



**COMITÉ EUROPÉEN DE DROIT RURAL
EUROPEAN COUNCIL FOR RURAL LAW**

**EUROPAISCHE GESELLSCHAFT FÜR AGRARRECHT UND DAS RECHT DES LÄNDLICHEN
RAUMES**

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1. What are the main developments in rural law since the last Congress? Please consider international, European Union, state and regional measures. If possible, include one or more of the following five topics, which provide a framework for discussion, but reporters should feel free to raise other important developments.

In recent 2 years, i.e. since the last CEDR Congress, it is difficult to indicate changes in agricultural law that would have fundamental or groundbreaking character. However, one should note the gradual evolution of regulations resulting from national (local), regional and even global economic and political developments.

Local dimension

Changes in the law taking place in the national dimension are driven by the legislator's response to important national phenomena (such as the need to combat and prevent the spread of ASF, or to remove the effects of drought, which has recently caused large losses in Polish agriculture), as well as further implementation of one of the fundamental programs regarding support for Polish agriculture, which is the Rural Development Program (RDP).

RDP 2014-2020 has been developed on the basis of European Union regulations, in particular Regulations (EU) No 1305/2013 of the European Parliament and of the Council 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 Regulation 1303/2013 of 17 December 2013 establishing common provisions on the ERDF, ESF, CF, EAFRD and the EMFF, as well as delegated and implementing acts of the European Commission.

The program is integrated into the overall system of the country's development policy, in particular through the Partnership Agreement mechanism. The legal basis for the operation of RDP 2014-2020 in Poland are:

(i) the Act of 20 February 2015 on supporting rural development with the participation of the European Agricultural Fund for Rural Development under the Rural Development Program for 2014-2020¹, and

(ii) the Act of 20 February 2015 on local development with the participation of the local community²,

¹ OJ of 2015 item 349, as amended as amended.

² OJ of 2015 item 378, as amended.

(iii) many executive ordinances for the implementation of the RDP.

RDP 2014-2020 was adopted by the European Commission implementing decision of 12 December 2014. RDP 2014-2020 is financed from the EU budget (European Agricultural Fund for Rural Development - EAFRD) and national public funds. The total amount of public funding under the Program is over EUR 13.6 billion. The allocation of funds from the EU budget is around EUR 8.7 billion. The share of domestic public funds is over EUR 4.9 billion. Activities covered by the RDP cover the implementation of the following priorities:

PRIORITY 1. Facilitating knowledge transfer and innovation in agriculture and forestry and in rural areas, including specific objectives:

1.1 Supporting innovation, cooperation and development of the knowledge base in rural areas,

1.2 Strengthening the links between agriculture, food production and forestry and research and innovation, including for the purpose of improved environmental management and better results,

1.3 Supporting lifelong learning and vocational training in the agriculture and forestry sectors.

PRIORITY 2. Increasing farm profitability and competitiveness of all types of agriculture in all regions and promoting innovative technologies on farms and sustainable forest management, including specific objectives:

2.1 Improving the economic performance of all farms and facilitating the restructuring and modernization of farms, in particular with a view to increasing market share and market orientation as well as diversifying agricultural production,

2.2 Facilitating the entry of farmers with relevant skills into the agriculture sector, in particular generational renewal.

PRIORITY 3. Supporting the organization of the food chain, including the processing and marketing of agricultural products, animal welfare and risk management in agriculture, including specific objectives:

3.1 Improving the competitiveness of agricultural producers through better integration with the agri-food chain through quality systems, adding value to agricultural products, promotion on local markets and short supply cycles, producer groups and interbranch organizations,

3.2 Supporting risk prevention and management on farms.

PRIORITY 4. Restoration, protection and enrichment of agriculture and forestry related ecosystems, including specific objectives:

4.1 Restoration, protection and enrichment of biodiversity, including in Natura 2000 areas and areas with natural or other specific constraints, and high nature value farming, as well as the condition of European landscapes,

4.2 Improving water management, including fertilization and the use of pesticides,

4.3 Prevention of soil erosion and improvement of soil management.

PRIORITY 5. Promoting resource efficiency and supporting the transition in the agricultural, food and forestry sectors to a low-carbon and climate-resilient economy, including the specific objective of promoting the protection of carbon sinks and carbon sinks in agriculture and forestry.

PRIORITY 6. Promoting social inclusion, poverty reduction and economic development in rural areas, including specific objectives:

6.1 Facilitating diversification, creation and development of small enterprises, as well as job creation,

6.2 Supporting local development in rural areas.

In order to ensure the quality and effectiveness of program implementation, numerous legislative activities were undertaken, including - in the period from 2017 - the issue of several dozen ordinances (including their amendments) regarding the Program by the Minister of Agriculture and Rural Development, including regulations regarding individual measures, sub-measures or types of operations.

Examples of other legislative actions in the field of agricultural law undertaken in the last two years are the creation of legal instruments for combating ASF. These include, first of all, activities related to the implementation of the "Program aimed at early detection of infections by the virus causing African swine fever and broadening knowledge about this disease and its eradication" implemented on the basis of the Regulation of the Minister of Agriculture and Rural Development of 24 January 2018 on introduction in 2018 in the territory of the Republic of Poland of "Program aimed at early detection of infections with the virus causing African swine fever and broadening knowledge about this disease and its eradication"³.

Significant actions are also taken in relation to the need to implement into the national legal system the European Commission Implementing Decision (EU) 2019/609 of 11 April 2019 amending Implementing Decision 2014/709 / EU in relation to the application of the test

³ OJ item 316, as amended.

for identification of pathogens causing African swine fever, sending pigs through the areas listed in the connector and applying the decision in question, notified on 12 April 2019⁴.

In the period since the last CEDR Congress, attention should also be paid to legislative activities regarding the adaptation of the agricultural sector to activities related to the implementation of European Union requirements in the broadly understood environmental policy. An example would be an amendment to the Act on the greenhouse gas emission allowance trading scheme and certain other acts. This Act is intended to transpose the provisions of Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain types of atmospheric pollution, amendments to Directive 2003/35 / EC and repealing Directive 2001/81/EC (the so-called NEC Directive). The above directive sets out obligations to reduce air pollution, including by developing and disseminating the Code of Good Agricultural Practice in the field of reducing ammonia emissions.

The Code of Good Agricultural Practice was developed by experts from institutes supervised by the Minister of Agriculture and Rural Development. It defines a number of agricultural practices aimed at reducing the emission of ammonia to the atmosphere, which are possible to be used in Polish agriculture. The Code covers primarily issues of low-carbon distribution techniques and storage of fertilizers and animal housing and feeding systems. The document also contains recommendations regarding the rationalization of nitrogen fertilization. The selection of practices was guided by the potential for reducing emissions, including application costs and the scale of implementation difficulties.

In the discussed period, initiatives were also taken to re-organize and rationalize very restrictive regulations governing the principles of agricultural property trading. Unfortunately, adopted after nearly 2 years of legislative work the act of 26 April 2019 amending the act on shaping the agricultural system must be disappointing, as it does not solve most of the problems related to trade in agricultural real estate in Poland⁵.

Regional dimension

On a regional level, undoubtedly, the most important event which, of course if it comes to pass, will have the greatest impact on the economic situation of farmers will be Brexit. It is well known that the exact legal conditions in which goods will be exchanged with Great Britain in the event of the country's exit from the EU are not known at the moment. In

⁴ OJ EU L 104 of 15.04.2019, p. 92.

⁵ OJ of 2019, item 1080.

the case of the so-called “hard Brexit”, the United Kingdom will become a third country without any transitional arrangements. From then on, all EU primary and secondary legislation would cease to apply to the United Kingdom. There would be no transition period provided for in the Withdrawal Agreement, which may have broad implications for the Community market and international processes and process initiatives in which the United Kingdom has been involved in so far. In this case, the main legal framework for trade in goods will be the WTO legal order (i.e. the GATT contract system).

Global dimension

Changes in legal conditions in the global dimension are, on one hand, characterized by stagnation in the next round of talks on agriculture within the WTO, and on the other hand, the US administration has changed its approach to globalization process. It may seem reasonable to believe that the years 2017-2019, at least in terms of international trade, have been perhaps the rockiest period in many decades. The “new NAFTA” i.e. the United States - Mexico - Canada Agreement (USMCA) — was agreed to by the U.S., Mexico, and Canada. Also the back-and-forth trade dispute between the U.S. and China continues with much uncertainty as to whether the dispute will escalate further. Both countries slapped (and continue to do so) tariffs and threats of more tariffs on each other, resulting in economic hardship for many.

The fate of a very important European Union free trade agreement with Mercosur is also at stake. It can significantly affect our market, especially in the context of agriculture. It is noted that the entry into force of this agreement could be particularly detrimental to the European beef sector, the sugar production sector as well as wheat and ethanol producers. Also in this case, however - in the light of recent declarations by some EU Member States - the fate of this agreement is uncertain.

1.1 Regulation and use of new technologies

In European agriculture, innovation is becoming one of the main challenges, and a factor increasing its competitiveness. The appreciation of innovations is one of the key aspects in recent attempts at the realization of the European agriculture model, Future of the Common Agricultural Policy post 2020 puts innovation and investment in innovation at the heart of the debate, in addition to climate issues, as a prerequisite for the development of European agriculture.

Know-how is expected to improve production quality and, in view of the shrinking number of workers in the agricultural sector, the introduction of technical improvements in agriculture. Undoubtedly, these production factors must be adapted to structural changes in the economy as a whole in order to influence competitiveness. At the moment, there is a delay in the introduction of modern machinery to mass agricultural production. Most farms use equipment which will become obsolete according to the new requirements. In this respect, innovativeness, robotics and automation of agricultural production will be one of the key production factors influencing the increase of the level of competitiveness.

For example, one can mention the Polish Rural Development Programme, which assumes that "Bonuses for young farmers" will contribute to the implementation of the cross-cutting objective of innovation by targeting young people who are more inclined to take investment risk and introduce innovative solutions in agriculture related to the organization of production, the product and the production technology. Preference for the participation of young farmers in organized forms of cooperation of agricultural producers are also conducive to the implementation of innovative solutions. This measure is intended to increase the competitiveness of agriculture by changing the structure of agricultural labor resources in favor of young farmers.

Several instruments supporting innovativeness, which are provided for in the Polish Strategy for Responsible Development, are, among others, the support for development of the social importance of agricultural undertakings, combining multifunctional agriculture and services of social (or healthcare) character at the local level, enabling diversification of farmers' incomes combined with a wider offer of social services for the elderly and the disabled. This implies the introduction of social measures, in particular with regard to the health care sector in rural areas.

The aim is to introduce mobile technologies that can support agriculture in four areas: improving access to financial services, providing relevant information for agriculture, improving supply chain efficiency, increasing market access. In this respect, dedicated legal instruments were designed to achieve these objectives. Those included mLearning (acquiring knowledge on agricultural techniques and trends, information on plant cultivation) or mFarming (optimization of crops with available technologies on the basis of microclimatic data). Such solutions certainly match the innovativeness of the CAP, which is emphasized in the post-2020 perspective. Undoubtedly, the Polish farmers will have to make a range of arrangements in order for these systems to fulfil their functions and bring effects which will affect the competitiveness of agriculture.

Regulation (EU) No 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel food, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001, the provisions of which have been applied by all Member States since 1 January 2018, also represents a new challenge for Polish agriculture⁶. Undoubtedly, novel food, including GM products, will become an important factor in the development for Polish agriculture and its future.

In Poland, the Main Sanitary Inspectorate is a competent body in the area of novel foods. An entrepreneur bringing novel foods or a novel food ingredient into the market in Poland is obliged to: submit an application to the Main Sanitary Inspectorate and send a copy of the entire application to the European Commission.

The application shall include the necessary information, including copies of the studies conducted concerning the product and any available documents showing that the product/ingredient concerned fulfils the requirements of art. 3 sec. 1 of the aforementioned Regulation; an appropriate labelling proposal that complies with art. 8 of the Regulation; the outline/summary of the dossier (submitted application). The main entity responsible for introducing novel foods to the market is the European Commission.

Undoubtedly, the profitability of food production and other economic aspects are important factors influencing the future of novel foods. Social acceptance of novel foods, including GM products, is not without significance. The precautionary principle in this respect may be the key to success for these regulations. European consumers may be concerned about the consumption of novel foods and their effects on health.

At the same time, the European Union is faced with the challenge of international competition, particularly with China and the USA. The rules laid down therein have a significant impact on the competitiveness of European products. Current high food safety standards can become a competitive barrier to European products compared to those from America or China. There, the rules of introducing new products to the market are less strict. This may, in the long term, hinder the competitiveness of European products on international markets.

Balancing climate and environmental protection with progress and innovation can be a difficult challenge for farmers in Europe. Preservation of natural environmental conditions

⁶ OJ EU L 327, 11.12.2015, p. 1.

slightly interferes with the production of novel foods, including GM products. It is important to call for the search for legal solutions that reconcile these two great objectives of the Common Agricultural Policy.

1.2. Regulation of livestock and livestock health

A. Animal health

According to the report of the Supreme Chamber of Control of 2017 prepared on the example of the Lubuskie Voivodeship, the scale of using antibiotics in animal production in Poland is not exactly known⁷. This is due, inter alia, to the fact that there is no supervision over the correctness and legitimacy of their use. Determining the use of antibiotics is based on a farmers' declaration of non-use. The decision to administer antibiotic is made by a veterinarian and breeder.

There is a need, therefore, to take legislative action to change the form and manner of keeping medical and veterinary documentation and records of animal treatment. Currently, works are underway to amend the regulation in the scope of keeping the indicated documentation. One of the proposed solutions is to introduce an obligation on a farm owner to have a self-copying animal treatment book. At the same time, works are underway on amendments to the Pharmaceutical Law of September 6, 2001⁸. They are aimed at extending the operation of the Veterinary Inspection to the level of a poviast by supervision at farms and animal treatment facilities. This supervision will be aimed at monitoring the use of medicinal products.

Work is currently underway on a draft law on the organization of breeding and reproduction of farm animals⁹. Its primary goal is to eliminate the national act of June 29, 2007 collision¹⁰ due to direct effect of EU Regulation No. 2016/1012 application. Proposed legal solutions cover several aspects. Firstly, they relate to the determination of the competence of the minister responsible for agriculture as the authority which has the rights and ability set out in Regulation 2016/1012 in Poland and which carries out the tasks and activities specified in that Regulation. Secondly, they refer to determining the procedure in which the minister responsible for agriculture is to recognize breed societies and breeding enterprises, breeding organizations or other entities that apply for keeping breeding books and

⁷ The results of the inspection indicate that the problem in question appears particularly in the production of chickens, turkeys and pigs.

⁸ OJ of 2016 item 2142 as amended.

⁹ Print No. 3175, the Parliament of the 8th term.

¹⁰ Act of 29 June 2007 on the organization of farm animals breeding and reproduction, OJ of 2007 No. 133 item 921 as amended.

breeding registers for cattle, pigs, sheep, goats and equidae. This procedure also includes the approval of breeding programs implemented by those breed societies or breeding operations. Thirdly, the draft proposes that the National Center for Animal Breeding is an entity that carries out official controls on this issue on behalf of the minister. In addition, the Center's powers have been defined, as well as the way the minister competent for agriculture imposes and withdraws the sanctions set out in Regulation 2016/1012 if controlled entities violate its provisions. Fourthly, in order to ensure the continuity of breeding for farm animals of species such as poultry, fur animals, bees and cervids, which are not covered by Regulation 2016/1012, provisions on the rules for keeping breeding books and registers, conducting evaluation were proposed utility and genetic value and requirements for animals used for reproduction. In addition, in accordance with alpaca breeders postulates, the list of farm animals has been supplemented with alpacas to enable breeding of this species in the manner previously appropriate for the list of farm animals. Fifthly, the project proposes material provisions giving rise to the provision of state aid for keeping breeding books and evaluation of their utility and genetic value¹¹.

The bill was sent to the Parliament; however, a proposal was made to reject it at the first reading. In July this year governmental bill on organization of breeding and reproduction of farm animals was submitted to the extraordinary subcommittee and is subject to further work.

New Animal Health Law requires that many provisions are amended or repealed, including the Veterinary Inspection Act¹², the act on animal health protection and combating infectious animal diseases¹³. Normative acts drafts are being worked on.

B. African Swine Fever prevention

The current problem directly related to one of the game species, the wild boar, is the threat posed by the African Swine Fever (ASF) virus and related to the issue of sanitary hunting. ASF epidemic that has been ongoing in Europe for several years, despite protective instruments implementation, is systematically expanding its range¹⁴. In the EU this issue is

¹¹ D. Ogryczak, *Impact assessment of regulations contained in the government's draft act on the organization of breeding and farm animals reproduction*, Bureau of Sejm Analysis, Warsaw February 2019, Sejm print No. 3175.

¹² Act of 29 January 2004 on Veterinary Inspection, OJ of 2004 No. 33 item 287 as amended.

¹³ Act of 11 March 2004 on animal health protection and combating infectious animal diseases, OJ 2004 No. 69 item 625 as amended.

¹⁴ ASF virus has been present since 1978 in Sardinia, Italy. It spread to eastern Europe from the original outbreak in Georgia on the territory of the Russian Federation, Armenia, Azerbaijan and Ukraine, Belarus, Lithuania, Latvia and Estonia. In Poland, the first outbreak was found in 2014. At the end of 2018, the virus was

regulated in Council Directive 2002/60/ EC laying down specific provisions for the control of African Swine Fever¹⁵ and the European Commission's Implementing Decision 2003/422/EC, issued on this basis, of 23 May 2003 approving the diagnostic manual for African Swine Fever¹⁶. On this basis, the European Commission, by implementing decision 2014/709/UE of 9 October 2014 on animal health control measures for African Swine Fever in some Member States and cancelling Implementing Decision 2014/178/EU¹⁷ has established many animal health control measures, including the ban on sending pigs and pork from endangered areas.

The current state of the threat occurrence within the EU was determined by Commission Decision 2018/834 of 4 June 2018 amending Implementing Decision 2014/709/EU concerning animal health control measures in relation to African Swine Fever in some Member States¹⁸. This act confirmed the occurrence of the virus in a large part of eastern and central Poland, to which bans will be applied. Under the provisions of Directive 2002/60/EC, Member States must ensure that any suspicion of disease is immediately reported to the authorities of the country concerned and, if confirmed, the results of the investigation must be submitted to the European Commission. Member States were required to draw up and submit to the Commission the *Plan to prevent against the disease* (Article 16) and report progress on its implementation every six months. In the area of disease occurrence, agricultural holdings must be placed under supervision, and animals and pig products, materials or wastes that could be moved by ASF, can not leave the farm area. Restrictions may also apply to the movement of people or vehicles. Determining the occurrence of disease on the farm, with a few exceptions, requires the slaughter of all pigs and the destruction of infected meat or other waste. Similar rules apply to the detection of disease in a slaughterhouse or means of transport. Rooms, vehicles and equipment that may be contaminated must be cleaned and disinfected. An order was also made to create an 'infected area' with a radius of at least 3 km and an 'area of vulnerable' with a radius of 10 km around the outbreak.

already present in Romania, Moldova, the Czech Republic and Hungary. See scientific report of the European Food Safety Authority EFSA „*Epidemiological analyses on African swine fever in the Baltic countries and Poland*”, published November 7th, 2017, Journal EFSA 2017, No. 15 (11), p. 5068. <https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2017.5068>. See also the materials of the conference of agriculture ministers from EU countries on *Eradication of African swine fever in the EU and the long-term management of wild boar populations*”, European Commission, Brussels, 19 December 2018. https://ec.europa.eu/food/sites/food/files/animals/docs/ad_control-measures_asf_conf-20181219_pres-01.pdf

¹⁵ Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119 / EEC as regards Cieszyn disease and African swine fever, OJ EU L 192 from 20.07.2002, p. 27, further quoted as: "Directive 2002/60/ EC".

¹⁶ OJ EU L 143, 11.06.2003, p. 35; OJ EU Polish special edition, ch. 3, vol. 39, p. 59.

¹⁷ OJ EU L 295, 11.10.2014, p. 63.

¹⁸ OJ EU L 140, 6.06. 2018, p. 89.

If it is suspected that wild boars may have been infected, Member States must notify the pig owners and the hunter as well as carry out a study of all shot or dead boars. It is obligatory to designate the infected area together with farms under surveillance, as well as it is possible to issue a hunting ban. Legal actions were introduced in Poland aimed at: 1) preventing ASF, 2) special solutions related to ASF occurrence on the territory of the Republic of Poland.

Preventing infectious diseases of animals and preventing threats resulting to people is an element of veterinary protection of animals regulated in the principle by the provisions of the Act of 11 March 2004 on the protection of animal health and fighting with infectious animals' diseases¹⁹ and the Act of 23 September 2016 amending certain acts to facilitate the control of infectious animal diseases²⁰. Regulation in this area is also settled in Act of 13 October 1995 r. Law on Hunting.²¹

The first of the duties laid down is the introduction of a signaling order. The provision of Art. 42 u.z.z. in the event of a suspected disease imposes on the animal keeper an immediate notification of the veterinary inspection, veterinarian or the executive body of the commune. In addition, the obligation to notify the indicated bodies or the nearest institution of a clinic for animals with perceived signs of diseases of free-living animals rests on the basis of Art. 14 p. 1. on the lessee and manager of the hunting circuit and owners, owners and land managers. Due to the nature of the ASF spread outside the country, in the event of an outbreak, veterinary authorities provide information on protected, threatened or other areas established in connection with the eradication of disease outside the Republic of Poland, competent authorities of EU Member States or third countries in order to cooperate in the eradication of contagious animal disease (Art. 48 u.z.z.). Regulation of the Ministry of Agriculture and Rural Development of 6 May 2015 on fighting with African Swine Fever²² determines the manner and procedure of the ASF suspected and confirmed, the manner and conditions for the identification of infected, threatened and contaminated areas, measures to control the disease, the manner of cleaning and disinfection and the re-placement of animals on the farm. The second group of ASF control measures includes administrative and legal instruments of a mandatory and regulatory nature. The minister competent for agriculture may, by the way of a regulation, introduces: 1) the division of the country into restricted and disease-free zones, and may also require universal testing, treatment and other treatments on

¹⁹ I.e. from 2018, OJ item 1967, as amended, cited hereinafter as: „u.z.z.”

²⁰ OJ of 2016 item 1605.

²¹ I.e. from 2018, OJ p. 2033 as amended, cited hereinafter as „p.l.”.

²² OJ of 2015 item 754.

animals from sensitive species, with a view to preventing uncontrolled spreading of the disease infectious animals; 2) temporary bans for leaving the disease outbreak and temporary restrictions on movement of people or vehicles, with a view to preventing the uncontrolled spread of infectious animal diseases and minimizing the nuisance of the introduced restrictions (Art. 47 u.z.z.).

In addition, pursuant to art. 44-46 u.z.z. bans and prohibitions may be introduced, established by the poviats veterinary surgeon either by regulation (local law act) or by administrative decision or by way of a voivode's regulation. In this form, an order may be made to hunt plots of game animals (wild boars) imposed on hunters or managers of hunting districts²³. It is also possible to shoot sanitary even in areas covered by legal forms of nature protection (e.g. national parks) and their protection zones, which pursuant to art. 47a u.z.z carries out a hunter from the Polish Hunting Association for a fee. The owner of animals killed or slaughtered for the order of the Veterinary Inspection bodies, or that died as a result of the procedures imposed by these organs in the control of infectious animal diseases, is entitled pursuant to art. 49 u.z.z. a compensation if it is complied with all obligations imposed on ASF. Detailed issues are regulated by the Regulation of the Ministry of Agriculture and Rural Development of 6 May 2015 on measures taken in connection with the eradication of African Swine Fever²⁴, on the basis of which prohibitions²⁴ and orders for farms were established from the areas of occurrence and danger of the disease.

The creation of a protective system functioning in a coherent way across the EU did not protect against all health security problems. Hence, Member States, based on the provisions of Directive 2002/60/EC, develop contingency plans taking into account local factors such as the density of pig farms that may contribute to the spread of African Swine Fever virus²⁵. In Poland, an updated ASF control program is being prepared annually, adopted by way of the Ministry of Agriculture and Rural Development regulation (executive order). Currently, the Ministry of Agriculture and Rural Development regulation of 20 March 2019 on the introduction in 2019 on the territory of the Republic of Poland *Program aimed at early detection of infections with the virus causing African swine fever and increasing knowledge of*

²³ This is provided for in the provisions of the Regulation of the Ministry of Agriculture and Rural Development of 19 February 2016 on the regulation of wild boar hunting, OJ of 2016 item 229, ordering wild boar hunting to reach the density of wild boar at the level of at most 0.5 person/km² in the areas specified in the annex to the regulation, excluding national parks and nature reserves.

²⁴ I.e. OJ from 2018 item 280, as amended.

²⁵ The strategy of combating ASF for the eastern part of the European Union mentions document SANTE/7113/2015-Rev7, which contains guidelines for the surveillance and eradication of African Swine Fever among boars.

*this disease and its control*²⁶, providing for the application of measures aimed at strengthening the protection of the territory of the Republic of Poland against ASF. The program provides for: 1) reduction in the population of wild boars carried out both by hunting and sanitary hunting; 2) directed at increasing the share of female boars in reducing the population of this animal species; 3) prohibiting the feeding of wild boars. It should also be emphasized that on the basis of §1 point 3 of the Minister of Environment of 1 August 2017 amending the regulation on hunting periods for game animals²⁷ it is allowed to hunt wild boars for a whole year, and therefore also during the breeding season. These regulations met with a negative response from public opinion, and also did not receive full support from the Polish Hunting Association²⁸.

The Act of September 5, 2016²⁹ also introduces specific solutions related to the occurrence of African swine fever regarding the supply of pork from farms located in the areas covered by regulatory measures established in connection with the occurrence of the virus. The regulations introduce procedural simplifications for the sale of pork to producers in the areas where the virus is present, provided that it meets veterinary requirements. The applicable regulations turn out to be insufficient and the virus is systematically spreading. It is influenced by many factors, including the degree of awareness of the principles of biosecurity among farmers and hunters. This effectiveness was not improved by the reduced wild boar population, which is the result of sanitary hunting since 2014 and the recovery from 185 to 310 thousand wild boars annually. Hence the proposals to combat the epidemic by building, along the lines of Luxembourg, fences along the eastern border of the Republic of Poland, or shooting all boars living in Poland, and then reintroducing them.

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1.3. Food production and labeling

An organic product is produced with organic farming methods, using natural resources and methods with providing favourable conditions for the environment and animal welfare. Food may be considered organic if at least 95 percent of its ingredients of agricultural origin by weight are organic.

²⁶ OJ of 2019 item 598.

²⁷ OJ of 2017 item 1487.

²⁸ Polish Hunting Association declaration available on <https://www.pzlow.pl/attachments/article/593/O%C5%9Bwiadczenie%20Zarz%C4%85du%20G%C5%82%C3%B3wnego%20Polskiego%20Zwi%C4%85zku%20C5%81owieckiego.pdf>.

²⁹ Act of 5 September 2016 on specific solutions related to the occurrence of African Swine Fever on the territory of the Republic of Poland, i.e. OJ of 2019 item 988 together with executive order to the act.

At the European level, organic products are regulated by Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products, while at the national level the matter is governed by the Organic Farming Act of 25 June 2009³⁰.

Pursuant to the provisions of the foregoing regulation, organic products which meet the requirements must bear the EU "organic leaf" logo.

In the organic food sector, an upward trend can be observed - as much as by 125 percent over the past 10 years. For such a dynamically developing market, it has become necessary to introduce changes in the legal regulations. These changes aimed at the unification of EU regulations, and consequently also national solutions. The new regulations were adopted after almost four years of negotiations. They must now be accepted by ministers from member states, which will probably be carried out smoothly, as the text was agreed jointly by the EU institutions. The provisions should enter into force on 1 January 2021.

These regulations are to promote organic production within the EU, guarantee the competitiveness of organic farms and protect consumers against fraud and unfair practices by producers.

These rules also aim to ensure fair competition between European products and those imported from outside the European Union. Producers from third countries who place goods on the EU market will have to comply with EU production and inspection rules. Until now, non-EU producers were covered by the principle of equivalence. Their products were admitted to the EU market if they complied with local rules that the EU considered similar to European rules. The new rules will abolish this principle. Importers will have to comply with EU standards. They will have five years from the entry into force of the new rules to do so. Therefore, the restrictions will apply from 2026.

The list of products classified as organic and the list of additional rules for organic farming will be extended. The new system of group certification, e.g. for producer groups, is designed to support small farms. A common certificate will reduce the costs of certification or inspection, which will be distributed among several people. The regulations will also establish a stricter control system. Small farms will be able to use a simplified certification system.

However, farmers, breeders, food products manufacturers, traders and importers operating in the EU will face stricter and annual inspections. Producers, including farmers, will have to ensure prevention against accidental contamination of their products with

³⁰ OJ of 2009, No. 116 item 975.

forbidden pesticides or fertilizers. If, during monitoring, no irregularities are found for the next three years, the inspections will be carried out less frequently, i.e. every two years. Less inspections means lower costs for producers of certified organic food, which may result in an increase in the competitiveness of these products.

Also an option to combine organic production with conventional production, provided that "clear and effective separation" of both types is ensured. A simplified path of certification for small farms is also provided for to encourage undertaking organic production.

Today, in Poland, the market for organic products is worth about 900 million PLN and develops at a pace of 20% per year. Forecasts for the development of the organic products sector in Poland are optimistic. Probably as soon as in 2025, this market can reach a value exceeding PLN 3 billion.

It should be noted that the changes being introduced are expected, desirable and needed from the perspective of both consumers and producers.

The fundamental controversy that may be resolved by the new legislation, was revealed at the intersection between Regulation 1308/2013³¹ (Article 78 and Annex VII to the Regulation) containing technical and definition norms for milk and dairy products, and the rules on consumer protection against misleading as a result of a defective or unlawful designation and presentation of a product and the principle of proportionality and non-discrimination set out in Article 39 in conjunction with Article 40 (2) TFEU. The dispute decided by the Court of Justice in Case C-422/16³² covered the assessment of admissibility of applying terms reserved exclusively for milk and its products (cheese, butter, cream, etc.) to respective plant-based products (e.g. soy milk, peanut butter). The Court of Justice imposed, based on a literal interpretation of the law, a restrictive prohibition on the use of such signs, and considered that the restriction did not infringe the principle of proportionality and non-discrimination and that the consumer protection objective was achieved³³.

The judgment raises certain doubts. While there is widespread agreement that, given the wording of Regulation 1308/2013, the prohibition is reasonable, the assessment of

³¹ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ EU L 347, 20.12.2013, p. 671.

³² Judgment of the Court of 14 June 2017. *Verband Sozialer Wettbewerb eV v TofuTown.com. GmbH*, C-422/16, EU:C:2017:458.

³³ The judgment was widely commented. See e.g. M. Namysłowska, J. Nowak, *Granice ochrony konsumentów a znakowanie środków spożywczych*, Głosa do wyroku trybunału Sprawiedliwości z 14.06.2017 r. C-422/16, *tofuTown.com*, *Europejski Przegląd Sądowy*, may 2018, p. 52 – 58; A. Wesołowska, *Znakowanie produktów pochodzenia roślinnego po ukazaniu się wyroku TSUE w sprawie TofuTown*, *Lex/el*.2019.

compliance with the principles of proportionality, non-discrimination and consumer protection is contested and challenged.

Firstly, the issue of the restrictive approach to the concept of milk and dairy products is raised. The purpose of establishing reserved names for specific product groups is to improve the economic conditions for the production and quality of products, as long as they do not create obstacles to the marketing of innovative products. It is also pointed to the need to adjust, on an ongoing basis, legal regulations to the changing market realities and consumer needs. In this approach, products of vegetable origin with a purpose, structure or consistency corresponding to dairy products can be, and often are, innovative in nature, and their exclusion from the market can be considered a not allowable restriction. It also does not take into account new, but already established, nutritional tendencies, especially vegan and vegetarian dietary arrangements³⁴.

Secondly, the raised argument of consumer protection against misleading is not entirely reasonable. Consumers' awareness, tastes and requirements are subject to constant change, while wide access to information on new nutritional trends, knowledge about healthy nutrition, the advantages of slow food, novel foods, or hazards resulting from the processes of production and processing, forms consumer attitudes and nutritional habits. Marking vegetable products using traditional names of milk and dairy products indicates either its consistency (nut butter/cream), or structure (ricecream spray) or function (almond milk), and even the taste (butterhead lettuce). They are names already rooted in the consumer's consciousness and do not suggest any other origin than vegetable origin. Such products are also usually offered on separate and marked stands. All these circumstances, to a large extent, preclude the risk of misleading the consumer, and are the reason for departing from the current restrictive regulation.

Thirdly, the argument of easing the restrictiveness of the regulation by the admissibility of notification of exceptions to the general prohibition, is insufficient. Exceptions for products traditionally using reserved names, notified by Member States in the form of so-called indicative lists, have been included in Decision 2010/791/EU³⁵, which in

³⁴ An example of embracing these new trends is Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001, OJ L EU L 165, 30.6.2011, p. 1. EU L 327, p. 1, under which chia seed, plum seed oil and micro-algae were recognized as foodstuffs.

³⁵ Commission Decision 2010/791/EU of 20 December 2010 listing the products referred to in the second subparagraph of point III(1) of Annex XII to Council Regulation (EC) No 1234/2007, OJ EU L 336, 21.12.2010, p. 55. The Regulation indicated in the title was replaced by the currently applicable Regulation 1308/2013, but the provisions governing the labelling of milk and dairy products remained unchanged.

fact is not amended and contains names in national languages that may neither be used in countries other than notifying countries nor translated into other languages. This weakens the positions of countries that joined the EU later on, and in which the period of development of rules of the consumer market is shorter than 30 years required for traditional names. This situation concerns Poland, which applied in 2017 for an extension of the list of products, but did not obtain the approval of the Commission as the 30-year period of using the name for the product had not been met. Also it must be critically assessed the position of the European Commission that exceptions can be notified only once, at the time of accession to the EU, as a manifestation of the restriction to freedom of the Member States, inhibiting their development needs and unjustified differentiation of the market situation.

Fourthly, the restrictive provisions of Regulation 1308/2013 is contrary to the well-established meaning of the principles of proportionality and non-discrimination³⁶. Maintaining proportionality requires the legal measures used to be adequate for achieving the intended objectives and not more restrictive than necessary. Non-discrimination excludes any discrimination between EU producers or consumers. Both the restrictiveness of regulations regarding the use of names, and the procedure and conditions for notifying exceptions, considered by the CJ as an element of liberalisation of restrictions and maintaining market flexibility, do not defend the assessment of compliance with these principles and constitute a reason for amending the existing legal regulation.

Conclusions

Provisions regarding trade names for products of vegetable origin, reserved exclusively for milk and dairy products, should be amended so as to take into account new nutritional trends, changes in consumer consciousness and awareness, and the dynamic development of innovative products. In their current wording, they are anachronistic and do not meet the purpose they were established for, and they constitute a barrier to development and violate the principles of proportionality and non-discrimination. They do not meet the requirement of rational legislation, and the changes taking into account the aspects and arguments referred to in the report may contribute to the expected simplification of the rules of the CAP.

1.4. Chemicals in agriculture

³⁶ E. Tomkiewicz (et. al.), *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz*, vol.1, ed. A. Wróbel, Warszawa 2012, p. 721; B. Majczyna, *Zasada niedyskryminacji we wspólnej polityce rolnej w orzecznictwie trybunału Sprawiedliwości Wspólnot Europejskich*, „Europejski Przegląd Sądowy”, 2006, no. 7, p. 58.

Agriculture is one of the major sources of threats to the environment, directly through pollution of waters and soils and indirectly for the marine environment. Chemicals used in agricultural production also have an impact on the biodiversity state. These include neonicotinoids used in agriculture on a large scale for about 20 years. Unfortunately, many studies show their adverse effect not only on the central nervous system of pests, but also bees and other pollinating insects³⁷, but there is scientific evidence for the impact of these measures on animal and human health.³⁸ Similarly, in the Special Report published in February 2019, the European Court of Auditors³⁹ drew attention to the problem of pesticide residues in food, which affects not only environmental safety, but also food safety in the EU. Alarming is, in particular, the example of bees, whose progressive decline in numbers, referred to as so-called Colony Collapse Disorder⁴⁰, which in effect led to the listing of these insects on the European Red List of endangered species by the International Union for Conservation of Nature (IUCN).⁴¹ The result of the massive disappearance of honeybee families are huge economic losses in the production of oilseeds, fruits and vegetables, as well as a threat to beekeeping⁴².

The use of plant protection products is regulated in the EU Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market⁴³. In order to ensure a high level of protection of human and animal health and the environment, while maintaining the competitiveness of Community agriculture, measures have been introduced to apply and trade in chemical substances that are included in plant protection products. The criterion for allowing the substance is to ensure simultaneous benefits for plant production and no harmful

³⁷ S.G Potts, S.P.M. Roberts, R. Dean, G. Marris, M.A. Brown, R. Jones, P. Neumann, J. Settele, *Declines of Managed Honey Bees and Beekeepers in Europe*, "Journal of Agricultural Research" 2010, No. 49, p. 20–22.

³⁸ Studies show the harmfulness of nicotinoids for birds, aquatic invertebrates and even - through research done on rats - for humans), M. Grotowska, K. Janda, K. Jakubczyk, *Wpływ pestycydów na zdrowie człowieka (Effect of pesticides on human health*, „Pomeranian Journal Life Sciences” 2018, vol. 64 (2), p. 42-50 and literature indicated there.

³⁹ European Court of Auditors, *Chemical hazards in food - EU food safety policy provides protection but also has challenges*, Special Report 2019, No. 2.

⁴⁰ K. Buczek, *Zespół masowego ginięcia pszczoły miodnej CDD (Colony Collapse Disorder CDD)*, „Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia” 2009, vol. LXIV (1) Sectio DD, p. 1-4.

⁴¹ The IUCN Red List of Threatened Species, access: <https://www.iucn.org/resources/conservation-tools/iucn-red-list-threatened-species> or <https://www.iucnredlist.org/search/list>

⁴² K. Buczek, *Zespół masowego ...*, p. 1 and K. Różański, *Prawne formy wsparcia działalności pszczelarskiej w świetle rozporządzenia 1308/2013 ustanawiającego wspólną organizację rynków produktów rolnych (Legal Ways of Supporting Apicultural Activity in the Light of Regulation No. 1308/2013 Establishing a Common Organisation of the Markets in Agricultural Products)*, „Studia Iuridica Lublinensia” 2017, vol. XXVI, vol. 1, p. 445, 447.

⁴³ EC Regulation No 1107/2009 of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117 / EEC and 91/414 / EEC, L 309 z 24.11.2009, s. 1, further quoted as: "Regulation 1101/2009"

effect on human and animal health and unacceptable influence on the environment. The list of permitted substances is included in Annex III to Regulation 1107/2009.

However, pursuant to Art. 21 sec. 1 of Regulation 1107/2009, the Commission may at any time evaluate an approved active substance in the light of new scientific and technical knowledge and monitoring data. If, as a result of obtaining new information, there appears that a substance no longer meets the admissibility criteria, the European Commission basing on Art. 21 sec. 4 of Regulation 1107/2009 may issue implementing rules to withdraw or amend the approval of the indicated substance.

On this basis, in 2013 the Commission seriously restricted the use of three pesticides (clothianidin, imidacloprid and thiamethoxam) approved as active substances in plant protection products. The European Commission, in accordance with one of the basic principles of EU environmental law, which is the principle of prevention⁴⁴ and precautionary principle (Art. 191 sec. 2 of the Treaty on the Functioning of the European Union⁴⁵), decided to act in this matter, making her decisions dependent on the results of the verification of scientific reports. Commission Implementing Regulation (EU) No 485/2013⁴⁶ introduces in Art. 2 a ban on placing on the market of seeds grown with the mentioned substances, with the exception of seeds used in greenhouses. At the same time, Member States were required to submit "confirmatory information" regarding the risk assessment of these substances (including for bees) in situations that were still permitted. The European Food Safety Authority (EFSA), which has been conducting studies on the effects of substances contained in plant protection products used in field crops for several years, has confirmed the high risk of using several authorized substances for bee welfare, and research has also indicated that neonicotinoids leak out to soil and water, and from there to other plants.⁴⁷ An EFSA report, issued on behalf of the European Commission in February 2018⁴⁸, confirmed that the previous activities are insufficient.

⁴⁴ More on the principle of prevention M. Górski, *Zasada prewencji w prawie ochrony środowiska (Principle of prevention in environmental law)* „Studia Prawno-Ekonomiczne” 1995, no 52, p. 87

⁴⁵ Consolidated version, OJ EU C 326, 26.10.2012, p. 47.

⁴⁶ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing the European Parliament and Council Regulation (EC) No 1107/2009 as regards the list of approved active substances, OJ EU L 153, 11.6.2011, p. 1.

⁴⁷ European Food Safety Authority (EFSA), *Peer review of the pesticide risk assessment for the active substance imidacloprid in light of confirmatory data submitted*, Journal EFSA 2016, nr 14(11), p. 4607, or *Peer review of the pesticide risk assessment for the active substance sulfoxaflor in light of confirmatory data submitted*, Journal EFSA 2019, 26 February 2019, nr 17(3), p. 5633.

⁴⁸ European Food Safety Authority (EFSA), *Conclusion on pesticides peer review, Peer review of the pesticide risk assessment for bees for the active substance imidacloprid considering the uses as seed treatments and granules*, Journal EFSA 2018 nr 16(2), p. 5178

On April 27, 2018, a decision was taken at the level of the EU Council to prohibit the use in field crops and the restriction of certain neonicotinoids (imidacloprid, clothianidin and thiamethoxam) in the greenhouse cultures throughout the EU. Poland was in the group of countries that abstained from voting.⁴⁹ On this basis, the European Commission issued three implementing regulations on 29 May 2019 Regulation No 2018/783 regarding the conditions for the approval of the active substance imidachloprid⁵⁰, Regulation No 2018/784 as regards the conditions for the approval of the active substance clothianidin⁵¹, Regulation No. 2018/785 with regard to the conditions of approval of the active substance thiamethoxam⁵². Pursuant to Regulation (EC) No 1107/2009, Member States were required to amend or withdraw existing authorizations for plant protection products containing the designated substances as active substance by 19 September 2018 at the latest and the use of stocks of these substances by the end of 2018 more restrictive than the EU ban, introduced France, Austria and Germany and partly the Netherlands.

The rules for the prevention of environmental pollution through the use of plant protection products are governed by two legal acts in Poland: the Plant Protection Act of 18 December 2003⁵³ and the Act of 8 March 2013 on plant protection products⁵⁴. They are: 1) the principle of taking into account first the agrotechnical, physical, mechanical or biological protection methods that minimize the use of chemicals; 2) the obligation to strictly apply the recommendations of the use of measures to prevent contamination of the environment; 3) establishment of a number of control instruments, which were provided by the State Inspectorate for Plant Protection and Seed Production, Land entry, sampling, plant and protection measures, document control⁵⁵. The Agricultural and Food Quality Inspection

⁴⁹ The ban was supported by Austria, Cyprus, Estonia, France, Greece, Spain, the Netherlands, Ireland, Luxembourg, Malta, Germany, Portugal, Slovenia, Sweden, the United Kingdom and Italy (countries representing 74% of the EU population). The Czech Republic, Denmark, Romania and Hungary were opposed to the ban. Apart from Poland, Belgium, Bulgaria, Croatia, Finland, Lithuania, Latvia and Slovakia abstained from voting.

⁵⁰ Commission Implementing Regulation (EU) 2018/783 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions for the approval of the imidacloprid active substance, OJ EU L 132, 30.05.2018, p. 31.

⁵¹ Commission Implementing Regulation (EU) of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions for the approval of the active substance clothianidin, OJ EU L 132, 30.05.2018, p. 35.

⁵² Commission Implementing Regulation of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions for the approval of the active substance thiamethoxam, OJ EU L 132, 30.05.2018, p. 40.

⁵³ OJ of 2019 item 972 as amended

⁵⁴ OJ of 2018 item 1310.

⁵⁵ More on this subject M.A. Król, *Ochrona biosfery przed nadmierną chemizacją w rolnictwie (Biosphere protection against excessive chemistry in agriculture)* [in:] M. Górski, *Prawo ochrony środowiska (Environmental Protection Law)*, Warsaw 2014, p. 632-634, or M.A. Król, A. Niewiadomski, *Rodzinne gospodarstwa rolne w systemie prawnym ochrony środowiska i zrównoważonego rozwoju (Family farms in the*

bodies supervise the marketing of fertilizers and plant health aids, and under this supervision they have the right to enter the land, inventory these resources, carry out compliance inspections, access to facilities where these resources are stored, free of charge sampling for testing.

Basic rules for the safe use of plant protection products for bees have also been introduced, eg compliance with the bee prevention period, not using not recommended and untested mixtures of plant protection products, because the mixture may have a different effect on bees than a single product, non-use of pesticides on flowering weeds and slips attracting bees and pollinators.

In Poland, in accordance with the provisions of the Commission Implementing Regulation (EU) No 485/2013, the ban on the use of neonicotinoid seed dressing has been in force since 2013.

However, the provision of Art. 53 sec. 1 of Regulation 1107/2009 creates extraordinary situations in plant protection, giving the possibility of temporary derogation from the established rules in special circumstances. A Member State may authorize, for a period not exceeding 120 days, the placing of plant protection products on the market, for the purpose of limited and controlled use, where such action proves necessary because of a risk which cannot be prevented by other reasonable measures. As an exception to the established rule, it should be, in my opinion, used in extraordinary circumstances, after fulfilling the condition of earlier application of funds admitted to trading in the EU, their ineffectiveness and clearly endangered socio-economic interests, the breakdown of crop production. The Member State concerned is required to inform the other Member States and the Commission of the action taken, providing detailed information on the situation and any measures taken to ensure consumer safety.

Twice, both in 2018.⁵⁶, and 2019 r.⁵⁷ using the exception from Art. 53 sec. 1 of Regulation 1107/2009 and pursuant to Art. 7 sec. 1 of the Polish act on plant protection products, the Minister of Agriculture and Rural Development has allowed temporarily - for a period of up to 120 days - the placing on the market of plant protection products: Modesto 480 FS and Cruiser OSR 322 FS, used for seed mortars, based on m .in. on one active

legal system of environmental protection and sustainable development) [in:] M. Podstawka (edt.), *Ekonomiczne i prawne mechanizmy wspierania i ochrony rolnictwa rodzinnego (Economic and legal mechanisms for supporting and protecting family farming)*, Warsaw 2015, p. 243- 244.

⁵⁶ Minister of Agriculture and Rural Development permission of July, 9th, 2018 <https://www.gov.pl/web/rolnictwo/czasowe-zezwozenie-na-zastosowanie-zapraw-nasiennych-z-grupy-neonikotynoidow>

⁵⁷ Ministry of Agriculture and Rural Development permission of May 15th, 2019.

substance from the group of neonicotinoids containing clothianidin and thiamethoxam, which in April 2018 were banned by the European Commission.

In 2019, Modesto 480 FS mortar was granted a permit for the period from May 20 to September 17, 2019, and Cruiser OSR 322 FS mortar. obtained a temporary permit for the period from 1 June to 28 September 2019, both in the cultivation of winter colza. It should also be stressed that the 120-day permit covers a sufficient period.

This means using the exception of an emergency twice and allowing two prohibited in the EU from 2013 in field crops of neonicotinoids. Consent to the use of mortars by Polish producers of rape is therefore not an isolated case. On 21 June 2010, EFSA published a study commissioned by the European Commission to assess the legitimacy of issuing by seven EU countries (Bulgaria, Estonia, Finland, Lithuania, Latvia, Romania and Hungary)⁵⁸ temporary emergency permits for mortars from the neonicotinoid group. For example, the Bulgarian report identified information that is not in line with the EFSA methodology proposed in the EFSA insecticide protocol developed under Art. 4 sec. 7 of Regulation 1107/2009. Therefore, EFSA could not assess whether the granting of emergency permits was scientifically substantiated and whether it was necessary because of a danger which could not be stopped by other reasonable measures.

The widespread use of this exception also creates the risk of opening the legal path for further concessions to the chemical industry in crops such as sugar beet.

1.5. Agriculture and the environment

A. Introduction

Contemporary agricultural activity causes numerous threats to native nature. Factors that cause the degradation of natural values and depletion of biodiversity are, in particular, uncontrolled urbanization and fragmentation of rural areas, drainage ditches in wetlands, reduction of water retention, monocultures connected with intensification of agricultural production, soil and water pollution due to excessive agricultural chemistry, biogeographic species to the environment and genetically modified varieties of plants, and the disappearance of breeding of traditional breeds of animals⁵⁹. The damage caused by dehumidification of land for agriculture and uncontrolled chemistry of agriculture took place in particular in the

⁵⁸ Among others *Evaluation of the emergency authorisations granted by Member State Bulgaria for plant protection products containing clothianidin, imidacloprid or thiamethoxam*, EFSA Journal 2018:EN, p. 1417 or *Evaluation of the emergency authorisations granted by Member State Romania for plant protection products containing clothianidin, imidacloprid or thiamethoxam*, EFSA Journal 2018: EN-1416.

⁵⁹ B. Poskrobko, T. Poskrobko, K. Skiba, *Ochrona biosfery*, Warszawa 2007, p. 178.

1990s.⁶⁰

As indicated in the natural sciences⁶¹, in spite of these negative phenomena, in Poland the biodiversity of areas is much richer and the agricultural landscape is much more diverse than in other parts of Europe. There are still many unique, unmatched in Europe, aquatic and peat ecosystems⁶². The impact on the state of species richness of living organisms in Poland is the area of preservation of natural spaces in rural areas, which occupy in Poland 290.8 thousand square kilometers, which represents 93.2% of the country's area⁶³.

From the point of view of preserving specific agrocenosis of species and landscape elements eliminated in other parts of Europe, the most important components of the agricultural model in the last decades are: 1) spatial structure of land, with small surface mosaic of fields, meadows, orchards and the presence of copper, trees and bushes, ponds, etc.; 2) the use of low doses of mineral fertilizers and chemical plant protection products⁶⁴; 3) cultivation of old indigenous cultivars and breeding traditional farm animals, despite its low profitability; 4) relatively low degree of physical degradation of soils, mainly due to the cultivation technology and low use of heavy equipment.⁶⁵

In the end of XX century in Poland, under the Europe Agreement⁶⁶, changes in legislation started appearing gradually in this field. For the first time, in the Act of 1995 on the Protection of Crops⁶⁷, the legislator introduced rules relating to the manner, scope and conditions of using pesticides in agriculture and forestry land use. Then, for the first time in the Act of 1995 on the Protection of Farm and Forest Land⁶⁸, faulty agricultural activity (e.g., caused by the improper use of pesticides) was identified as one of the causes of land

⁶⁰ I.E. Chmielewski, T. Węgorzek, Rolnicza przestrzeń produkcyjna a różnorodność biologiczna [in:] R. Andrzejewski, A. Weigle, *Różnorodność biologiczna Polski*, Narodowa Fundacja Ochrony Zdrowia, Warszawa 2013, p. 203-210.

⁶¹ Ibidem and S. Radwan, W. Płaska, T. Mieczan, *Różnorodność biologiczna środowisk wodnych i podmokłych na obszarach wiejskich*, „Woda-Środowisko-Obszary Wiejskie” 2004, vol. 4, 2a, p. 279.

⁶² For example on Polesie Lubelskie, Pojezierze Pomorskie, in the vicinity of Chełmno, in Dolina Biebrzy. More on the topic: S. Radwan, W. Płaska, T. Mieczan, *Różnorodność biologiczna*,..., p. 279.

⁶³ Data from 2015 r. Rocznik Statystyczny Rolnictwa, Główny Urząd Statystyczny, Warszawa 2016, p. 119.

⁶⁴ However, statistics show that sales of plant protection products have increased significantly over the past ten years: in 2005 – 41,1 thousand tones, and in 2015 – 67, 3 thousand tones (in bulk goods), Rocznik Statystyczny Rolnictwo 2016, p. 140.

⁶⁵ E. Symonides, *Ochrona przyrody*, Warszawa 2008, p. 316-317.

⁶⁶ Europe Agreement establishing an association between the Polish Republic on the one hand, and the European Communities and their Member States, on the other hand, JO No. 11 item 38 as amended.

⁶⁷ The Act of 12 July 1995 on the Protection of Crops, cons. text OJ of 2002, No. 171 item 1398 as amended, derogated.

⁶⁸ Cf. Art. 4 sec. 16 and 17 in conjunction with Art. 15 sec. 1 and 5 of the Act of 3 February 1995 on the Protection of Farm and Forest Land, the original text Journal of Laws No. 16, item 78 with subsequent amendments. More information M.A. Król, *Przejawy europeizacji w prawie rolnym (Manifestations of Europeanization in agricultural law)*, "Studia Iuridica Agraria" 2009, Vol VII, p. 82.

degradation and devastation. Another new legal solution was the introduction of the regulation of fertilizer use⁶⁹, which was subjected to many restrictions, both because of the risks it posed to health and life of humans, as well as the need to protect the environment. The first Polish Act of 2001 on Organic Farming⁷⁰, introducing the first legal regulation on organic production method comes from this period as well.

After accession to the EU the following served to promote environmentally friendly farming practices: 1) The Code of Good Agricultural Practice (2004)⁷¹ and 2) the rules of the Common Good Agricultural Practice (ZDPR) introduced due to the dependence of financial support in the framework of several measures covered by the Rural Development Plan for 2004-2006⁷² for the fulfillment of environmental requirements. These standards related primarily to the requirements of the rational management of fertilizers, plant protection products, management of grasslands, water and soil conservation, rational use of wastewater and sewage sludge, conservation of valuable habitats and species found in agricultural areas, as well as maintaining cleanliness and order on the farm.⁷³

B. Legal basis for biodiversity protection in agricultural activities

Requirements for Poland's accession to the EU required the adaptation of many normative acts to Community legislation. One of these acts was the Nature Conservation Act passed in 2004⁷⁴. This act, being another Polish legal act in the discussed subject, represents the continuation of the existing concepts of protection of the natural environment⁷⁵, but with a

⁶⁹ The Act of 26 July 2000 on Fertilizers and Fertilization, OJ No. 89 item 991 as amended, Ministry of Agriculture and Regulation of 1 June 2001 on the Detailed Method of Application of Fertilizers and Conduct Training on their Use, OJ No. 60 item 616, acts derogated.

⁷⁰ The Act of 16 March 2001 on Organic Farming, OJ No. 38, item 452 as amended, act derogated.

⁷¹ M. A. Król, *Dobre praktyki w rolnictwie jako przejaw realizacji zasady zrównoważonego rozwoju (Best practices in agriculture as a manifestation of the principle of sustainable development)*, "Review of Environmental Law" 2010, No 1, p. 54.

⁷² Rural Development Plan for 2004-2006, announced M.P. of 2004, No. 56, item 958, designed to flexibly Act of 28 November 2003 on Support for Rural Development from the Guarantee Section of the European Agricultural Guidance and Guarantee Agricultural, OJ No. 229, item 2273 as amended, act derogated.

⁷³ The scope of the obligations arising from ZDPR specified in Annex F to the Plan, and in the form of normative in Appendix 1 of Regulation of 14 April 2004 on Detailed Conditions and Procedures for Granting Financial Aid to Support Agricultural Activities in Areas Favored Covered by the Rural Development Plan, OJ No. 73 item 657.

⁷⁴ Act of 16 April 2004 Nature Conservation Act, i.e. from 2018 Journal of Laws 1614, as amended. Hereinafter referred as "u.o.p.". This law has implemented several EC Directives including Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, EU L 103, 25.04.1979 as amended (valid until 2009), Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, EU L 206, 22.07.1992, p. 7 as amended (Hereinafter referred to as the "Habitats Directive").

⁷⁵ The doctrine strongly emphasizes the conservative, conservative aspect of nature conservation: R. Paczuski, *Prawo ochrony środowiska*, Bydgoszcz, 2000, p. 438, or M. A. Bar, J. Jendrośka, *Prawo ochrony środowiska. Podręcznik*, Wrocław 2005, p. 859. The more contemporary, planning direction of nature protection

strong emphasis on the concept of biodiversity conservation⁷⁶. This is confirmed by the content of art. 2 sec. 1 of Nature Conservation Act, which defines the scope of this protection as: preservation, sustainable use and renewal of resources, compositions and components of nature and art. 2 pt. 2 of u.o.p. indicating biodiversity conservation as one of the goals of the act.

In this concept, the natural environment of human being in which the human activity takes place remains the object of legal conservation. Referring to the content of the provision of art. 2 of Nature Conservation Act, this activity must not violate the principle of sustainable use of natural resources. Hence, consequently, in art. 3 pt. 1 of u.o.p. specified the obligation to take into account nature protection requirements in business and investment. The manifestation of sustainable socio-economic development, as written in art. 5 of the Constitution of the Republic of Poland⁷⁷ with regard to nature conservation, it is the assumption of sustainable use of natural resources and components (Art. 2 sec. 1 u.o.p.), sustainable use of biological diversity (Art. 3 sec. 4 u.o.p.) and sustainable use of agricultural and forestry land (Art. 24 sec. 1 pt. 6 u.o.p.)⁷⁸.

As regards the protection of nature in the Polish legislation, two protective regimes can be clearly distinguished. The first, traditionally referred to as the "Nature Conservation Law", is the preservation of natural resources in terms of preservation, ideal. This ideal protection of nature means protection of resources, creatures and components of nature, motivated by conservation and biocenotic considerations, irrespective of their economic value. The second, referred to as "consumer protection", is the provision relating to the economic use of natural resources in agricultural, fishing, forestry and hunting⁷⁹.

When referring to legal instruments for the protection of natural resources against the negative impact of agricultural activity, it should be pointed out that the initial analysis of the normative material allows to state that the legal regulation in this area is dispersed. The basic legal act establishing restrictions on the conduct of this activity is the provisions of the Nature

emphasize: W. Radecki, J. Sommer, *Prawne formy ochrony przyrody*, Warszawa 1990, p. 8, or W. Radecki, p. 39.

⁷⁶ As shown by A. Habuda, *Koncepcje ochrony przyrody w prawie polskim i wspólnotowym* [in:] J. Jendrośka, M. Bar (edt), *Wspólnotowe prawo ochrony środowiska i jego implementacja w Polsce trzy lata po akcesji*, Wrocław 2008, p. 128. W. Radecki recognizes that the concept of biodiversity protection is a new understanding of conservation nature, W. Radecki, *Ustawa o ochronie przyrody. Komentarz*, Warszawa 2008, p. 49.

⁷⁷ Constitution of the Republic of Poland of April 2, 1997, Journal No. 78, pos. 43 as amended.

⁷⁸ More: W. Radecki, *Ustawa o ochronie...*, p. 48, J. Ciechanowicz-McLean, *Polskie prawo ochrony przyrody*, Warszawa 2006, p. 33-34, J. Sommer [in:], *Teoretyczne podstawy prawa ochrony przyrody*, W. Radecki (edt.), Wrocław 2006, p. 100, or Z. Bukowski, *Zrównowazony rozwój w systemie prawa*, Toruń 2009, p. 482-483.

⁷⁹ M. A. Król [in:], *Prawo ochrony środowiska*, edt. M. Górski, Warszawa 2014, p. 520-524.

Conservation Act of 2004:

1) indicating the legal regime in areas covered by one of nature conservation areas;

2) regulating resources management and nature components (Art. 9 u.o.p.). In addition, it must be stated that legal solutions for the preservation of biodiversity in agricultural activities, irrespective of the location of the area where this activity is conducted, are found in many other legal acts. The provisions of the Act on the Protection of Agricultural and Forest Land⁸⁰ are of paramount importance, Forest Act⁸¹, Law on fertilizers and fertilization⁸², Law on plant protection products⁸³, Act on payments under direct support schemes⁸⁴ along with executive acts⁸⁵. An important instrument for nature conservation in agricultural activities is financial support for afforestation of the most vulnerable forest classes and agri-environmental-climatic measures (the provisions of the Rural Development Act, together with implementing acts⁸⁶) and to support the ecological method of agricultural activity, (the provisions of the Organic Agriculture Act⁸⁷), or restrictions on genetically modified organisms⁸⁸.

C. Conservation of natural resources against excessive chemisation in agriculture

Modern, effective farming is not possible today without the use of soil improvers in nutrients and plant protection agents against harmful organisms⁸⁹. High efficiency in regulating growth and other biological processes in crop plants must be achieved while

⁸⁰ Act of 3 February 1995 on the Protection of Agricultural and Forest Land, i.e. from 2017, OJ item 1161, as amended.

⁸¹ Act of 28 September 1991r. on Forests, i.e. from 2018, OJ item 2129 as amended.

⁸² Act of 10 July 2007 on Fertilizers and Fertilization, i.e. from 2018, OJ item 1259, hereinafter referred to as "u.n.n."

⁸³ Act of 8 March 2013 on Plant Protection Products, i.e. from 2018, OJ item 1310 as amended, hereinafter „u.ś.o.r.”.

⁸⁴ Act of 5 February 2015 on Payments under Direct Support Schemes, i.e. OJ of 2018 item 1312 as amended.

⁸⁵ Ministry of Agriculture and Rural Development Executive order of 9 March 2015 on Standards of Good Agricultural and Environmental Condition, OJ item 344 as amended.

⁸⁶ Act of 20 February 2015 on Support for Rural Development, with funding from the European Agricultural Fund for Rural Development under the Rural Development Program 2014-2020, i.e. Journal of Law 2018, p. 627 as amended and MARD Executive order of 19 March 2009 on the detailed terms and conditions for the granting of financial assistance under the "Afforestation of agricultural land and afforestation of non-agricultural land" covered by the Rural Development Program 2007-2013, i.e. z 2016 r. Journal of Law p. 153 and the MARD Executive order of 18 March 2015 on the detailed terms and conditions for the granting of financial assistance under the Agri-environment and Climate Action program covered by the Rural Development Program 2014-2020, OJ item 415 as amended.

⁸⁷ Act of 25 June 2009 on organic farming, i.e. from 2019 OJ item 1353.

⁸⁸ Act of 22 June 2001 on microorganisms and genetically modified organisms, i.e. from 2019 OJ item 706 as amended.

⁸⁹ I. Mystkowska, K. Zarzecka, *Zasady i bezpieczeństwo stosowania środków ochrony roślin w rolnictwie* [in:] K. Zarzycka, S. Kondracki, J. Skrzyczyńska, *Współczesne dylematy polskiego rolnictwa*, część II, Biała Podlaska 2012, p. 249.

maintaining the safety of human health and life and the protection of the environment.

Admission to use or marketing of plant protection products, fertilizers or plant-growth aids is strictly regulated. At present, only those agents which, when used properly and for their intended purpose, are allowed to be used, do not pose a risk to human health, animal or the environment⁹⁰. In particular, plant protection products must not contain active substances presenting such a hazard, for which the European Commission has issued a decision on non-application. The authorization of a plant protection product to the market requires the authorization of the minister responsible for agriculture. Fertilizers and plant growth aids authorized by the Minister competent for agriculture or marketed in another EU Member State, the Republic of Turkey or a Member State of the European Free Trade Association (EFTA) may be placed on the market if the national rules on the basis of which they were produced and marketed, provide protection for human and animal health and the protection of the environment.

The Plant Protection Products Act of 2013 introduced several principles to prevent environmental contamination from the use of plant protection products. These are: 1) the principle of taking into account first the agrotechnical, physical, mechanical or biological methods of protection allowing to minimize the use of chemicals; 2) the obligation to strictly apply the recommendations of the use of measures to prevent contamination of the environment; 3) establishment of a number of control instruments, in which was provided the State Inspectorate for Plant Protection and Seed Production, above all land entry, sampling, plant and protection measures, document control.

The concept of "integrated production of plants", ie production using integrated plant protection and the use of technical and biological advances in cultivation and fertilization, with particular reference to human and animal health and the protection of the environment was implemented (Art. 2 pt. 17 u.ś.o.r.). Whereas "integrated plant protection" means, pursuant to Art. 2 pt. 16 of u.ś.o.r., the method of protection of plants against harmful organisms, using all available methods of plant protection, especially non-chemical methods, in a way that minimizes risks to human health, animals and the environment. The manufacturer using this method can apply for an IP certificate, which confirms that the permitted levels of plant protection chemicals, heavy metals, nitrates are not exceeded in manufactured crops.

⁹⁰ A list of fertilizers and plant improvement agents that can be marketed under the authorizations of the Minister for Agriculture, based on Art. 4 sec. 1 and 2 u.n.n. is available on the website of the office of the minister responsible for agriculture and rural development, <https://www.gov.pl/web/rolnictwo/wykaz-nawozow-i-srodkow-wspomagajacych-uprawe-roslin>

The use of fertilizers in modern agriculture is necessary in view of the need to ensure that the EU's agriculture is increasingly competitive on world markets and hence the requirement to improve its efficiency. However, excessive or inadequate use of fertilizers leads to serious contamination of soils, surface and groundwater, and thus poses a threat to human health and life. According to W. Radecki, the task of the system of law is to counteract such threats⁹¹. The Fertilizer and Fertilizer Act regulates the conditions and mode of placing on the market of fertilizers and plant health aids, the rules governing the use of these substances in agriculture and the rules for the prevention of risks to human and animal health and the environment which may arise as a result of their transport, storage and use.

The act introduces several rules regarding the use of fertilizers and plant-growth aids, including: 1) the order to use fertilizers and agents in a way that does not endanger the health of humans, animals or the environment; 2) the use only of fertilizers and measures that have been authorized; 3) the determining of maximum dose of fertilizer that can be used during the year; 4) the order to use soil improvers and growth promoters in accordance with instructions for use and storage.

Implementing provisions of the act on fertilizers and fertilizing⁹² have laid down the detailed rules for the application of fertilizers, preventing risks to human, animal and environmental health, including Use of appropriate equipment, prohibition of use at a distance of at least 20 m from the protection zone of water sources, water intakes, reservoir shores and watercourses, surface waters and coastal waters, and restrictions applied at low levels of groundwater.

Control of proper implementation of the provisions of the act, among others as regards marketing of fertilizers and plant aids, the Agricultural Trade Quality Inspectorates are authorized to enter the land, make an inventory of these resources, carry out inspections of compliance with the provisions of the act, access to facilities where these resources are stored, free of charge sampling for testing. These are instruments to enhance the effectiveness of observance of established regulations, and their practical application depends on the actual state of human and environmental safety.

2. As you discuss rural law developments in your country, please address the following questions:

⁹¹ W. Radecki, *Prawna ochrona środowiska...*, p. 179; more: W. Radecki, *Ustawa o nawozach i nawożeniu z komentarzem*, Wrocław 2002, *passim*.

⁹² Ministry of Agriculture and Rural Development Executive order of 18 June 2008 on implementation of certain provisions of the Act on fertilizers and fertilizers, OJ No. 119 item 765 as amended.

2.1. What are the sources (statutes, administrative regulations, national policy) for each of these developments?

The development of Polish agricultural law in recent years has been determined by the Common Agricultural Policy of the European Union, foreign policy of the European Union and internal policy, which gradually shifts the emphasis from civil law regulations to administrative law regulations. The direct source of new regulations are the provisions of EU law and Polish acts, which in many cases make the validity of a legal transaction contingent upon the prior consent of a state authority or impose financial sanctions for failure to comply with the appropriate form of a legal transaction performed with the participation of an agricultural producer.

Polish agricultural law also endeavours to meet challenges not related to market events, which have a significant impact on the situation in agricultural markets. This concerns in particular the way *de minimis* aid is granted in relation to the cyclical occurrence of weather anomalies, including drought and floods, in the territory of the State, as well as the scope for public intervention related to the effects of the eradication of the African swine fever virus (ASF) which occurred in eastern Poland. Moreover, the Russian embargo, which is painful mainly in the fruit sector, has a permanent impact on the condition of Polish agriculture and determines the activity of state authorities, e.g. in the area of granting sureties and guarantees to purchasers and processors. At the same time, the difficult situation in agricultural markets led to the liberalisation of Polish regulations governing the employment of workers in agricultural holdings.

Moreover, by way of Polish secondary regulations, the protection of property of agricultural holdings has been considerably strengthened through a significant limitation of the possibility to carry out judicial enforcement of property components used for agricultural production.

Anti-odour regulations are also a topical issue in the Polish public debate, and their strengthening is being postulated by people used to live in towns and cities and who now migrate to rural areas. It opposes too liberal regulations that allow investment in infrastructure for livestock production in the immediate vicinity of residential buildings.

In Poland, the restructuring of agricultural administration was also carried out by way of acts, moving away from the concept of a somewhat decentralised or de-concentrated administration in favour of the idea of a centralised apparatus.

2.2. What are the main elements of each of these developments and how do they affect producers?

In recent years, Poland has introduced a system of administrative rationing of trade in private agricultural land, and the process of privatisation of state agricultural land, which remained in the Agricultural Property Stock of the State Treasury after state farms from the socialist period, which lasted in Poland until 1989, has been halted until 2021. This was done pursuant to the provisions of the Act of 14 April 2016 on Suspension of the Sale of Real Estate of the Agricultural Property Stock of the Treasury and Amendments to Certain Acts, which significantly changed the existing regulations concerning private trade in agricultural land contained in the Act of 11 April 2003 on the Shaping of the Agricultural System⁹³. The latter law was thoroughly modernised by means of amending regulations, which entered into force on 26 June 2019 (Journal of Laws of 2019, item 1080). The latest regulations in this area broaden the catalogue of exceptions to the obligation to obtain the consent of the Director General of the National Centre for Agricultural Support to the sale or purchase of agricultural real estate or agricultural holding, without which a legal transaction of sale is invalid, and also liberalise the trade in agricultural real estate within the administrative boundaries of cities. Statistical data indicate a decrease in the dynamics of agricultural real estate trade in Poland, as well as an increase in the prices of such real estate, which may result from the application of the discussed regulations. It should be pointed out that the reason for introducing such restrictions was, among others, the desire to limit speculation in agricultural land trade.

Moreover, in order to strengthen cooperation in the food supply chain and improve the position of the agricultural producer as the first link in the food supply chain, by way of amendment of the Act of 11 March 2004 on the Organisation of Certain Agricultural Markets the obligation to conclude contracts for the supply of agricultural products in a specific form (written, prepared prior to delivery) and with a specific content was introduced, under pain of payment of a fine of 5% of the payment⁹⁴. In principle, this concerns contracts for the supply of agricultural products belonging to the sectors referred to in Article 1(2) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013⁹⁵. This regulation hindered the activity of processing entities basing their activity on commercial relations with intermediaries and entities purchasing from agricultural producers. The marketing of these agricultural raw materials is also subject to strict state supervision. These

⁹³ OJ No. 869 item 869, as amended.

⁹⁴ OJ of 2018 item 945, as amended.

⁹⁵ OJ EU L 347, 20.12.2013, p. 671.

solutions did not prove to be fully effective, as evidenced by the fact that the Polish Minister of Agriculture and Rural Development tabled a legislative initiative amending the existing regulations. Among the proposed solutions aimed at clarifying the provisions of the existing obligation to conclude agreements on the supply of agricultural products, the Minister proposes, inter alia, establishing a prohibited practice of purchasing agricultural products below their reference price, which will be considered as unfair use of contractual advantage in trade in agricultural products. It should be stressed that the purchase of agricultural products below the reference prices will be penalised.

Polish agricultural producers welcomed the changes in the EU legislation on *de minimis* public aid in agriculture, introduced by Commission Regulation (EU) 2019/316 of 21 February 2019 amending Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agricultural sector⁹⁶. The need for this change resulted from the fact that part of the drought aid paid to Polish agricultural producers in recent years was classified as this type of public aid, which led to the exhaustion of the established limit. Currently, the *de minimis* aid scheme is a closed Polish national limit set at of 1% of production, which currently, in a three-year arrangement, amounts to EUR 225.7 million.

Due to an outbreak of ASF virus in eastern Poland, the veterinary services have by administrative decisions led to a significant depopulation of pigs in those areas. At present, the Polish authorities are working on effective legal solutions that will allow compensation to be granted to agricultural producers from public funds for the equivalent of their utilised herds, the application of historical payments for a period of five years from the cessation of production caused by the administrative depopulation of the herd, the granting of financial assistance to farmers to reorganise their holdings in another production direction, support for the introduction of full bio-insurance for those holdings which continue to produce pigs, and compensation for lost income for pig producers due to the destabilised pig market. So far, the Polish Rural Development Programme has been amended to support investments designed to protect farms against ASF.

In addition, in connection with increasing costs of employment of workers and fixed or decreasing prices of agricultural products, the Polish legislator on 18 May 2019 introduced a new type of civil-law contract - a contract on assistance with harvesting. This regulation is aimed at reducing public costs of employment of agricultural hired hands and limiting

⁹⁶ OJ EU L 51I, 22.2.2019, p. 1.

obligations of a farmer as an employer in comparison with those resulting from the labour law and social insurance law (see Article 91a et seq. of the Act of 20 December 1990 on Social Insurance for Farmers⁹⁷). The limited experience with the application of the new rules does not allow drawing conclusions on the usefulness of this new legal category.

Certain problems with bank loans for investment projects in agricultural holdings, including projects co-financed from the Rural Development Programme, occurred in connection with the entry into force of a new Regulation of the Minister of Justice of 5 July 2017 on the definition of objects belonging to a farmer running a holding which are not subject to enforcement⁹⁸. Quite a broad presentation of the catalogue of assets of a farm, from which a court bailiff cannot enforce the adjudged receivables, including bank debts, led to a weakening of the position of farmers as borrowers and a decrease in the level of investments in agriculture.

2.3. Are these legal developments in your country linked to international, European, national and/or regional obligations or guidelines? Are the developments compatible and in conformity with international, European, national and/or regional obligations or guidelines?

The new Polish regulations limiting agricultural real estate trade are controversial in the doctrine of law and meet with criticism in public debate. It is pointed out that they are potentially incompatible with the principles derived from the Polish Constitution and the EU Treaty principle of free movement of capital. Such legal solutions were also criticised by the Polish Ombudsman, who pointed out to the qualified vagueness of provisions regulating constitutional rights and freedoms of citizens and violation of constitutional principles: freedom to own property and economic freedom through the accumulation in an ordinary Act of significant restrictions in private trade in agricultural land. However, the Polish government argues the need for such restrictions by the necessity of shaping the Polish agricultural system on the basis of a family farm (Article 23 of the Constitution) and points to similar restrictions on agricultural land trade in French or German legislation.

Negative phenomena in the Polish cereal market are also justified by quotas for Ukrainian cereal imports at zero duty, granted by the European Union under agreements with the World Trade Organisation (WTO). This grain is mainly imported to eastern Poland, which leads to a decrease in the purchase price of domestic raw material by 10-17%. In view of the

⁹⁷ OJ of 2019 item 299.

⁹⁸ OJ item 1385.

impossibility to limit this phenomenon due to the existence of international obligations, the Polish authorities are considering the introduction of financial mechanisms to compensate cereal producers for the losses incurred as a result.

In this context, the political agreement on free trade between the European Union and South American Mercosur (Southern Common Market) negotiated in 2019 also raises serious concerns for Polish farmers.

2.4. Do any difficulties in implementation arise?

With regard to the above-mentioned problems with anti-odour regulations in the rural spatial planning process, no regulations harmonising the interests of the parties concerned have been introduced so far, despite the government's legislative proposals put forward this year.

There is also a disputable issue in Polish doctrine and jurisprudence whether the administrative reorganisation of the Polish agricultural administration, in particular the abolition of the Agricultural Market Agency and the Agricultural Property Agency through the establishment of the National Centre for Agricultural Support in their place, was covered by the scope of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the protection of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. The future resolution of this issue by the Polish Supreme Court will be crucial for the assessment of claims of approximately 1,000 former employees of these liquidated institutions dismissed under the Act.