission Directive (EEC) No 87/250, Commission Directive (EEC) No 90/496, Commission Directive (EC) No 1999/10 and Directive (EC) No 2000/13 of the European Parliament and the Council, the Commission Directives EU No 2002/67 and 2008/5 together with the Commission Regulation (EU) No 608/2004⁶. The new resolution provides for implementation of common definitions, principles and procedures with a view of establishing a clear framework and common basis for the EU and national measures governing food information.

On 3 January 2013, Regulation of the European Parliament and the Council (regulation No 1151/2012 of 21 November 2012) on quality schemes for agricultural products and foodstuffs came into force⁷. The Regulation integrates all legal solutions contained in the Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁸. It also introduces many changes serving the strengthening of so-called 'quality products' market.

Further, on 12 June 2013, new labelling rules were set out with regards products for children and for medical purposes. The new regulation was introduced by Regulation of the European Parliament and the Council No 609/2013 on food intended for infants and young children as well as regarding food for special medical purposes and total diet replacement for weight control, repealing Council directive 92/52 (EEC), Commission Directive (EC) No 96/8/, (EC) No 1999/21 2006/125/EC and 2006/141/EC, the European Union and Council directive (EC) No 2009/39 and Commission Regulation (EC) No 41/2009 and (EC) No 953/2009⁹. Since 1 July 2012 enforcement regulations have been in force with regards the implementation of requirements of Regulation No 178/2002 regarding the possibility of monitoring animal food safety¹⁰. It

⁶ O. J. UE, L 304 of 22.11.2011, p. 18 - 63.

⁷ O. J. UE, L 343 of 14.12.2012, p. 1-29.

⁸ O. J. UE, L 93 of 31.3.2006, p. 12-25.

⁹ O. J. UE, L 181 from 29.6.2013, p. 35 - 56.

¹⁰ Commission Regulation No 931/2011 of 19 September on the requirements concerning the monitoring of animal food products pursuant to Regulation of the

is a tool used to enhance the process of eliminating hazardous food from the market¹¹.

It is also noteworthy that in May this year the European Commission proposed to replace about 70 existing legal acts with 5 comprehensive ones. This will fully and comprehensively regulate all food safety issues.

In Poland, in turn, work is going on a draft amendment to the existing law on food safety and food provision and catering. The new regulation aims to protect healthy-living of school-age children through safeguarding, among others, limited availability in school premises of food products containing significant amounts of components and agents that are hazardous, especially for children, and their proper growth and development. Proposals are also made to replace the five currently existing food safety inspecting units with one, the main task of which will be food production supervision¹². Other preparatory works concern several other laws regulating agricultural issues. One of those is a draft law amending the existing law on animal protection and combating contagious animal diseases and some other laws¹³. These amendments are well justified as they are needed to ensure efficient and uniform application within the territory of the Republic of Poland of the provisions of the Regulation of the European Parliament and the Council (EC) No 1069/2009 of 21 October 2009 on sanitary provisions concerning animal by-products, not intended for human consumption, repealing Regulation (EC) No 1774/2002 concerning health rules concerning animal by-products not intended for human consumption.¹⁴, and other related EU regulations.

1.4. The law governing rural land use (including planning law)

Land rights under the EU regulation has primarily a protective character and accounts for the right to rural use of land. However, it is not only the arable land, but also forests and forest land that is under

European Parliament and the Council (EC) No 178/2002 on animal food products, O. J. UE, L 242 of 20.9.2011, p. 2-3.

¹¹ J. Górna: *Czynniki warunkujące skuteczność systemu identyfikowalności na przykładzie przedsiębiorstw przetwórstwa mięsnego*, „Zarządzanie i Finanse” No 3, volume 2, p. 108-109.

¹²<http://orka.sejm.gov.pl/zapisy7.nsf/0/E23A76D3DAD18516C12579B1004FA644/%24File/0025207.pdf> [downloaded on 23.08.2013].

¹³ Draft law adopted by the Council of Ministers on 17 July 2012.

¹⁴ O. J. UE L 300 of 14.11.2009, p. 1.

protection. In the last two years land rights have been subject to numerous discussions in Polish legislative activity, regarding their protection as well trading in those lands.

Regarding protective regulations, the Act of 8 March 2013 amending the existing law on agricultural real property and forest lands¹⁵ should be mentioned here. The now required ministerial approval of the re-classification of class I to III arable land has enhanced the protection of agricultural property with highest production efficiency. A similar protection enhancement lay at the foundations of a new regulation on soil classification¹⁶. The inclusion of so-called management and post-consolidation of land should also serve better management of agricultural land property¹⁷.

The trading in agricultural land, both public and private, has also undergone substantial modifications. In 2011 the law on the shaping of agricultural regime¹⁸ underwent yet another change; among others, a new definition of an individual farmer was introduced, while the new implementing regulation defined in detail the qualifications that a person engaged in agricultural activity should possess¹⁹. Regulations on the management of agricultural land-property of the State Treasury were substantially amended as well, by two amendments to the Act of 19 October 1991 on the management of agricultural land²⁰ and amended implementing regulations. These amendments to the Act²¹, as well as to the implementing regulations²² aim to facilitate purchasing of agricultural

¹⁵ O. J. of 2013, item 503.

¹⁶ Ordinance of the Council of Ministers of 12 September 2012 on soil classification, O. J. of 2012 item 1246.

¹⁷ Act of 26 July 2013 amending the law of land consolidation and exchange: <http://sejm.gov.pl/Sejm7.nsf/PrzebiegProc.xsp?nr=827> [downloaded on 07.08.2013].

¹⁸ Act of 11 April 2003 on the shaping and agricultural regime, O. J. No 64, item 592 as amended.

¹⁹ Ordinance of the Minister of Agriculture and Rural Development of 17 January 2012 on agricultural qualifications of persons carrying out agricultural activity, O. J. of 2012, item 109.

²⁰ Act of 19 October 1991 on management of agricultural land – property of the State Treasury, unified text of 2012 item 1187 as amended.

²¹ Act of 16 September 2011 amending the Act on management of agricultural land – property of the State Treasury, (O. J. No 233 item 1382) and Act of 14 December 2012 on management of agricultural land – property of the State Treasury, (O. J. of 2012 item 155).

²² Ordinance of the Minister of Agriculture and Rural Development of 30 April 2012 on detailed principles of the sale of the real property from the Agricultural Property Bank and its elements owned by the State Treasury, and on the terms and conditions of reducing the selling price of a property listed as heritage and estimated pricing the land

land by farmers wishing to create or increase a family agricultural holding, and in this way to speed up the process of privatising state-owned land. Works on the amendments to spatial planning law and building law are also in progress.

1.5. Rural tax law

A gradual implementation of agricultural accounting is being planned, starting from the largest agricultural holdings. A general tax (i.e. income tax) on income generated by agricultural activity will be introduced to replace the existing rural tax. The tax reform is being worked on by the Ministry of Finance in conjunction with the Ministry of Agriculture and Rural Development. Moreover, as an element of the reform, the tax payable by persons earning income from special agricultural production (of the estimated income)²³ was increased by 16%.

1.6. Rural social law

Domestic rural social law has also been substantially amended. On 1 January 2013 an Act of 11 May 2012 amending the then existing Act on pensions and disability pensions from the Social Insurance Fund and some other legal acts²⁴ came into force. It introduced certain additional payable pensions in the form of a partial or temporary agricultural pension, and amended the requirements for farmers' eligibility for a regular pension. Some regulations were introduced mainly in connection with the increased pension age to 67 years. A month later, on 1 February 2012, an Act of 13 January 2012 on farmers' health insurance contributions for the year 2012 became effective²⁵. Pursuant to that Act, obligatory health insurance applies, *inter alia*, to persons meeting the

(O. J. of 2012 item 540) and ordinance of the Minister of Agriculture and Rural Development of 16 February 2012 on detailed principles of distributing installments due for the sale of property from the Agricultural Property Bank and its elements owned by the State Treasury, and the interest rate accrued on the distributed over time payments of installments (O. J. of 2012 item 208), as well as Ordinance of the Minister of Agriculture and Rural Development of 30 April 2012 amending the ordinance on detailed principles of conducting tenders for renting real property from the Agricultural Property Bank owned by the State Treasury O. J. of 2012, item 523.

²³ Ordinance of the Minister of Finance of 13 November 2012 on estimating standards used for estimating income generated by special agricultural production, O. J. of 2012 item 1272.

²⁴ O. J. of 2012, item 637.

²⁵ O. J. of 2012 item 123.

requirements for eligibility for farmers' social insurance who are farmers or residents of agricultural holdings within the meaning of the provisions of the Law of 20 December 1990 on farmers' social insurance²⁶.

1.7. Other areas of rural law

At the beginning of 2013 a Seed on Management Act of 9 November 2012²⁷ came into force in Poland. The Act regulates, *inter alia*, registration and trading in GM seeds. It also contains provisions on the production and marketing of seeds and their varieties originating from amateur or regional plantations. It also details the principles of registering plant varieties by the Main Centre of Cultivated Plant Varieties Research (*Centralny Ośrodek Badania Odmian Roślin Uprawnych*). The implementation ordinance of the Council of Ministers of 2 January 2013 is also referred to with regards the prohibition of using corn seed variety of the MON 810 series²⁸.

Works on the drafting of a law on renewable energy resources are also going on. That law is an element of so called big three-law package of laws on energy and energy market. On 26 July 2013, the Parliament approved the novelty of Polish energy law²⁹, which is a small three-law package allowing the energy market to be opened to individual consumers, and making it possible for individual energy producers to independently sell self-produced energy to a distribution network. Pursuant to the new solutions proposed in the draft, a natural person (an individual, such as eg. a farmer) will be allowed to produce energy in a microinstallation (up to 40 kW).

²⁶ O. J. unified text of 2008, No 50, item 291 as amended. Also see: D. Puślecki, *Ubezpieczenie zdrowotne rolników*, „Przegląd Prawa Rolnego” 2012, No 2, p 31.

²⁷ O. J. of 2012, item 1512.

²⁸ O. J. of 2013, item 39.

²⁹ <http://sejm.gov.pl/Sejm7.nsf/PrzebiegProc.xsp?nr=946> [downloaded on 6.08.2013].

B Analysis

1. Introduction

Evaluating the evolution of agricultural law in the above areas, an observation can be made that there have been a number of different regulations implemented in the recent years, some of them more, and some less successful. This was also noted by the EU legislative bodies, who subsequently created and implemented new laws in different areas of application. The past experience as well as the current and future demands have constituted the grounds for drafting of seven acts outlining the legal framework for the CAP in the period 2014-2020. It is a good thing that the basic shape and the Community character of CAP will be continued unchanged in the future, although it is a pity that those acts have not yet been passed, which is also an indicator of the difficulties that needed to be overcome in making those laws. Working out compromises was not easy, mainly due to the global situation (especially the WTO negotiations), the economic crisis, or the different needs and interests of member states. Generally speaking, the CAP has defended itself, but certain accents in its legitimisation have been shifted around. The economic crisis and the potential food deficiency showed once again how important food safety is, and emphasised the need to ascertain proper supply of agricultural products at proper prices, produced in proper conditions, respecting environmental demands and food safety requirements.

The evolution of the EU, likewise the evolution of the domestic law was not uniform and equal in intensity in all legislative spheres. This is typical of the development of agricultural law, and what needs to be assessed is rather the justification, or justifiable reasons for a faster than in other areas, development of certain aspects of agricultural law, while some other areas experienced a slowdown in development.

2. Successful legal developments

The following legislative work both in the EU and Poland is particularly noteworthy regarding:

food safety regulations. These are new regulations aimed to enhance food safety (protecting human and animal life) and to promote production of quality food, which, in turn, enhances the competitive market position of European products on the global market;

- the strengthened position of direct payments being the basic instrument supporting the Community agriculture, and which has a positive effect on individual farmer's income, contributing, at the same time, to overall public wealth.

Therefore, it will be justified to retain direct payments, also after 2013, although it is understood that they should take a different form. Thus the 'greening' of direct payments, despite certain concerns, must be considered, in principle, as a positive step.

- also the measures taken in the last two years to support the rural areas, as well as the planned financing of those, although might be questioned by some, deserve a positive opinion;

- it is also justified to leave certain elements of market intervention, as well as the risk management instruments, in place. They constitute a certain safety net, and also make it possible for the EU and the member states to react properly to changes as well as threats that occur on the agricultural market. Also proposals to regulate risk management instruments under the provisions of the ordinance on the support extended to rural areas within the European Agricultural Fund must be regarded as a positive development, even if certain proposals in this respect may raise doubts. What is more, implementation of an instrument called Income Stabilisation Tool would require keeping registers of farmers' incomes while in Poland agricultural producers are exempted from income tax and therefore do not keep accounts and books registering their incomes and expenses. Therefore it would be difficult to establish the level of reduced income which would enable active producers to seek compensation.³⁰

3. Unsuccessful legal developments

A less successful evolutionary development of EU agricultural legislation, also from Poland's perspective, includes:

- continued, because of many different reasons, failure to secure adequate incomes, which is one of the CAP's objectives;

- still a considerable difference in the level of support offered to farmers in individual member states, and a continued preference and support extended to those from Western Europe; This, however, at least for Poland, will change in the new financing period;

³⁰ More in I. Lipińska, Prawne instrumenty zarządzania ryzykiem w rolnictwie, Przegląd Prawa Rolnego 2013, No 1.

- the already mentioned greening of direct payments when it comes to detailed proposals, which may subsequently deepen the inequalities among member states. Therefore determining the allocation of direct payment funds on the basis of the size of arable land seems much more justified;

- the EU structural policy is also less visible. Some of its instruments have been included in other regulations (especially when it comes to the regulations pertaining to rural development). A stronger support of activities undertaken in that area is very important from Poland's point of view because of the necessity to modernise Polish agriculture.

4. New trends

Regarding the evolution of agricultural law, in this Report, like in the one of 2011³¹, we note a number of general directions, or tendencies of development directions. Today we can also see that substantive regulations pertaining to agriculture grow in numbers and complexity. They become international or European, ecological or environmental, as well as expansive, public or institutional³². The following direction tendencies are also present:

- expansion of agricultural law. Both the EU and Polish legislation include a growing number of regulations of new social relationships in agriculture or agriculture-related areas. They regulate, *inter alia*, environmental or climate-related issues as well as renewable energy resources which have an effect on agricultural activity, and which are new challenges for the CAP. Here, certain 'competitive' rules must be observed to account for agricultural products of food or non-food purposes.

- environmental element in agricultural law. Here again, both the EU and Polish legislative work includes measures introduced to reduce the damaging effect that agricultural activity has on the environment, and to create positive environmental effects that may also flow from that activity,

- rural focus. Agricultural law contains regulations of the relationships between agriculture and the territory on which it is present, combining in this way the environmental aspect with the nutritional one.

³¹ Authors: R. Budzinowski, A. Suchoń, K. Błażejewska.

³² R. Budzinowski, *Problemy ogólne prawa rolnego. Przemiany podstaw legislacyjnych i koncepcji doktrynalnych*, p. 127.

Thus rural law is and will continue to be an important component of the CAP.

On the other hand, looking at agricultural law from the point of view of its legal effects, we note the growing ‘regulatory’ not ‘interventionist’ character of the European Union agricultural law.

Agricultural law is also better ordered than other specific laws and its main areas are covered by legal acts of broad application, containing definitions of the introduced concepts which determine the legal solutions of the implementing orders. The legal framework of the CAP in the years 2013-2014 will be determined by seven basic legal acts.

5. The overall role of international and European legislation and jurisprudence in the development of rural law

The EU legislation with global focus (i.e. having account for the provisions of international legislation) and EU jurisdiction have substantial influence of the development of agricultural law.

We note that in the EU legislation motives that justify intervention into broadly understood agricultural issues through legal regulations determining and legitimising protective, or supportive measures have grown stronger. That is because agriculture does not only provide direct food security, but it also plays a role of a supplier of a variety of public goods (wealth), and whose supply cannot be guaranteed by the very existence of the market. Stronger motives justifying intervention into agricultural affairs entail further development of legislation which eventually becomes a separate agricultural law. It may be thus said that the driving force of the development of that legislation has not at all been exhausted –on the contrary, it is now stronger than ever. However, what can be observed is different levels of intensity of legislative work in different areas of agricultural law or areas related to agriculture. Traditionally, agriculture has not been a special focus of attention of law-makers, but recently environmental rural law and food law have been given a lot more attention. It is noteworthy though that the traditional areas of agricultural law have received much attention from domestic law-makers, although again, their activity in individual member states differs greatly.

The influence of EU jurisdiction on the development of agricultural law may be well presented on Poland’s example where Poland stood against the European Commission or vice versa.

An example of the former will be the decision in Poland's favour of 29 September 2011 in case T-4/06³³ when Poland sought to nullify the provision of art. 2 of Commission Regulation No 1686/2005 determining the coefficient of the additional levy in the sugar sector³⁴. Whereas in March 2012, in its decision in case T-243/07³⁵, the ECJ held that Commission's decision No 2007/361³⁶ did not apply to Poland with regards the cost of removal from the market of the excessive quantity of the product³⁷. A final decision is still pending regarding elimination of the excess of sugar from the market, of the quantity that exceeded the stock limit determined by the EU³⁸. The first instance court rejected Poland's complaint as inadmissible (it was filed before Poland became a member state). However, the ECJ, in its judgment TSUE C-336/09³⁹ of June 2012 reversed the decision of the Court of first instance.

An example of a case lost by Poland as the applicant is case T-241/10 where Poland complained against the Commission's decision No 2010/152⁴⁰ which excluded from the EU financing amounts spent by the Polish paying agency by virtue of the single area payment complementing national direct payments and some other payments granted under the rural development scheme. Poland challenged that complaint, primarily, on grounds of offences in the system of agricultural

³³ O. J. UE C 331 of 12.11.2011, p. 16.

³⁵ Regulation No 1686/2005 of 14 October 2005 on production levies and the coefficient for the additional levy in the sugar sector for the business year 2004/2005 (O. J. UE, L 271 of 15.10.2005, p. 12-13).

³⁵ O. J. UE, C 73 of 10.3.2012, p. 67.

³⁶ Commission Decision 2007/361/EC of 4 May 2007 on the determination of surplus stocks of agricultural products other than sugar and the financial consequences of their elimination in connection with the EU accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia (O. J. UE, L 138 of 30.5.2007, p. 14-17).

³⁷ The appealed decision determined the quantities of agricultural products in free circulation at the territory of some new member states as at the accession date, which in the Commission's opinion exceeded the normal level of stocks of those products

³⁸ These issues have been determined in Regulation No 60/2004 of January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia (O. J. UE, L 9 of 15.1.2004, p. 8-12).

³⁹ O. J. UE, C 258 of 25.8.2012, p. 2-3.

⁴⁰ Commission Decision 2010/152/UE of 11 March 2010 excluding from European Union financing certain expenditure incurred by member states in connection with the Guarantee Section of the European Orientation and Agricultural Guarantee Fund, the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Areas Development (O. J. UE, L 63 of 12.3.2010, p. 7-20).

plots identification in the years 2005-2006. In September 2012 the ECJ dismissed Poland's appeal to nullify Commission decision 2009/444/EC of 19 June 2009 allocating the amounts obtained as a result of the implementation of modules referred to in art. 7 and art. 10 of Council Regulation (EC) No 73/2009⁴¹.

The active role of the European Commission against Poland can be seen in matters concerning GMOs. For example, in June 2011, the Commission files a complaint against Poland⁴² with a claim that through adopting a national law on fodder, which prohibited production, marketing and use of genetically modified fodder and GMOs in animal feeding and for other feeding purposes, Poland violated its obligations resulting from Regulation (EC) (WE) No 1829/2003⁴³. And in June 2013 the Commission filed a complaint with the ECJ claiming that Poland failed to observe the EU regulations on the monitoring the plantations of GMOs.⁴⁴

6. Influence of Polish legislature on the development of rural law

Assessing the influence of Polish legislation on the development of agricultural law, one should note that the EU legislation plays a deciding role that determines the development of the domestic legislation. That influence was already present before Poland's accession and obviously deepened once Poland became a member state. Thus the European Union law is the driving force of the agricultural legislation developing in Poland. Consequently, Polish agricultural law develops most intensely in the areas that are covered by the Common Agricultural Policy.

Areas not covered by the CAP show a decidedly lower dynamics, so characteristic for the EU law. The work on development of new concepts and new regulations in agriculture is also noteworthy. What is still missing is legal acts of broad scope of application (as they exist eg in France or Italy) which could effectively lay grounds and set directions for the development and modernisation of agriculture in Poland.

What is also noteworthy is that agricultural issues are regulated in a general framework legal act, while detailed application of the law is

⁴¹ O. J. UE, L 148 of 11.6.2009, p. 29-32 .

⁴² Complaint filed on 21 June 2011 - The European Commission against the Republic of Poland (Case C-313/11), O. J. UE, C 252 of 27.8.2011, p. 23-24.

⁴³ O. J. UE, L 268 z 18.10.2003, p. 1-23.

⁴⁴ Directive of the European Parliament and the Council 2001/18/EC of 12 March 2001 on the deliberate release in the environment of genetically modified organisms and repealing Council Directive 90/220/EEC, O. J. UE, L 106, 17.04.2001, p. 1-39.

specified in implementing orders. Such a solution allows an expedient reaction to the changing needs without having to amend the legal act in question.

7. Influence of Polish jurisprudence on the development of rural law

As already mentioned in the previous Report, in light of Poland's Constitution, judicial decisions do not constitute the generally binding sources of law. However, certain judicial judgments did and do have influence on the development of agricultural law, including the law making process policy and the shape of the binding laws and regulations. Judgments in agricultural matters may be handed down by different bodies, such as e.g. The Supreme Court, administrative courts (including the Supreme Administrative Court) and the Constitutional Court (in Poland: Constitutional Tribunal). Due to the fact that different bodies may issue decision in agricultural matters, the adjudicated issues and the delivered judgments are also diversified.

Judgments (thesis) issued by the Supreme Court are of capital importance particularly from the point of view of law application, since they explain, clarify and remove doubts arising from the construction of the Law, and serve to unify the practice. A special role in the shaping of agricultural law is also played by administrative courts. Decisions of those courts are not only in matters governed by the national law, but predominantly in matters related to the implementation of the CAP mechanisms. Decisions of administrative courts contain evaluation of the binding law and consequently contribute to amendments or enhancements of the binding laws. Last but not least, judgments issue by the Constitutional Tribunal are also important from the point of view of the development of agricultural law, as those decisions rule on the incompatibility of a normative act with the Constitution, thus shaping overall legislation, having regard to the standards established in the Constitution.

8. Polish approach to the proposed reforms of the CAP for 2014–2020

The proposed reforms of the CAP for the period 2014-2020 are of interest and importance to every member state, and each has voiced its expectations as well as concerns regarding that issue. Also in Poland, the planned reforms were a subject of frequent discussions and Poland's

government has many a times, at different stages of the work on the future shape of the CAP, presented its opinion.⁴⁵

Poland's expectations regarding the functioning of the CAP after 2013 are largely determined by the state in which Polish agriculture was at the moment of the accession, as well as by relevant provisions of the Accession Treaty and the provisions on the development funds and support for Polish agriculture and rural areas received so far. Poland belongs to the most agricultural members of the European Union. It must also be understood that for Poland agriculture has always had a much more social and economic importance than for most countries in Western Europe. The country has struggled for years to overcome its weaknesses and problems that have their origin in the past. The historic 'heritage' includes a high number of small farm units with many persons employed in them. On the other hand, certain other characteristic features of Polish agriculture (eg those related to rural landscape protection or biodiversity) ideally meet the new challenges of the CAP. Poland was an active participant in the discussion about the future of the CAP after 2013 when, the completed in 2008 *Health Check*⁴⁶, was deliberated. Poland's position was then based first, on the document entitled "The Polish Vision of the Common Agricultural Policy after 2013 – preliminary assumption and proposals"⁴⁷, and next, after a series of consultations, presented in a document called "Position of the Government of the Republic of Poland regarding the future of the Common Agricultural Policy of the European Union after 2013"⁴⁸. In that document, Poland drew attention to the necessity of maintaining a fully 'Community' character of the agricultural policy, ensuring its proper financing and maintaining its existing structure (i.e. common organisation of markets, direct payments system, rural development policy). Poland is also of the opinion that the

⁴⁵ More in: R. Budzinowski, Die Zukunft der EU Agrarpolitik aus polnischer Perspektive, in: Die gemeinsame Agrarpolitik vor neuen Herausforderungen, ed. J. Martinez, Goettingen 2012.

⁴⁶ For Poland, the debate based first on a document entitled "The Polish Vision of the Common Agricultural Policy after 2013 – preliminary assumption and proposals" and then, after a series of consultations, presented in a document called "Position of the Government of the Republic of Poland regarding the future of the Common Agricultural Policy of the European Union after 2013".

⁴⁷ This document has been prepared by the Ministry of Agriculture and Rural Development, and subsequently approved by the European Committee at the Council of Ministers on 21 November 2008.

⁴⁸ This position was adopted by the Council of Ministers on 12 June 2009. Poland was one of the few 1-member states whose Government officially took such a stand.

existing effective instruments of the market policy, those which ensure a safety network and direct payments being an instrument of support to agricultural income, should be continued, while the rural development Policy should be enhanced.

The draft resolution of the European Parliament regarding CAP until 2020, also called the Dess Report⁴⁹ adopted on 25 May 2011 was highly criticised in Poland as being incompatible with Polish interests and Polish agriculture. The Polish Ministry of Agriculture and Rural Development also saw it as containing disadvantageous proposals regarding the future of direct payments and Pillar II of the CAP. In particular, the Report rejected the idea of a unified, flat area rate across the whole EU, which – as seen in Poland – if accepted, would have ascertained the much needed levelling of the support granted to the member states. On the positive side, Poland welcomed the declaration that the rural development policy must support modernisation of agricultural holdings, innovations, diversification of rural areas, and must also meet the environmental and climate challenges. The coordination of the funds from Pillar II with those from the Cohesion Fund, as well as the proposal of placing Pillar II under the principle of so-called conditionality, i.e. tying the assignment of the funds to prior results also won Poland's approval.

The legislative proposals published on 12 October 2011, which constitute the legal framework of the CAP after 2013, had been preliminarily scrutinised by the Polish Ministry of Agriculture and Rural Development, which analysed them from the Polish perspective⁵⁰. As a result, certain expectations have been voiced, and certain concerns raised. As could be seen, at least on the example of direct payments, many proposed solutions were far from offering the simplification of the existing ones. It seems that in the future the CAP will be even more complex, especially when now the green component has been separated, and because of the relationship between that component and the activity of Pillar II. The proposed policy in which national envelopes based on historical parameters, are to be continued does not seem fair either. What is more, the long time demanded equation of direct payments based on

⁴⁹ On 27 May 2011, the Minister of Agriculture and Rural Development sent a letter to all Polish EP members drawing their attention to the threats to Polish agriculture arising from Dess' Report [www.minrol.gov.pl, downloaded 1.08.2013].

⁵⁰ *A preliminary evaluation of the assumptions to the legislative package from Poland's perspective*, Publisher on the Ministry of Agriculture and Rural Development, webpage at minrol.gov.pl.

area rates has not been accounted for, and the proposal provides merely for a partial elimination of disproportions of payments among member states, to be effected by 2019. Abandonment of the proposal to strengthen Pillar II financially, is not in line with Poland's expectations either.

However, despite those shortcomings, Poland also notices and welcomes a number of positive solutions proposed in the Report, which include improvement of the support distribution among different-size households, an increased role attached to small agricultural units in the European agriculture model, or a wider scope of CAP instruments, to include measures taken to meet the new challenges.

A more detailed assessment of the basic instruments of the future CAP from the Polish perspective points to the advantages as well as the disadvantages of the proposals. For instance, regarding direct payments, the prospect of a possibility of an increased support extended to less economically advantageous areas is certainly welcome and approved, but the continuation until 2018 of the possibility of partial differentiation (of up to 60% of the national envelope) of direct support based on historical receipts is criticised. However, in Poland's eyes, a true positive development regarding rural areas is the proposal of retaining the scope of the financial support mechanism of Pillar II, leaving a substantial degree of autonomy in that respect to member states. However, it is also believed that the increased administrative burden connected with the implementation of that Pillar, as well as its only apparent simplification (some of the measures or actions are simply repeated or continues), does not seem quite right. Regarding market instruments, Poland appreciates the broader use of the general 'crisis' clause that may be used in the event of a threat of a market distortion risk, or when the position of agricultural producers must be supported and enhanced in the overall food chain. At the same time, however, Poland is less enthusiastic when it comes to the proposal of a change in the system of additional payments in the private storage of butter from obligatory to facultative.

It is also obvious that interests of individual member states, and of particular member states groups (eg. the Old-UE members, or the Eastern-Central Europe members) are not identical. This very fact also enforces the need to work out a compromise. This, however, is nothing new. In the over 50-year history of the EU, different views and opinions have been always present, but this does not prevent the fact that the scope and significance of the Common Agricultural Market has continued to grow in size and importance.