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**Commission/Kommission I**

**Rapport national**

**Market organization – Legal Framework and implementation in Poland**

**Part II**

**Rapporteur/Berichterstatter**

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## Introduction

Reformed system of payments under the direct support schemes introduces many changes. The previous regulations<sup>1</sup> were not connected with direct payments from production but only subject to the fulfillment of cross-compliance requirements, which contributed to support and stabilization of farm income, and also contributed to providing the public, next to agricultural products also public goods<sup>2</sup> such as food security or environmental goods (biodiversity, quality of the environment, rural landscape)<sup>3</sup>. While the payment system in the next programming period of the Common Agricultural Policy (CAP) for 2014-2020 is to support economically active farmers, with an emphasis on support for young farmers, small and medium-sized farms and with the possibility of reducing support to farms achieving the highest income. Under the new programming period the CAP increased environmental requirements relating to the support of farms, as well as maintained additional support to producers in areas with natural constraints.

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<sup>1</sup> Council regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003, O.J. L 30 z 31.01.2009, p. 16.

<sup>2</sup> According to one of the economic concept direct payments are primarily a kind of compensation for provision of public goods, see: The future of CAP direct payments „Agricultural Policy Perspectives Brief”, No. 2, 2011, European Commission, DG Agri, Brussels.

<sup>3</sup> **K. Bańkowska, M.A. Król**, Wynagrodzenie za środowiskowe dobra publiczne dostarczane przez rolnictwo (Remuneration for environmental public goods provided by agriculture) [w:] M. Woźniak, Pierzchała, Dobra publiczne w administracji (Public goods in administration), Toruń 2015, s. 215-235, although in Polish law doctrine there is the opinion of undermining the legitimacy of this thesis, see: **D. Łobos-Kotowska**, Działalność rolnicza jako przesłanka uzyskania uprawnienia do płatności (Agricultural activity as a circumstance for entitlement to direct payments), „Studia Iuridica Agraria” 2013, t. XI, s. 72.

## **II. Legal framework**

### **6. Professionally active farmer**

An important element of the reformed system of direct payments is dependent on support the fulfillment of the criteria of 'economically active farmer'. The introduction of this instrument comes down to the fact that a farmer who does not meet the requirements set out in the definition shall be excluded in the given year:

1) from all direct payments;

2) in the case of certain measures aimed at supporting rural development shall be considered as a farmer who does not meet the eligibility criteria or conditions for receiving the support. It should also be noted that the actions of the RDP 2014-2020<sup>4</sup> require to meet the current legal requirements for professionally active farmers:

- quality systems for agricultural products and foodstuffs;
- help to start a business for young farmers;
- organic agriculture;
- payments to areas facing natural or other specific constraints (LFA);
- risk management systems (crop insurance, mutual funds, stabilization of income).

The concept of professionally active farmer is defined in Art. 9 of the Regulation of the European Parliament and of the Council (EU) No 1307/2013 of 17 December 2013. establishing rules for direct payments to farmers under support schemes within the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009<sup>5</sup>.

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<sup>4</sup> The Rural Development Programme 2014 - 2020, based on the provisions of the European Union, in particular Regulation of the European Parliament and of the Council (EU) No 1305/2013 of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 and delegated and implementing acts of the European Commission, approved by Commission Decision CCI 2014PL06RDN001.

<sup>5</sup> O. J. UE L 347 of 20.12.2013, p. 608 with amendments, hereinafter cited as: "Reg. No 1307/2013".

The Polish Act of 5 February 2015 about payments under the direct support schemes<sup>6</sup> does not contain a legal definition of the concept of “professionally active farmer”, this concept expressly does not even exist in the law. However, Art. 7 paragraph 3 and 4 and Art. 34 paragraph 1 and 2 sec. 1 of the Act implement provisions of Regulation No 1307/2013, aimed at ensuring targeting support for professionally active farmers.

In Poland, each beneficiary applying for direct payments in 2015, who in 2014 received the total amount of direct payments (excluding transitional national aids) of no more than EUR 5000 (before taking into account any reductions and exclusions<sup>7</sup>), will be automatically considered to be a professionally active farmer and participation in the system of support will not mean any additional obligations (Art. 7, paragraph 3 u.p.r.s.w.b. in connection with art. 9, paragraph 2, 3 and 4 of Reg. No 1307/2013).

Introduction of this general rule, is subject to a few exceptions. Under the current Regulation 1307/2013 a number of exemptions symptoms were contained and, in some cases, the obligation to document the economic activity in agriculture was introduced.

Pursuant to Art. 9 paragraph. 2, the first section of Reg. No 1307/2013, the subjective inclusion was concluded. No direct payments shall be granted to natural or legal persons, or to groups of natural or legal persons who:

- administer airports;
- administer water supply;
- administer permanent sports grounds and recreation facilities;
- provide rail transport services;
- provide services in the field of real estate.

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<sup>6</sup> Journal of Laws of 2015, item 308, with amended., hereinafter cited as: "u.p.r.s.w.b.".

<sup>7</sup> Pursuant to Art. 17 paragraph. 2 point b of Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation, O.J. EU L. No. 181 from 20. 06 2014, p. 1, hereinafter cited as: "Reg. No. 639/2014. "

However, in accordance with Art. 9 paragraph. 2, the second sec. of Reg. No. 1307/2013, where appropriate, Member States may on the basis of objective and non-discriminatory criteria decide to amend the list of indicated businesses and activities of other similar non-agricultural undertakings or activities, then they can decide to remove such additions. Therefore Art. 7 paragraph. 4 establishes optional capability to define such a list of other types of non-agricultural activities, by regulation of the Minister of Agriculture and Rural Development.<sup>8</sup>

EU rules establish, however, exceptions to this rule, this means return to the principle of taking payments.

On the basis of Art. 9, paragraph 2 the third sec. of Reg. No 1307/2013 mentioned categories entities covered by the exclusion will be able to demonstrate that they meet the criteria set out in that article, and therefore the possibility of becoming a professionally active farmer by documenting that:

- the annual amount of direct payments is at least 5% of the total revenue generated from non-agricultural activities in the last financial year for which such evidence is available;
- their agricultural activities is not a marginal. Pursuant to Art. 13 paragraph. 1, first sec. of Reg. No 639/2014, this requirement will be considered satisfied when all of the revenue from agricultural activity is at least 1/3 of the total revenues), or
- their main business or core business is performing agricultural activity - ie. not included in the official register of companies.<sup>9</sup>

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<sup>8</sup> Until the time of the report, the Minister of Agriculture and Rural Development does not exercise his authority to issue an executive act.

<sup>9</sup> According to art. 13 paragraph. 3, first sec. of Reg. No. 639/2014 agricultural activity is the main form of economic activity or objects of a legal person if it has been registered as a principal business or company objects in an official register of companies or any equivalent official register of a Member State. In the case of a natural person is required for entry into the equivalent records. In Poland activities in agriculture in terms of agricultural crops and farming and animal husbandry, horticulture, vegetable growing, forestry and inland fisheries, as well

Under Art. 34 of the Act types of evidence of the occurrence of the above-mentioned circumstances will be further specified in the implementing rules. In other cases, the principle of exclusion of entities involved, from the list mentioned above exclusions and rules of evidence of economic activity in agriculture will apply.

Examination of the existence of "professional activity" shall apply solely to farmers whose amount of direct payments exceeds 5000 euros, while they carry out (except for agricultural activity) types of non-agricultural activities referred to in Art. 9 paragraph 2, the first sec. of Reg. No 1307/2013 (including administration of airports), or other non-agricultural activities which will eventually be defined in the regulation issued under the optional authorization contained in Art. 7 paragraph 4 of the Act.

According to the data from the Agency for Restructuring and Modernisation of Agriculture (ARiMR) adopted solution will allow for automatic recognition of nearly 91% of farmers, with a total of 7.1 million hectares of agricultural land (50.52%), as professionally active. It should be noted, however, that the approach adopted in the Act will make it necessary to show compliance with the conditions of professionally active farmer will deal with the least possible number of beneficiaries. This is because the application by the European legislator over the analyzed solutions (ie. not extending the list of activities), the conducting of which will cover the procedure to check activity and establishing a threshold for payment of causing the automatic recognition of the entity for the economically active farmer at a maximum of 5000 euros.

To sum up, it should be emphasized that the majority of Polish farmers the introduced new regulation will not bring significant changes. The majority of the beneficiaries, who in 2014 received the total amount of direct payments of no more than EUR 5000 will be automatically considered professionally active farmers to apply for the direct payments in

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as in the field of agro-tourism and home-made wines), performed by a natural person is freely without entry in the register of economic activity. Agricultural producers are entered in the national registration system of producers, farm records and records of claims for payment.

2015 and participation in the system of support will not entail any additional obligations. Thanks to this vast number of farmers will be considered active. From the point of view of the procedure of applying for support such an approach will simplify the process of applying for payment by the smallest holdings, from the point of view of the costs incurred by the paying agency will reduce the administrative burden associated with the operation of applications.

## **7. Reduction in payments - degressivity**

In accordance with Art. 11 Reg. No 1307/2013 Member States reduce the amount of direct payments to be granted to a farmer in a given calendar year by at least 5% for the portion of the amount exceeding EUR 150 thousand. This instrument is referred to as degressiveness of payment and is an instrument optional for Member States.

Attitude to the payment of annual reductions in individual Member States was diverse. The introduction of this instrument favored countries like Romania, Lithuania, Latvia, Italy, Portugal and Poland. In contrast, the Czech Republic, Denmark, Germany, France, Austria, the Netherlands and Sweden issued a negative assessment<sup>10</sup>. For this reason, different Member States applied different solution to the reduction of payments<sup>11</sup>. Most, as many as fifteen Member States<sup>12</sup>, with the surplus amount of over EUR 150 thousand, as referred to in Art. 11 Reg. No 1307/2013, adopted the minimum degressivity of 5%. Nine countries<sup>13</sup> applied surtax up to 100% reduction of the basic payment with surplus amount between 150 thousand and 600 thousand euros. In nine countries deduction system was used ( subtraction

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<sup>10</sup> A. Czyżewski, S. Stępień, Punkty widzenia Polski i innych państw członkowskich Unii Europejskiej na WPR 2014-2020 (Viewpoints Polish and other European Union Member States on the CAP 2014-2020), "Journal of Agribusiness and Rural Development" 2012, v. 3, p. 75.

<sup>11</sup> The CAP towards 2020. Implementation of the new system of direct payments. MS notifications, DG Agriculture and Rural Development, European Commission.

<sup>12</sup> Czech Republic, Denmark, Estonia, Cyprus, Spain, Latvia, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia, Sweden, Finland, United Kingdom (England).

<sup>13</sup> Austria, Belgium (Flanders), Ireland, Greece, Bulgaria, Poland, Italy, Hungary, the United Kingdom (Scotland).

of salaries) of the salaries actually paid to farmers<sup>14</sup>. Several countries did not apply the reduction mechanism<sup>15</sup>. From the presented estimates within 5 years in years 2015-2020 achieved through the instrument of annual reductions will be EUR 558 million and will be credited to national envelopes to supporting rural development.

In Poland, pursuant to art. 19 paragraph 1 u.p.r.s.w.b., under the new system of direct support reduction will be used, involving the reduction of payments by 100% of the excess amount of the single area payment over 150 thousand euros. Based on estimates<sup>16</sup> it is assumed that with the reduction in payments will be covered only around 150 holdings and farms that have the area of not less than 1.4 thousand hectares. The limit above which the payments will not be paid are EUR 335 thousand per year.

The total amount obtained as a result of the application of this mechanism in Poland will reach approximately EUR 20 million per year and will be credited to the budget of the RDP.

## **8. Support for young farmers**

Support for young farmers is one of the instruments of intense demographic impact on relations in agriculture. As emphasized in the doctrine the law<sup>17</sup> legal solutions to facilitate generation change in agriculture are among the most important instruments to improve the agrarian structure in the countries of the old EU-15, used since the seventies. Also today in Poland all forms of support to facilitate start young farmers are regarded as a manifestation of stimulating structural change in the agricultural sector by facilitating the acquisition or

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<sup>14</sup> Bulgaria, Estonia, Greece, Spain, Italy, Latvia, Luxembourg, Austria, Slovenia.

<sup>15</sup> Germany, France, Croatia, Lithuania, Romania, Belgium (Wallonia).

<sup>16</sup> Data from the Ministry of Agriculture materials.

<sup>17</sup> Under Directive No. 159/72 on the modernization of farms, O.J. EC 1972 L 96, p. 1. For more on this topic:

**A. Lichorowicz**, Problematyka struktur agrarnych w ustawodawstwie Wspólnoty Europejskiej (The issue of agricultural structures in the European Community legislation), Kraków 1996, s. 129 i n.

establishment of farms by young people with appropriate qualifications, which is expected to lead to an increase in competitiveness of the agricultural sector<sup>18</sup>.

In the current term of the program there is a significant change in the system of support for young farmers who for the first time will receive support not only as previously from the second pillar of this policy, but for the first time it provided also specific payment for young farmers under the first pillar.

By virtue of Art. 50 Reg. No 1307/2013 Member States shall grant an annual payment to young farmers. It is an instrument classified as mandatory use by Member States. The purpose of this payment is additional income support for young farmers. It is the payment of the area given for maximum 5 years.

Pursuant to Art. 13 u.p.r.s.w.b. to grant payments for young farmers Art. 50 paragraph 8 of Reg. No 1307/2013 shall apply, this means payment for young farmers will take the form of area payments and the rate will be 25% of the national average payment per hectare. This payment is paid to the area of land within the area approved for the farmer to the single area payment not exceeding 50 hectares.

The status of a young farmer holds a person under the age of 40 starting an agricultural holding first time as head of this farm or that has already begun such activities during five years prior to the first submission of an application under the single area payment scheme. A young farmer must be entitled to receive SAPS and meet the requirements of professionally active farmers.

Pursuant to art. 49 paragraph 1 point b) of Reg. No 639/2014 the discussed payment may also be granted to a legal person or group of people (including spouses) if the legal person is entitled to payments under the system adopted, provided that at least one natural person, who meets the criteria for a young farmer (age, start-up), maintains effective and

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<sup>18</sup> **P. Wojciechowski, A. Niewiadomski** [w:] P. Czechowski (red.), Prawo rolne (Agricultural law), Warszawa 2011, s. 432.

durable control over the legal person in terms of management decisions, benefits and financial risk in the first year of submitting the application for payment for young farmers. On the basis of the Regulation of the Minister of Agriculture and Rural Development of March 12, 2015 on detailed conditions and procedures for granting direct payments and payments not linked to tobacco<sup>19</sup>, in § 6. 1 and 2 the conditions are set out for the exercise of the recognition by a young farmer the factual and permanent control over a legal person and a group of individuals with regard to decisions concerning the management, benefits and financial risk. In accordance with paragraph 46 of the preamble to Reg. 1307/2013 the purpose of payments to young farmers is income support for young farmers starting agricultural activity. In § 7 of the Polish Ministry of Agriculture regulation the conditions for fulfilling the condition for the start of the agricultural activity (ie. setting up) are set out.

For example, it is considered that the commencement of agricultural activity (ie. establishment of the holding) takes place in the year in which: 1) the farmer filled the first application for direct payments or 2) made the first request for financial assistance under the RDP 2007-2013 ; 3) took possession of the livestock covered by the obligation of notification to the register of livestock and marked and the headquarters of herds of these animals; 4) insured for the first time in the Agricultural Social Insurance Fund as a farmer or farmer's spouse or by virtue of the special branches of agricultural production; 5) begun conducting one of the special branches of agricultural production.

In Poland there is planned to be invested for this payment 2% of the national envelope, which is over EUR 67 million per year. The estimated rate of payments for young farmers will be approx. 59.8 EUR / ha. It is estimated that approx. 110 thousand farmers will qualify to this payment annually.

In addition to payments for young farmers under the new system of direct payments, generational change in agriculture will be supported by activities in the RDP 2014-2020. It

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<sup>19</sup> Journal of Acts from 2015, item 351 with amendments.

will be mainly premium for young farmers, but to exploiting the potential of young farmers holdings will serve actions concerning the modernization of farms, restructuring of small farms, creating groups and producer organizations.

### **10. Support for small farms**

Since the Second Mansholt Plan and the first great structural reform the 1972 European legislation, implementing the objectives set out in the Treaty of Rome<sup>20</sup>, supported a specific group of farms. As highlighted in the doctrine<sup>21</sup>, the main objective of Directive 159/72, next to the proclaimed modernization, was to help farmers who reach low income. Small farms have been for many years seen as an obstacle to modernization of agriculture in the EU and as a reserve labor force<sup>22</sup>.

Today, after forty years of implementation of these instruments, despite the emergence of many new circumstances (even environmental) the basic directions of the CAP in terms of structural changes have not changed. Still, the subject of support are slim, multifunctional farms of family nature. Such a farm, which is not only a production (one of the economic foundations of the economy and food production), but also non-productive: 1) social (social responsibility, a place for the family, a buffer against poverty) and 2) ecological (environmental and biodiversity benefits and landscape)<sup>23</sup>.

In Poland in 2013 there were 1,429 million farms, of which 1,362 million were small and medium-sized farms (from 1 ha to 50 ha) and was at the same time the number of farms benefiting from direct subsidies<sup>24</sup>. The average size of a farm in the country is 11.37 ha<sup>25</sup>.

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<sup>20</sup> The Treaty establishing the European Economic Community, signed in Rome on 25 March 1957.

<sup>21</sup> **A. Jurcewicz** [w:] A. Stelmachowski (red.), *Prawo rolne (Agricultural law)*, Warszawa 2008, s. 80.

<sup>22</sup> **S. Wiggins, J. Kristen, L. Llambi**, *The Future of Small Farms*, "World Development" 2010, Vol. 38, No. 10, pp. 1341–1348, <http://www.sciencedirect.com/science/journal/0305750X/38/10>

<sup>23</sup> **M. Dudzińska, K. Kocur-Bera**, Definicja małego gospodarstwa rolnego (The definition of a small farm), „Infrastruktura i ekologia terenów wiejskich” 2013, z. 1, s. 18 and indicated literature.

<sup>24</sup> *Agriculture Statistical Yearbook 2014*, Central Statistical Office (GUS), Warszawa 2015, s.113.

Approximately 862 thousand of the farm land has an area of less than 5 hectares. According to the FADN<sup>26</sup> more than half of Polish farms (56% of total households) reaches the value of agricultural production per year less than 4 thousand Euro (up to about 16 thousand. zł). Production value of more than 8 thousand. euros (about 32 thousand. zł) reaches only one in four farms (26% of total households)<sup>27</sup>.

Since the early nineties, that is after Poland's accession to the status of an associate, one of the most important problems to be solved in agricultural legislation was the adoption of legal solutions to improve the agrarian structure and creating a general farm development opportunities and acquire higher incomes<sup>28</sup>.

In much of the small farms there is potential for development, there are opportunities to increase agricultural production, improve agricultural technology. In addition, small farms accounted for 82% of all households with incomes outside agriculture, good use of the chances of raising additional revenue through the provision of additional services or small manufacturing activities.<sup>29</sup> The development of small farms in Poland will depend mainly on the increase in income from the farm. Hence, all the instruments to support small farms will be an incentive for the development of these farms and improve their profitability.

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<sup>25</sup> According to CSO data, the average total area of farms in Poland in 2013. Amounted to 11.37 hectares and the average area of agricultural land on the farm is 10.08 hectares. Considering the land in good agricultural and the average drops to 9.97 hectares. Data: Land use and sown area in 2013, Central Statistical Office (GUS), Warszawa 2014 r., ss. 39, 43, 44, 52.

<sup>26</sup> Information on research FADN (Farm Accountancy Data Network) na: [www.fadn.pl](http://www.fadn.pl)

<sup>27</sup> Support for small farms in Poland in the new financial perspective 2014-2020, MRiRW, Warszawa 2013, s. 2.

<sup>28</sup> Wider on this topic: **A. Lichorowicz**, Harmonizacja polskiego ustawodawstwa strukturalnego w rolnictwie z ustawodawstwem Unii Europejskiej. Na przykładzie prawnego pojęcia gospodarstwa rolnego (Harmonisation of Polish agricultural structural legislation with EU legislation. For example the legal concept of a farm), PiP 1996, z. 4-5, **P. Czechowski**, Problemy harmonizacji prawa w związku z integracją polskiego rolnictwa z Unią Europejską (Problem of law harmonization in connection with the integration of the Polish agriculture with the European Union) [w:] St. Prutis (red.), Polskie prawo rolne u progu Unii Europejskiej, Białystok 1998, s. 51 – 54, czy **St. Prutis**, Instrumenty prawne polityki strukturalnej w rolnictwie (dyskusje i bariery), (Legal instruments of structural policy in agriculture (discussions and barriers)), „Studia Iuridica Agraria” 2002, t. III, s. 193 i n.

<sup>29</sup> The deep characteristics of this type of farms: **A. Chlebicka, J. Falkowski, T. Wolek**, Małe gospodarstwa w Polsce – charakterystyka (Small farms in Poland – characteristics), SAEPR/FAPA, Warszawa, March 2009, [www.fapa.com.pl/gfx/saepr/Male\\_gospodarstwa\\_w\\_Polsce.pdf](http://www.fapa.com.pl/gfx/saepr/Male_gospodarstwa_w_Polsce.pdf)

In the new programming period, small farms will use:

- support under the direct support scheme;
- as part of the Rural Development Programme.

Pursuant to art. 61 and Reg. 1307/2013 in the new program there was established a special, simplified form of support, defined as a system for small farms. This instrument is optional for both Member States and farmers of eligible households. If, however, the application of this scheme replaces any other payments to which the farmer would have been entitled had he remained in the general system or the single area payment and payment of its affiliates as well as payments related to production).

In 2015, in the framework of direct support, the holders of small farms will benefit from direct payments in the new system called "payment for small farms". The system will be voluntary for both Member States and farmers. It will replace all other payments made within the basic system of direct payments. Payment is in the form of a lump sum, charged by summing all payments to be granted to a farmer in a given year. Pursuant to Art. 19 paragraph. 2 u.p.r.s.w.b. The maximum payment amount can reach up to 1,250 euros per farm.

In everyday meanings, a small farm is associated with smallholders farmer, low income, limited resources and production primarily for their own needs. The question is what the farm, in the legal sense, should be regarded as small and eligible to benefit from a support scheme from the structural funds. Neither the European legislation, nor the doctrine developed a single definition of a small farm and there is no clear dividing line between the small, medium and large farm.<sup>30</sup> The definition of a small farm is dependent on the criterion

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<sup>30</sup> M. Dudzińska, K. Kocur-Bera, Definicja małego ..., s. 20.

of a holding. For the analysis physical factors can be used, such as agricultural area or amount of work on the farm or livestock density or derived income.<sup>31</sup>

Pursuant to art. 56 u.p.r.s.w.b. a farmer applying for direct payments for 2015 shall be considered automatically as a farmer participating in the system for small farms, if:

- they meet the conditions for the granting SAPS, or its affiliates and payments linked to production.

Pursuant to art. 10 paragraph. 1 point a) and b) of Reg. No 1307/2013 minimum requirements for the payment of the following areas are set:

- the amount of support that equals 100 €. However, under Art. 10 paragraph 2 of Reg. 1307/2013 to reflect the structure of their agricultural economies, Member States may adjust the thresholds referred to in paragraph 1 point a) and b), within the limits set out in Annex IV. For this reason, Poland has implemented indicated in the Annex limit of 200 € (art. 7, paragraph 2 sec. 2 u.p.r.s.w.b.);

- or in terms of space - the total area of land within the area approved in the possession of the farmer is not less than 1 hectare (Art. 7, paragraph. 1 sec. 2 u.p.r.s.w.b.) ;

- 2) the total amount of direct payments determined for the farmer is not more than PLN equivalent of € 1250.

Farmers will be able to join the scheme for small farms only in the first year of its application, ie. in the year 2015 (application submitted by June 9, 2015). Pursuant to art. 56 sec. 2 u.p.r.s.w.b. farmers receiving less than € 1250 will be incorporated into the system automatically. Withdrawal from the system will be possible at any time, and the will is associated with a lack of reusability in it in the coming years.

The main difference obtaining the status of small farm lies in the fact that pursuant to art. 61 paragraph 3 of Reg. 1307/2013, farmers participating in the scheme are exempt from

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<sup>31</sup> **A. Chlebicka, J. Falkowski, T. Wolek**, Małe gospodarstwa ....., s. 3, czy **M. Dudzińska, K. Kocur-Bera**, Definicja małego ...s., 21.

agricultural practices provided and must comply with agricultural practices beneficial for the climate and the environment, or equivalent practices as well as the release of the participating farmers' control standards and requirements of cross compliance.

According to ARiMR datas, it is estimated that in the system for small farms approx. 680 thousand households will participate, representing almost half of the total number of beneficiaries of direct payments in Poland.<sup>32</sup>

It should also be noted that in the RDP for the years 2014 - 2020 there were proposed instruments of financial assistance - actions of which beneficiaries can be farmers running farms with low production capacity and low incomes from agricultural activities It will be mainly action *The restructuring of small farms (Restrukturyzacja małych gospodarstw)*, whose goal will be to make changes in the farm contribute to improving the competitiveness and increase profitability through an increase in economic size, In particular by changing the profile. The bonus will amount to 60 thousand PLN paid in two installments The beneficiary is a farmer insured in Agricultural Social Insurance Fund conducting agricultural activities correctly.

In addition, farmers eligible for the scheme for small farms will be able to use a special instrument within the RDP 2014-2020 *Payments to farmers returning small farms (Płatności dla rolników przekazujących małe gospodarstwa)*. Support will be granted to those farmers who permanently transmit their farm to another farmer to enlarge the farm. The amount of this support under the RDP will provide 120% of the annual support, the receiving of which the beneficiary would qualify under the scheme for small farms in the first pillar of the Common Agricultural Policy. Aid will be paid once for the period from the date of transfer of the farm until 31 December 2020.

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<sup>32</sup>A detailed description of the system of direct payments in Poland in the years 2015-2020 (data from the website of the National Sugar Beet Growers Association, <http://kzpb.com.pl/files/files/szczegolowyopis%20systemuplatnosci%20bezposrednich.pdf>, dostęp 02.08.2015.

The beneficiaries of the system of small farms will also be able to benefit from other activities: The modernization of agricultural holdings (*Modernizacja gospodarstw rolnych*); The premium for farmers commencing their agricultural activity (*Premia na rozpoczęcie działalności pozarolniczej*) or Organic farming (*Rolnictwo ekologiczne*) whether Agri-environment-climate schemes (*Program rolnośrodowiskowo-klimatyczny*).

## 12. Shifting funds between pillars

The European legislator, in accordance with the provisions of Regulation No 1311/2013 laying down the multiannual financial framework for 2014-2020<sup>33</sup>, remained division into two funds, which are to fund the two pillars of the CAP, however, expressly the art. 3. paragraph 1, the second paragraph of the flexibility of cash flow between the two pillars. As highlighted in the literature<sup>34</sup>, according to the objective pursued of the introduced legislation, there is a need to reduce differences in the level of payments between farmers, regions, and especially the countries. For this reason, the new design of direct payments seeks to better exploit synergies with Pillar II.

Pursuant to art. 14 Reg. 1307/2013 the principle of flexibility between pillars is detailed, on the basis of which Member States have the possibility of moving from 15% to 25% of funds from Pillar II to direct payments.

Kind of support	2015	2016	2017	2018	2019	2020	Total
CAP budget in total, in that:	4557	4573	4589	4607	4625	4623	27 574
Means for direct payments	2987	3005	3022	3042	3062	3062	18 180
Percent	65,5	65,7	65,8	66	66,2	66,2	65,8

<sup>33</sup> Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for 2014-2020, O. J. EU L 384 of 20.12.2013, p. 884.

<sup>34</sup> **A. Mickiewicz, B. Mickiewicz**, Podstawowe zasady dopłat bezpośrednich stosowane w nowej perspektywie finansowej 2015-2020 (Basic principles of direct payments applied in the new financial perspective 2015-2020), „Problemy Drobnych Gospodarstw Rolnych” 2015, z. 1, s. 12.

Financial envelope for payments with 25% increase from 2nd Pillar of CAP	3379	3395	3412	3431	3451	3062	20 129
Percent in relation to entire CAP budget	74,1	74,2	74,3	74,5	74,6	66,2	73,0

Source: Data from the Ministry of Agriculture and Rural Development

A. Mickiewicz, B. Mickiewicz, Podstawowe zasady dopłat bezpośrednich stosowane w nowej perspektywie finansowej 2015-2020, „Problemy Drobnych Gospodarstw Rolnych” 2015, z. 1,

In Poland, pursuant to art. 14 paragraph 2 first sec. of Reg. 1307/2013, 25% of the envelope of the second pillar for the years 2015-2020 has been shifted, ie. 2.34 billion EUR, increasing initial pool of funds for direct payments to 23,49 billion. The funds obtained as a result of this shift will be in the majority (about 73%) used to finance additional payment for small and medium-sized farms (payment to "the first hectares," ranging from 3.01 to 30 hectares in each farm). A similar pro-development result will have a scheduled payment for young farmers to which up to 2% of the annual national envelope is planned to be allocated. Poland also made full use of the possibility to allocate 15% of the national envelope for payments linked to production.<sup>35</sup>

A new element of the system, mandatory throughout the EU, for which 30% of funds will be allocated (Art. 47 paragraph 1 of Reg. 1307/2013), will be payment for planting, subject to compliance with requirements for crop diversification, maintenance of permanent grassland and devoting part of the surface for environmental purposes.

The proposed solutions will enable effective and efficient use of available EU funds for providing consumers in Poland and the European Union healthy and high quality food in a way that takes into account the need to restructure and modernization of the agri-food sector and the requirements of the environment in Poland. This will be achieved through specific support for active, small and medium-sized farms that have a realistic chance of development in conditions of globalization of markets and changes in consumer expectations.

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<sup>35</sup> Data: System płatności bezpośrednich ..., s. 2.

### **III. Greening**

#### **14. Payment for areas with natural constraints**

As indicated in motive 46 of the preamble of Reg. No 1307/2013, to support the sustainable development of agriculture in areas with specific natural constraints, Member States should be allowed to use part of top levels for direct payments to grant all farmers with operations in these areas, or on some of these areas, if it is decided by the Member State, the annual area payment in addition to the basic payment. Pursuant to Art. 1 letter b) point (v) and chapter IV of Title III of Reg. 1307/2013, Member States may establish a voluntary payment for farmers in areas with natural constraints.

Polish legislator in Art. 3. 1 sec. 12 of the Act of 20 February 2015 on support for rural development with the participation of the European Agricultural Fund for Rural Development under the Rural Development Programme for 2014-2020<sup>36</sup> predicted payment for farmers operating in areas with natural constraints or with other specific constraints (the LFA payment).

As part of the payments three forms of compensation were provided: 1) compensation in mountain areas; 2) compensation for other areas affected by specific natural constraints; 3) compensation for other areas affected by specific constraints (art. 3 sec. 1 point 12 letter a, b and c u.w.r.o.w.).

Based on the mandate contained in Art. 45 paragraph 1 section 1 of the Minister of Agriculture and Rural Development regulation of 13 March 2015 on detailed conditions and procedures for granting financial assistance under the measure "Payments to areas facing natural or other specific constraints" under the Rural Development Programme for 2014 - 2020<sup>37</sup> specify the conditions and procedures for granting and payment of LFA payments.

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<sup>36</sup> Journal of Laws from 2015, item 349, hereinafter cited as: „u.w.r.o.w.”.

<sup>37</sup> Journal of Laws from 2015, item 364, hereinafter cited as: „r.o.o.n.”.

The beneficiary of the payment (pursuant to paragraph 2 r.o.o.n.) will be professionally active farmer who own a farm located in the territory of the Republic of Poland and operate farming in LFA areas, with area of agricultural land belonging to the farm, amounting to at least 1 ha. The parcels covered by the aid, are used as an agricultural area (any area occupied by arable land, permanent grassland and permanent or permanent crops), and the surface must not be less than 0.1 hectares;

The rates of payments for farming in LFA areas defined in the paragraph 3 sec. 3 r.o.o.n., will be calculated separately for different types of these areas:

- 1) Payment for mountain areas (LFA Mountain type) - 450 PLN / ha
- 2) Payment for lowland areas (LFA lowland type):
  - a) LFA lowland type I - 179 PLN / ha
  - b) LFA lowland type II - 264 PLN / ha
- 3) payment for specific areas (LFA type specific) - 264 PLN / ha.

Legislature provided, however, paragraph 3 sec. 4 r.o.o.n. degressiveness of LFA payments depending on the total area of agricultural parcels or parts thereof covered. Depending on the area, the payment will be granted in the following dimensions: 1) from 1 to 25 hectares - 100% payment; 2) from 25.01 to 50 hectares - 50% of payments; 3) from 50.01 to 75 hectares - 25% of the payments; 4) over 75 ha - the payment will not be granted.

The adoption of such a solution is aimed at preventing excessive concentration of land in order to maintain subsidies. Payment rates are subject to certain modifications, and the instrument for a reduction greatly reduced (twice or even three times higher thresholds than the area of farms for farmers implementing a 5-year commitment). It is justified even from the point of view of the environmental effects of their operations. Lands of these farms will have to be maintained in good agricultural and environmental condition, and due to their location in naturally valuable areas will be served to improve the quality of natural elements of biodiversity.

### **13.1. Payment for environmental actions**

One of the manifestations of greening the CAP is a mandatory part of the environmental component of direct payments, supporting agricultural practices beneficial for the climate and the environment. Under Reg. No 1307/2013 payment system after 2013 became more environmentally friendly - "greened". This term refers to the new financial instrument, the so-called payments for environmental measures, granted, in principle, in addition to the basic area payments to farmers, and dependent on the fulfillment of their additional requirements relating to environmental protection, to halt the decline of biodiversity and combat climate change.

The obligation of absolute fulfillment of the aforementioned practices does not apply to all farmers, because according to applicable regulations it depends on:

- 1) arable land on the farm;
- 2) entry into the scheme for small farms;
- 3) owning permanent grassland;
- 4) running organic production;

Payments for environmental activities are awarded for mandatory agricultural practices undertaken on farms. They consist of simple, generalized, non-contractual and annual actions linked to agriculture, but going beyond cross-compliance requirements. Among the activities of those in the art. 43 paragraph 2 of Reg. No 1307/2013 indicated:

1. the requirement of crop diversification;
2. the requirement to maintain permanent pasture;
3. the requirement to maintain ecological focus areas.

Diversification of crops, under Art. 44 Reg. No 1307/2013, is based on the need for several different crops in the number dependent on farm size. The legislator points out the difficulty in fulfilling this requirement by small family farms, releasing from the requirement

farm up to 10 hectares. Due to the agrarian Polish structure and the average area of farms<sup>38</sup> an overwhelming majority will be freed from the obligation.

According to data from the ARiMR in Poland:

1. about 83% of households will be released from the obligation to implement crop diversification, which is, however, only 34% of the total arable land;
2. about 14% of households will be falling under the obligation of having two crops, and 3% of households having three crops. However, the data shows that 66% of the total arable land will be covered by the obligation to diversify crops.<sup>39</sup>

Considering the area of arable land covered by the specified requirement must be stated significant potential effectiveness of this instrument in Poland, but also a negligible share of family farms with an area which is the national average<sup>40</sup>.

The Polish implementing legislation has not created any mechanism of incentives for voluntary action by diversification also in these smaller farms, which could contribute to achieving the objective of this regulation, which in the assumptions of the European legislator is to counteract monocultures and consequently is a very important element for biodiversity and landscape development in rural areas.

The regulation adopted in 2013 also retains the obligation to maintain the current area of permanent pasture, which concerns naturally shaped meadows and pastures, often on wetlands. This instrument is primarily intended to be used on Natura 2000 sites, designated in accordance with the provisions of Directive 92/43/EEC on the conservation of natural habitats

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<sup>38</sup> According to Central Statistical Office (GUS) data, the average total area of farms in Poland in 2013. Amounted to 11.37 hectares and the average area of agricultural land on the farm is 10.08 hectares. Considering the land in good agricultural and the average drops to 9.97 hectares. Data: Land use and sown area in 2013. Central Statistical Office (GUS), Warszawa 2014 r., ss. 39, 43, 44, 52.

<sup>39</sup> Information bulletin, MRiRW, ARiMR, 2014, z. 6, s. 12.

<sup>40</sup> More on this topic: **M.A. Król**, Rola gospodarstw rodzinnych w prawnej ochronie zasobów środowiska i różnorodności biologicznej (The role of family farms in the legal protection of environmental resources and biodiversity) [w:] Prawne mechanizmy wspierania i ochrony rolnictwa rodzinnego w Polsce i innych państwach Unii Europejskiej, red. P. Litwiniuk, Warszawa 2015, s. 164.

and of wild fauna and flora living<sup>41</sup> and Directive 2009/147/EC on the protection of wild birds<sup>42</sup> but it may also pursuant to Art. 45 paragraph 1 sentence 2 of Reg. 1307/2013 used elsewhere. Permanent grasslands are characterized by high species diversity of plants and animals that exist due to natural process of their long-term expansion on the land. In addition, they serve important role in preserving the existing landscape in these areas.

Another additional requirement established in the context of payments for environmental actions is to be the obligation to maintain the so-called ecological focus areas on the surface of not less than 5% of the acreage farms<sup>43</sup>. Ecological focus areas include copper, terraces, buffer strips, plantings and shrubs, ponds, that is all of these elements of the landscape, which in the natural sciences are referred to as so-called environment islands surrounding agro-ecosystems<sup>44</sup>. Their presence is crucial not only for biodiversity but plays also an essential part of the rural landscape, making its diversity.

Maintaining ecological focus areas will concern farms with an area exceeding 15 hectares of arable land. ARiMR data show<sup>45</sup> that about 91% of households will be released from the obligation to implement this practice. And the area of arable land subject to fulfillment of the obligation to maintain ecological focus areas will constitute approximately 54% of the total arable land in Poland and, therefore, as in the case of crop diversification, this obligation will be burdened by only a few, larger farms. In addition, provisions of Regulation contain a list of areas located on the farm, which can be considered as ecological focus area (including fallow land, landscape features, like ponds, trees forming a natural monument, ditches, field margins

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<sup>41</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, O. J. L 206, 22.07.1992, p. 7.

<sup>42</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, O.J. L 20, 26.01.2010, p. 7.

<sup>43</sup> This percentage may be increased by the Commission after 2017 to 7%.

<sup>44</sup> **E. Symonides**, Znaczenie powiązań ekologicznych w krajobrazie rolniczym, „Woda-Środowisko-Obszary Wiejskie” 2010, t. 10, s. 250.

<sup>45</sup> Data: Informacja na temat wybranych elementów nowego systemu płatności bezpośrednich po 2014 r., (Information on selected elements of a new system of direct payments after 2014), Warszawa, MRiRW, maj 2014, s. 5.

mid-field, or hedges), which still reduces the need to take proactive environmental actions in this regard.

### **13.2. Equivalent practices**

Another element that needs mentioning is to establish the possibility of recognizing equivalent performance practices. Pursuant to Art. 43 paragraph 3 point and in conjunction to Annex IX of Reg. No 1307/2013 scope of implementation of commitments representing execution of practices equivalent to the triad of environmental activities has been defined. Equivalent practices cover similar practices, which result in equal or greater levels of benefits for the climate and environment as compared to one or more practices. Member States may, under national legislation consider to meet certain requirements for the execution of crop diversification obligation, maintenance of permanent grassland herbaceous, maintaining ecological focus areas.

In Poland under the provisions of Minister of Agricultural and Rural Development Regulation of 20 March 2015 on implementation of equivalent practices<sup>46</sup> only practices equivalent to the range specified in Part I, point 2, second indent of Annex IX to Reg. No 1307/2013 were accepted, ie. in respect of the obligation, ie. ‘use of at least 4 crop’ in the main crop on the farm. On the basis of adopted in Poland solution, which by that obligation shall be recognized in the event of implementation of the requirement set out in Annex 2 to the Minister of Agricultural and Rural Development Regulation of 18 March 2015 on specific conditions and procedures for granting financial assistance under the measure "*Działanie rolnośrodowiskowo-klimatyczne*" (Agrienvironment-climate action) of the Development Programme of Rural Areas for 2014-2020<sup>47</sup>, where in paragraph 1 in Part I. Package I. "*Rolnictwo zrównoważone*" (Sustainable agriculture) the possibility of diversifying crops through equivalent practices was determined - the application of requirement 4 in the main

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<sup>46</sup> Journal of Laws of 2015, item. 433.

<sup>47</sup> Journal of Laws of 2015, item 415.

crop during the year on arable land on the farm, where: 1) the share of main crops, including cereals in the crop structure does not exceed 65%, and 2) the share of each crop must not be less than 10%. Rating of the adopted solution is positive<sup>48</sup>, it does not apply to the smallest farms (of which there are many in Poland) but only larger farms, which will counteract monocultures and reduce the share of cereals in the structure of crops.

## Conclusions

The next CAP reform dictated by the new determinants of change: external constraints (eg competition in global markets, climate change) and partly other than in the past, internal considerations (such as the desire to reduce the budgetary resources and further enlargement of the EU with new Member States).<sup>49</sup>

Under this new environment follows the reorientation of agricultural policy instruments. The introduced solutions have eliminated a group of owners of land holdings with the sole purpose of receiving payment (so called “sofa farmers”), to reduce the subsidies for the largest farms, and the money saved spent on rural development.

Analysis of established legal solutions in the field of direct payments shows that despite the fundamental objective which is to ensure the appropriate level of farm income, which is the subject of increasingly frequent concerns of part of the economic doctrine<sup>50</sup>, the new model of direct support is also intended to support environment-friendly agricultural practices. The established legal measures also apply (both indirectly and directly) to the protection of biodiversity and landscape through crop diversification, maintenance of

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<sup>48</sup> **D. Stankiewicz**, Opinia merytoryczna do projektu ustawy o płatnościach w ramach systemów wsparcia bezpośredniego (Opinion on the draft Law on payments under the direct support schemes), druk sejmowy nr 3080), Opinie Biura Analiz Sejmowych, <http://orka.sejm.gov.pl/rexdomk7.nsf/Opdodr?OpenPage&nr=3080>

<sup>49</sup> **A. Czyżewski, S. Stępień**, Punkt widzenia ..., s. 70.

<sup>50</sup> **W. Czuba, W. Poczta, A. Sadowski**, Wpływ proponowanej reformy systemu dopłat bezpośrednich po 2013 r. na sytuację polskiego rolnictwa (The impact of the proposed reform of the system of direct payments after 2013 on the situation of Polish agriculture), „Wieś i Rolnictwo” 2011, z. 4, s. 78-81.

permanent pasture, the maintenance of ecological focus areas, or equivalent practices including, among others management of landscape features including thinning trees, trimming hedges, coastal forest vegetation restoration, stone walls, terraces, ditches, ponds (Section III. 5 of the Annex to Reg. No 1307/2013).

Factors speaking for the effective implementation of instruments of the so-called greening farms are:

1) their mandatory nature - farmers are entitled to payment for all eligible land will be required to observe agricultural practices beneficial to the environment and climate, or alternatively will be able to make so called similar practices (listed in Annex IX of Reg. No 1307/2013<sup>51</sup>), which result in equal or greater level of environmental benefits;

2) financial sanction for failure to comply "greening" by agricultural producers, being the possibility of withdrawal, in whole or in part of the aid<sup>52</sup>. Payments are of administrative law and their granting shall be based on administrative law decision under specified procedure. Failure to comply with management requirements in accordance with established principles (agricultural practices beneficial for the environment and climate) in the years beyond 2017 will be able lead to sanctions even exceeding the amount received in respect of greening, which will mean a partial reduction of other payments;

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<sup>51</sup> 1. In terms of crop diversification crop rotation, winter soil cover, intercrop. 2. As regards the maintenance of permanent pasture: management of meadows or pastures while maintaining the requirement to maintain permanent grassland, extensive grazing system. 3. For the maintenance of ecological focus areas use any of the following practices: among others, ecological set-aside; the creation of "buffer zones" in areas with high nature value Nature 2000 sites or other places of biodiversity conservation; management of buffer zones which have not cultivation and boundary strips; management, restoration of landscape features (trees, hedges, coastal forest vegetation, stone walls - terraces, ditches, ponds);

<sup>52</sup> Based on Art. 63 ff., 77 sec. 6 Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, OJ L 347, 20.12.2013, p. 549–607.

3) the obligation to re-convert land into permanent pasture for plowing or conversion of permanent grassland in environmentally valuable areas (eg. Nature 2000 sites), applied regardless of the financial penalty in the form of reduced payments;

4) ensuring for this purpose 30% of the total funds allocated for direct payments. In this way, almost one-third of the grant funds earmarked for direct payments will be dependent on the fulfillment by Member States of more flexible and introduced gradually requirements relating to environmental protection.

On the other hand, factor limiting the effectiveness of this instrument are numerous exemptions to undertake agricultural practices beneficial for the environment and the climate. As follows from the above analysis, to farmers who carry out farming activities on arable land to 10 hectares and do not have permanent grassland or were enrolled in 2015 into the system for small farms receiving payments for greening, will necessitate making changes in the management system.

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