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NEW ORGANIZATION OF THE AGRICULTURAL MARKET IN THE EUROPEAN UNION AFTER THE REFORM OF THE COMMON AGRICULTURAL POLICY AFTER 2013

The reform of the Common Agricultural Policy undertaken in 2013 encompassed important elements of the communitised agricultural sector. Besides the introduction of a new system of area payments, taking into account the so-called greening policy¹ supporting agricultural activities beneficial for the climate and the environment, some elements of the agricultural market were also subject to reform. New challenges, such as the fight against animal diseases, sudden imbalances in the security of turnover of agricultural products, the loss of consumer confidence in a given product prompted the European Union authorities to develop new or modernize existing legal mechanisms in the functioning of the common agricultural market².

The organization of the agricultural market in the European Union becomes crucial in view of the functioning of agriculture in the context of Transatlantic Trade and Investment Partnership (TTIP), or the Comprehensive Economic and Trade Agreement (CETA). These agreements are to lead to a coherency and complementarity of these systems, which will be a new challenge for the functioning of not only the agricultural market but all of agriculture in Europe. The effect of these regulations is to adjust EU market rules to the agricultural market

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J. Bieluk, D. Łobos-Kotowska, *Płatności bezpośrednie*, (in:) P. Czechowski (ed.), *Prawo rolne*, Warsaw 2015, pp. 410–423; B. Jeżyńska, *Znaczenie i funkcje zasady cross-compliance w systemie rolniczych dopłat bezpośrednich*, “*Studia Iuridica Lubliniensia*” 2010, No. 13, pp. 35–50.

² I. Lipińska, *Instrumenty ograniczania ryzyka produkcyjnego na rynku rolnym w aspekcie globalizacji – wybrane zagadnienia prawne i ekonomiczne*, “*Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego Problemy Rolnictwa Światowego*” 2016, No. 31, pp. 199–208.

in the United States or Canada. The current Community legal rules at the level of regulations do not regulate the modes of action of the European market in the Transatlantic Free Trade Area. Already at this stage it would be *de lege ferenda* to recommend an analysis of the impact of the above agreements on those valid in the European Union, including the regulation in Poland determining the operation of the single agricultural market³.

The analyzed legal solutions at European level in the field of the agricultural market regulate only part of the agricultural sector, leaving the remaining elements to the national laws of the Member States. Such a solution is to ensure uniformity of regulations in the most important sector industries of the single agricultural market. Currently, the single agricultural market at the European level consists of a market of cereals, rice, sugar, dried fodder, seeds, hops, olive oil and table olives, flax and hemp, fruit and vegetables, processed fruit and vegetables, bananas, wine, trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage, tobacco, beef and veal, milk and dairy products, pork, lamb and goat meat, eggs, poultry meat, ethyl alcohol of agricultural origin and apiculture products, silkworms and other products⁴.

At the treaty level the basic organizational framework of the agricultural market is set out in art. 40 of the Treaty on the Functioning of the European Union (TFEU). Depending on the type of agricultural products, the Treaty indicated the following forms of jointly defined rules for the organization of the market:

³ Cf.: K. Marciniuk, *Rolnictwo wobec integracji europejskiej i globalizacji. Problematyka prawna*, Warsaw 2013; A. Jurcewicz, B. Kozłowska, E. Tomkiewicz, *Polityka rolna Wspólnoty Europejskiej w świetle ustawodawstwa i orzecznictwa*, Warsaw 1995, pp. 139–193; E. Tomkiewicz, *Limitowanie produkcji w ustawodawstwie rolnym Wspólnoty Europejskiej*, Warsaw 2000, pp. 74–128; F. G. Snyder, *Common Agricultural Policy of European Economic Community*, London 1990, pp. 79–201; P. Czechowski, M. Korzycka-Iwanow, S. Prutis, A. Stelmachowski, *Polskie prawo rolne na tle ustawodawstwa Unii Europejskiej*, Warsaw 2002, pp. 206–223; P. Czechowski, *Proces dostosowania polskiego prawa rolnego i żywnościowego do prawa Unii Europejskiej*, Warsaw 2001, pp. 201–246; P. Czechowski, *Dostosowanie polskiego prawa rolnego i żywnościowego do prawa wspólnotowego po akcesji do Unii Europejskiej*, Warsaw 2005, pp. 38–49; A. Jurcewicz, B. Kozłowska, E. Tomkiewicz, *Wspólna polityka rolna. Zagadnienia prawne*, Warsaw 2004, pp. 103–135; P. Wodziczko, *Wymiana towarowa na rynku mleka w ramach Wspólnej Polityki Rolnej (WPR)*, “Prawo i Podatki Unii Europejskiej” 2007, No. 1, p. 34; A. Czyżewski, A. Hensisz, *Aktualne tendencje na światowych i unijnych rynkach rolnych. Wnioski dla Polski*, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2000, No. 1, p. 11; P. Pytlak, *Znaczenie i charakter umów w systemie mechanizmów regulujących branżowe rynki rolne*, “Rejent” 2006, No. 3, p. 93; E. Tomkiewicz, B. Kozłowska, A. Jurcewicz, *Zasady ogólne prawa europejskiego we wspólnej polityce rolnej*, “Europejski Przegląd Sądowy” 2006, No. 4, p. 39; No. 5, p. 28; A. Jurcewicz (eds.), *Prawo i polityka rolna Unii Europejskiej*, Warsaw 2010; B. Majczyna, *Zasada niedyskryminacji we wspólnej polityce rolnej w orzecznictwie Trybunału Sprawiedliwości Wspólnot Europejskich*, “Europejski Przegląd Sądowy” 2006, No. 7, p. 57.

⁴ These include, among others, horses, donkeys, mules and hinnies, vegetables (uncooked or cooked by steaming or boiling), frozen; coconuts, Brazil nuts and cashew nuts, fresh or dried, even shelled or peeled.

common rules on competition; compulsory coordination of the various national market organizations; European market organization⁵.

In light of the treaty provisions and the outcome of the legal doctrine, it was shown that the European market, including the agricultural market, is based on the following principles:

1) the unity of the internal market associated with the free movement of goods and capital within the Union, abolition of customs duties (as of July 1, 1968), goods contingencies and fees as well as any restrictions discriminating against products of Member States in internal trade;

2) granting preferences to goods produced within the EU (i.e. European preferences) in order to increase the profitability of purchases between EU countries in comparison to the global market, and conducting a common foreign trade policy in relation to third countries;

3) standardizing the mechanisms of intervention on the markets of the Union in order to compensate for differences in the level and structure of domestic prices, agricultural income and the controlled system of influx of goods from third countries. A special method of this uniformity can be seen in the new regulation;

4) the participation of Member States in joint financing of the Common Agricultural Policy⁶.

These principles were so universal that the reform of the agricultural market performed in 2013 did not change them. Only some of the provisions were clarified and expanded.

Legal institutions introduced as a result of reforming regulations of the Common Agricultural Policy on the organization of the single agricultural market, are a response to the changing reality on the agricultural market mainly connected with new phenomena, such as: zoonoses, the loss of consumer confidence in the product, or natural disasters. The discussed regulations were chosen in terms of weight of solutions and possibilities of public assistance for the agricultural sector. In addition to traditional mechanisms of public intervention, such as subsidies for private storage, certification of production, limiting its exports and imports, a number of new solutions to changing economic and development conditions were introduced, related also to the innovation of the agricultural sector and new threats arising from previously unknown animal diseases.

The community regulation covers 24 market sectors, which are also the core of the main agricultural products in Europe. Other agricultural products are subject to general European regulations concerning the agricultural sector, and above all the domestic regulations usually at a statutory level.

⁵ A. Jurcewicz, B. Kozłowska, E. Tomkiewicz, *Wspólna Polityka Rolna. Zagadnienia prawne*, Warsaw 2006.

⁶ P. Czechowski, A. Niewiadomski, *Europejskie rynki rolne*, (in:) P. Czechowski (ed.), *Prawo rolne*, Warsaw 2015, pp. 390–405.

The reform of the agricultural market was started in 2007 by replacing the sectoral approach with the horizontal approach to the organization of individual sectors. In this regard, Council Regulation (EC) No. 1234/2007 of October 22, 2007 was issued establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)⁷. Currently, a large part of it has become obsolete as a result of legislative activities carried out in 2013. Regulation 1234/2007 currently governs the issues of unlawful plantations⁸, marketing standards for milk and milk products, marketing standards for fats, marketing standards for eggs and poultry meat, certification of hops, or the issue of derogations in the wine market⁹. Regulation 1234/2007 was the first act, which in a complex way in one place regulated the rules prevailing in the common agricultural market, constituting a horizontal approach to the existing regulations.

The reforms undertaken in 2007 aiming to horizontally regulate issues of the agricultural market in Europe are continued in the reform of the Common Agricultural Policy of 2013. Currently, the primary regulator of the functioning of the agricultural market in Europe is Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of December 17, 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. 1234/2007¹⁰.

The new approach assumes that “the EU will in future be better prepared to respond to the imbalance in the market and crisis situations. In the event of exceptional market disturbance or extreme price volatility, the modified toolbox of the

⁷ Council Regulation (EC) No. 1234/2007 of October 22, 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), OJ UE L 299 of November 16, 2007, pp. 1–149, as amended; on the national organization of agricultural markets see P. Czechowski, A. Niewiadomski, *Europejskie rynki rolne*, (in:) A. Stelmachowski (ed.), *Prawo rolne*, Warsaw 2009, pp. 369–412; I. Lipińska, *Nowe przepisy w zakresie organizacji wspólnotowego rynku rolnego*, “Przegląd Prawa Rolnego” 2008, No. 1, p. 179.

⁸ V. Waye, *Regulatory Coherence and Pathways towards Global Wine Regulation*, “Journal of World Trade”, 2016, No. 50(3), pp. 497–531.

⁹ Most of these regulations will be in force until December 31, 2017.

¹⁰ Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of December 17, 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 of 2013 No. 347, p. 671, as amended); it is also supplemented by Regulation (EU) No. 1310/2013 of the European Parliament and of the Council of December 17, 2013 establishing certain transitional provisions on support for rural development areas by the European Agricultural Fund for Rural Development (EAFRD) amending Regulation (EU) No. 1305/2013 of the European Parliament and the Council in the scope of resources and their distribution for the year 2014 and amending Council Regulation (EC) No. 73/2009 and Regulation (EU) No. 1307/2013, (EU) No. 1306/2013 and (EU) No. 1308/2013 of the European Parliament and of the Council in respect of their application in 2014 (OJ EU L of 2013, No. 347, p. 865, as amended).

legal regulation should allow to mitigate the negative effects for farmers. In crisis situations, e.g. in the event of an outbreak of *E. coli*, the Commission will be able to apply the new emergency measures¹¹. This means the creation of new legal mechanisms that will make it more possible to respond to emerging outbreaks of animal diseases. Most of them, like the swine fever observed in Poland and Eastern Africa, significantly affect the functioning of the agricultural market. Farmers without efficient mechanisms of aid will not be able to cope themselves and carry out effective restoration of the potential of the product. As set out in the document *CAP instruments and their reforms* – the reform of the agricultural market after 2013 is to rely on “the consolidation of the tools a common market organization, functioning as a network of securities and applied only in the case of a price crisis and market disturbance. Furthermore, the abolition of all measures for controlling supply was confirmed: the sugar quota system will expire in 2017, and in 2016 the system of permits will fully replace the right to establish vineyards. The new system for milk products, scheduled for 2015, was preceded by the adoption of, among others, milk mini-package, while at the same time negotiations were in progress on the new CAP¹². The new single CMO has, furthermore, created a new crisis reserve for possible market disturbances. This reserve will be financed through annual reduction of direct payments, which could reach up to EUR 400 million¹³.

In this respect, Regulation 1308/2007 art. 220 sets out the measures for the prevention of animal diseases and loss of consumer confidence due to threats to human health, animal health or plant health. In a crisis situation, the Commission may issue implementing regulations adopting exceptional support measures for the affected market in order to include: restrictions on trade within the EU and with third countries, which may result from the application of measures to combat the spread of animal diseases. The Commission may also issue such acts in the event of serious market disturbances directly attributed to a loss in consumer confidence due to threats to human health, animal health or plant health and disease risk. These measures mainly concern enumeratively calculated products (beef and veal, milk and milk products, pork, sheep and goat meat; eggs; poultry meat). These include products prone to diseases that can significantly affect the functioning of the whole agricultural market. In recital 186 of the same Regulation it is stressed that “restrictions on free trade resulting from the application of measures aiming to combat the spread of animal diseases could cause difficulties on the market in one or more Member States. Experience shows that serious market disturbances, such as a significant drop in consumption or in prices, may be attributed to a loss in consumer confidence due to threats to human health,

¹¹ See <http://www.consilium.europa.eu/pl/policies/cap-reform/common-market-organisation/> (visited January 17, 2017).

¹² Regulation (EU) No. 261/2012, OJ L 94 of 30.03.2012.

¹³ See http://www.europarl.europa.eu/ftu/pdf/pl/FTU_5.2.3.pdf (visited January 17, 2017).

animal health or plant health. In light of experience, the measures attributable to a loss in consumer confidence should be extended to plant products¹⁴. This means that the extraordinary limitations described above may affect the plant products that will be covered by the disease outbreaks.

The above-described measures are taken promptly at the request of a Member State. In addition, restrictions on trade in a product within the EU or with third countries may be introduced, provided that the Member State rapidly applied health and veterinary measures to eradicate the disease, and only to the extent and for the time strictly necessary to support the market concerned. According to art. 220 paragraph 5 of Regulation 1308/2013 the EU provides part-financing equivalent to 50% of the expenditure borne by Member States for the measures provided for in paragraph 1. The use of exceptional support for producers whose animals have contracted serious diseases must not distort competition in the market. Thus in art. 220 paragraph 6 it is indicated that “Member States shall ensure that, where producers contribute to the expenditure borne by Member States, this does not result in a distortion of competition between producers in different Member States”.

These regulations have already found practical application in the implementing acts. The Commission Implementing Regulation (EU) 2016/760 of May 13, 2016 can be cited on exceptional support measures for the eggs and poultrymeat sectors in Italy¹⁴. It provides “part-financing equivalent to 50% of the expenditure borne by Italy to support the market of hatching eggs and poultrymeat seriously affected by the outbreak of highly pathogenic avian influenza of subtype H5N8 which was detected and notified by Italy on December 15, 2014”¹⁵. Furthermore, appropriate amounts of aid payments to farmers were established. This regulation is an example of the new changes introduced after 2013. It allows to carry out the interference of state bodies in the marketing of agricultural products. These solutions are primarily to help farmers who must get rid of the animals produced due to a given disease (veterinary withdrawal from the market).

Related implementing regulations apply to other Member States. As an example, Commission Implementing Regulation (EU) No. 428/2014 of April 25, 2014 can be cited, adopting exceptional support measures for the pigmeat market in Lithuania and amending Regulation (EU) No. 324/2014 adopting exceptional support measures for the pigmeat market in Poland¹⁶; or the Commission Imple-

¹⁴ Commission Implementing Regulation (EU) 2016/760 of May 13, 2016 on exceptional support measures for the eggs and poultrymeat sectors in Italy (OJ EU L of 2016, No. 126, p. 63).

¹⁵ The rest of this provision also indicates the application of the cited standards “for which Union and national animal health and veterinary measures were applicable until 16 February 2015 in all holdings except for the holding keeping male fattening turkeys, in which measures were applied until 25 February 2015”.

¹⁶ Commission Implementing Regulation (EU) No. 428/2014 of April 25, 2014 adopting exceptional support measures for the pigmeat market in Lithuania and amending Implementing Reg-

menting Regulation (EU) No. 324/2014 of March 28, 2014 adopting exceptional support measures for the pigmeat market in Poland¹⁷. Moreover, Commission Implementing Regulation (EU) No. 1071/2014 of October 10, 2014 should be noted concerning exceptional support measures for the eggs and poultrymeat sectors in Italy¹⁸. These regulations are an example of the necessity of legal solutions, whose task is to help farmers in difficult situations associated with the occurrence of events over which they have no control. These solutions show the process of taking into account regional differences and the processes occurring in individual EU countries, legal solutions that require customized legal solutions within the framework of the CAP.

It should be mentioned that in relation to the new protective instruments, a reserve system was created in the event of a crisis in the agricultural sector. This reserve is a new instrument aimed at supporting the sector in the event of a crisis of production or distribution. The crisis may be caused by the unforeseen actions described above, including the risks of spreading disease. Reserves are made annually by applying the reduction of direct payments under the CAP financial discipline mechanism. It is set out in the Regulation of the European Parliament and of the Council (EU) No. 1306/2013 of December 17, 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No. 352/78, (EC) No. 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008¹⁹. Financial discipline is only applicable to direct payments in excess of EUR 2,000. Every year, unused funds from the reserve are returned to farmers. For the years 2014–2020 the reserve was divided into seven equal annual tranches of EUR 400 million each (a total of EUR 2,800 million). The crisis reserve can be used to finance exceptional measures counteracting disturbances in the market. This reserve so far has not yet been applied in practice.

In this example it can be seen clearly that the system of the agricultural market in the European Union does not operate in isolation to other regulations con-

ulation (EU) No. 324/2014 adopting exceptional support measures for the pigmeat market in Poland (OJ EU L of 2014, No. 125, p. 64).

¹⁷ Commission Implementing Regulation (EU) No. 324/2014 of March 28, 2014 adopting exceptional support measures for the pigmeat market in Poland (OJ EU L of 2014, No. 95 p. 24) – it authorizes Poland to grant aid for the slaughter of animals listed in the regulation and marketing of fresh pork and porkmeat products derived therefrom in accordance with the relevant veterinary legislation: pigs falling within CN 0103 92 19; sows falling within CN code 0103 92 11.

¹⁸ Commission Implementing Regulation (EU) 1071/2014 of October 10, 2014 on exceptional support measures for the eggs and poultrymeat sectors in Italy (OJ EU L of 2014, No. 295, p. 51).

¹⁹ Regulation of the European Parliament and of the Council (EU) No. 1306/2013 of December 17, 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No. 352/78, (EC) No. 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008 (OJ EU L of 20.12.2013 No. 347, p. 549) – cited further as Regulation 1306/2013.

cerning the agricultural sector and is intended to be coordinated in a Common Agricultural Policy.

The reform of the Common Agricultural Policy after 2013 also assumes the continuation of social programmes with the use of agricultural products such as: “School Fruit Scheme” and the “School Milk Scheme”. These programmes have been proven since 2007. It was also assumed to increase their budgets (in the case of fruit for schools from EUR 90 to 150 million). These programmes not only improve the quality of products consumed by children in educational institutions and contribute to raising the level of their health, but they are also aimed to develop proper models of consumption, as it is emphasized in subsequent recitals of the regulation. Increased funding for these programmes is also used to introduce innovation in these sectors²⁰. These programmes involve state aid in exchange for delivering fruit or milk to schools.

Revolutionary changes in the functioning of the agricultural market were the abolition of milk quotas²¹ and the abolition of sugar quotas that were to come to an end at the end of the marketing year 2016/2017. The assumptions of the European Commission are to improve the competitiveness of European manufacturers of sugar in the world market, which will simultaneously provide manufacturers from developing countries with better possibilities to access the EU market²².

However, as a result of such changes, small dairy processing plants will not adapt their offer quickly to market needs, which will create the risk of falling out of the market. On the other hand, it is anticipated that the elimination of milk quota will be conducive to consolidation of the market, in particular the creation

²⁰ B. Kuziemska, K. Pieniak-Lendzion, P. Klej, *Zastosowanie nowoczesnych rozwiązań logistycznych w rolnictwie*, “Zeszyty Naukowe Uniwersytetu Przyrodniczo-Humanistycznego w Siedlcach”, Series: Administracja i Zarządzanie, 2016, No. 36(109), pp. 173–181.

²¹ Interview with the Minister of Agriculture and Rural Development Dr Marek Sawicki at <http://www.money.pl/gospodarka/wiadomosci/artukul/kwoty-mleczne-odchodzi-do-lamusa-dzis,96,0,1749088.html> (visited January 17, 2017); M. Sznajder, *Skutki likwidacji kwot mlecznych dla mleczarstwa polskiego*, Opinie i ekspertyzy. Kancelaria Senatu, Warsaw 2010; B. Czyżewski, M. Śmigala, *Instytucjonalne przesłanki rozwoju gospodarstw mleczarskich w Polsce*, “Journal of Agribusiness and Rural Development” 2012, No. 3(25), pp. 81–99; P. Szajner, *Wpływ likwidacji kwot mlecznych i zmian regulacji rynku mleka na perspektywy rozwoju polskiego mleczarstwa*, Instytut Ekonomiki Rolnictwa i Gospodarki Żywnościowej – Państwowy Instytut Badawczy, Warsaw 2013, p. 12; P. Szajner, *Ocena wpływu likwidacji kwot mlecznych na konkurencyjność polskiego mleczarstwa w kontekście teorii ekonomii*, “Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego w Warszawie. Problemy Rolnictwa Światowego” 2012, No. 12(27), pp. 104–112; A. Baer-Nawrocka, E. Kiryluk-Dryjska, *Wpływ likwidacji kwot mlecznych na sytuację produkcyjną i ekonomiczną producentów mleka w Unii Europejskiej (wyniki symulacji modelowych)*, “Więś i Rolnictwo” 2010, No. 3; M. Karolewska, *Polskie duże gospodarstwa specjalizujące się w produkcji mleka na tle gospodarstw z wybranych krajów europejskich*, “Roczniki Naukowe Rolnictwa” 2006, Series G, No. 93(1); D. Komorowska, *Koncentracja produkcji mleka w Polsce*, “Zeszyty Naukowe Ekonomiki Organizacji Gospodarki Żywnościowej” 2006, No. 61.

²² See <http://www.consilium.europa.eu/pl/policies/cap-reform/common-market-organisation/> (visited January 17, 2017).

of larger processing plants that will be able to receive from farmers produced milk. The elimination of milk quotas could mean a drop in profitability of small producers.

With regard to control measures of supply, the sugar quota system will expire on September 30, 2017. The framework provisions governing contracts between sugar factories and manufacturers will remain in force after that date. In addition, it will still be possible to receive subsidies for private storage of white sugar.

The abolition of limiting the production of sugar and milk is a serious challenge for manufacturers due to the fairly strict respect of existing constraints, which resulted in an appropriate level of prices on the market. It provided the possible profitability of the business. The current loosening of the system of production of quantities of milk and sugar can entail unpredictable and irreversible economic consequences for both producers and consumers.

As part of the reforms introduced in the milk sector a number of less important or unused programmes were abolished (aid for the use of skimmed milk and skimmed milk powder in animal feed and casein). They proved to be ineffective in 2008–2013 in terms of the objectives which they were to pursue.

The purpose of the reform of the agricultural market is also to strengthen farmers' bargaining power in negotiations with the food processing industry and supermarket chains, enabling them in particular more effective joining in forces in manufacturer organisations and interbranch organisations. This should in the long run allow to maintain a stable profit margin.

According to recital 132 of Regulation 1308/2013 interbranch organisations can play an important part in allowing dialogue between actors in the supply chain, and in promoting best practices and market transparency. For example, only the measures set out in art. 157 can be included in tasks of interbranch organizations in the milk market: improving knowledge and the transparency of production and the market; helping to coordinate better the way the products of the milk and milk products sector are placed on the market, in particular by means of research and market studies. Furthermore, promoting consumption of, and providing information on, milk and milk products in both internal and external markets; exploring potential export market; promoting integrated production or other environmentally sound production methods.

Bringing together farmers in larger organisms of manufacturers which are to be the established interbranch organisations is to cause that the level of achieved prices for offered products on a given market can be higher from that which a single agricultural producer could achieve. Only well-organised entities with sufficient force in the market will be able to negotiate a satisfactory price for manufacturers of large customers, such as retail chains or supermarkets. Strengthening the legal position of interbranch organisations and the extension of the scope of their activities will certainly contribute to increasing the profitability of agricultural production for members of such organisations. The regulations in force should

also be a guarantee for consumers that allows easy identification of individual suppliers of agricultural products. The longstanding groups of producers operating in the agricultural market also as wholesale organisations may be a good basis for the creation of interbranch organisations.

With regard to trade with third countries, most of the existing legal solutions were maintained. One of the more observable changes is to maintain export refunds to third countries only for certain products and, where conditions on the internal market meet the conditions required for the application of exceptional measures. However, export of subsidized goods has been limited. This is to protect the EU budget against excessive subsidizing of agricultural products, which for various reasons were subsidized.

The new regulations maintained the competition rules contained in the regulation; they mainly concern the rules contained in art. 101–109 TFEU. These provisions applied directly to the agricultural markets – with exceptions, which are provided for in Regulation 1308/2013. Deviations from the application of competition rules in the agricultural sector are associated with a number of exceptions.

The CAP reform implies, in principle, that competition should do without state aid. In various sectors of the economy, however, there are such factual and economic situations that the state must step in with their decisions to protect the values of a higher order, for example, as mentioned above the health and life of consumers of agricultural products and foodstuffs. The regulation requires that under state aid art. 107–109 TFEU are applied directly, which undoubtedly limits the current historically established specific construction of public aid for agriculture due to the protection of farms and the possibility of excluding the general competition rules on an exceptional basis due to the implementation of the objectives of the CAP²³.

The presented selected legal problems and institutions introduced by the reform of the agricultural market after 2013 allow the preliminary evaluation of their functioning and implementation. They fit into the wider context of the CAP reforms carried out in the system of area payments or in the rural development policy. In European science, the reforms performed are judged as comprehensive and constituting “a rediscovery of agriculture as a production business, and agricultural law as a set of standards teleologically organised”²⁴. The new regulations are even called European codes of agriculture²⁵. Regulation 1308/2013 is considered to be one of them. One should agree with the above assessment. The CAP reform after 2013 for the first time presents the EU agricultural policy

²³ Cf. P. Czechowski, *Proces dostosowania polskiego prawa rolnego i żywnościowego do prawa Unii Europejskiej*, Warsaw 2001, pp. 247–274.

²⁴ F. Albinini, *Europejskie kodeksy rolnictwa i ponowne odkrycie rolnictwa jako działalności produkcyjnej*, (in:) P. Litwiniuk (ed.), *Kwestia agrarna. Zagadnienia prawne i ekonomiczne*, Warsaw 2016, p. 352.

²⁵ *Ibidem*.

as an organised mechanism of legal instruments for the coherent implementation of specific goals. It is also defined as “awareness of the need for a system and chain nature of the agricultural policy”²⁶. In this context, the evaluation of regulations concerning the organisation of the agricultural market should be done with consideration of other essential elements of the CAP reform²⁷. They also incorporate a very important factor of environmental protection in the process of agricultural production²⁸. It is recognized as one of the elements of the concept of agricultural ownership determined by Andrzej Stelmachowski.

Undoubtedly, the desired and necessary changes are steps to facilitate the launch of public aid in respect of subsidizing agricultural production in the case of unexpected market events. This mechanism so far applies to a situation of the occurrence of a threat of outbreaks of disease in animals, less often plants. Public support allows agricultural producers to survive a difficult period associated with the inability to achieve revenue due to the necessity of getting rid of the infected herd. This institution will find more and more frequent application due to the emergence of new outbreaks and new emerging diseases. Significant legal solutions were tested in this scope in selected EU countries on the occasion of the fight against the “mad” cows disease. This is already used for instance in the fight against the African swine fever. In this respect, the new regulations not only protect agricultural producers against excessive loss of income but also protect the life and health of consumers against the possibility of acquiring infected products.

These regulations should be welcomed, as they are a necessary extension of the mechanisms of state intervention with new legal mechanisms. Only the state can meet such challenges as the active introduction of mechanisms to combat animal diseases, for example by means of administrative closures of outbreak areas in which production is carried on. Public administration bodies also received mechanisms for the formation of sanitation mechanisms and the elimination of potentially affected herds. The mechanisms of free market regulation would not be sufficient in this regard. The fight against the “mad” cows disease proved to be effective thanks to mechanisms of state intervention.

The elimination of the production quotas for milk and sugar should be assessed with some degree of uncertainty. The mechanism developed in 1984 was to reduce excess products in the milk market. In 2008, and then in 2013, when it was decided to eliminate quotas, an opposite economic phenomenon was observed. Globally, the demand for milk and milk products is expected to increase by 2%. There was a need for response to the growing demand for milk

²⁶ *Ibidem*, p. 344.

²⁷ M. Nucera, G. Ferrari, A. Finizia, S. Merciai, A. Sorrentino, *The role of Producer Organisations in the vegetable value chain: an application to the red chicory from Veneto*, “Rivista di Economia Agraria” 2016, No. 71(1), pp. 100–114.

²⁸ S. Prutis, *Ochrona środowiska za pomocą instrumentów prawno-finansowych Wspólnej Polityki Rolnej*, “Studia Iuridica Agraria” 2015, Vol. XIII, pp. 39–64.

products. Quotas caused not only a limit in this production, but resulted in severe penalties. Only for 2014, Polish farmers (over 70 thousand farmers) who crossed the national quota by 6.5% should pay about PLN 800 million in penalties.

Thorough scientific evaluation will be able to be performed only in a few years, when the effects of the elimination of milk quotas will be able to be evaluated using economic analysis. Today, however, two economic phenomena can be observed in this regard. On the one hand, the increase in milk production. Only in Poland it is recorded at 14%. It responds to the internal demand and increasing exports in this field. On the other hand, an increase in milk supply in the market affect price reduction. In 2015, a hectolitre of milk in Poland cost PLN 121 which accounted for 20% less than in the corresponding previous period in 2016: already PLN 105²⁹. The abolition of milk quotas in the short term may lead to market volatility. In the longer term it will lead to increased competitiveness of the European Union in this sector in global markets by providing export opportunities of both surplus milk products as well as products especially produced for this purpose.

Currently, the abolition of milk quotas in the market for individual farmers should be assessed through the reduction in the profitability of production and a significant drop in milk prices. Without special assistance schemes, it seems that a large part of small farmers will have to liquidate their herds.

The elimination of quotas itself by assumption is to contribute to the consolidation of production and to achieving higher revenue³⁰. The creation of free-market principles in the market of milk and sugar is a challenge for modern agriculture. It is also a challenge for the management model of agriculture. Currently, it is the market and its right that are to decide on the profitability of producers of milk or sugar³¹, rather than administrative mechanisms for determining the level of subsidies and penalties for production carried out.

A response to these challenges is presented in the article on strengthening the role of interbranch organisations. The orientation of agricultural production towards specialization in large market actors is to facilitate the selling of products for manufacturers, at prices that enable to achieve an adequate income. This solution should be assessed positively in particular in connection with the strengthening of the position of agricultural producers in the Rural Development Programme 2014–2020. Consolidation of production in the system of interbranch agreements may also facilitate price negotiations with major customers, such as retailers³².

²⁹ See <http://www.farmer.pl/produkcja-zwierzeza/bydlo-i-mleko/konca-obnizek-cen-mleka-nie-widac,63899.html> (visited January 17, 2017).

³⁰ A. Niewiadomski, *Wspólna Polityka Rolna po 2013 r. – wybrane problemy prawne*, “*Studia Iuridica Agraria*” 2015, Vol. XIII, pp. 117–132.

³¹ M. Maitah, H. Řezbová, L. Smutka, K. Tomšik, *European Sugar Production and its Control in the World Market*, “*Sugar Tech*” 2016, No. 18(3), pp. 236–241.

³² A. Suchoń, *Grupy i organizacje producentów rolnych wobec wyzwań Wspólnej Polityki Rolnej 2014–2020*, “*Studia Iuridica Agraria*” 2015, Vol. XIII, pp. 133–150.

Interbranch agreements can also to a greater extent set the specialization of production, which will increase the ability to export manufactured products. New market mechanisms prefer the possibility of increasing the presence of agricultural products from the European Union in global markets³³. This mechanism will not only allow individual producers united in the interbranch agreements to maintain themselves on the market, but in the long run it will increase the competitiveness of agricultural products from the European Union³⁴.

The new regulations of the agricultural market are also to lead to ensuring the implementation of one of the fundamental objectives of the CAP which is to ensure security of supply, thereby ensuring food security. However, it should be stressed that today there is a departure from the determination of food safety, for food security³⁵. It connects to the protection of the environment and sustainable food production, or “global food security”. These regulations, included not only in this Regulation will increase the competitiveness of European agriculture and its presence in global markets. In this context, the transatlantic agreements cited at the beginning of the article should, if possible, take into account the new juridical approach to food security in European law.

Activities related to market activity are also subject to major growth³⁶. These European “codifications” introduced in 2013 in agriculture allow to link the system of agricultural markets and other actions of active farmers. In some Member States, such as Italy, adequate legal mechanisms have already been put in place enabling the functioning of the domestic market in a changed legal reality³⁷. The Polish legislator has not taken any major actions in this respect. It should de lege ferenda be recommended to review the European regulations with regard to national regulations. National regulations relating to the organisation of agricultural markets do not exist in practice. There are also no effective mechanisms for

³³ J. Strojny, *Wpływ eksportu rolno-żywnościowego na produkcję krajów UE*, “Journal of Agribusiness and Rural Development” 2016, No. 2(40), pp. 433–442.

³⁴ J. P. von Germeten, M. Hartmann, *Analysis of Rural and Urban Supply Chains in the European School Fruit Scheme Using Qualitative Interviews and Network Analysis of Content*, “Journal of Hunger & Environmental Nutrition” 2016, Vol. 11, issue 4, pp. 1–25.

³⁵ F. Albisini, *Europejskie kodeksy rolnictwa...*, (in:) P. Litwiniuk (ed.), *Kwestia agrarna...*, p. 353; cf. also P. Wojciechowski, *Cele prawa żywnościowego*, “Studia Iuridica Agraria” 2014, Vol. XII, pp. 45–64; M. Korzycka-Iwanow, P. Wojciechowski, *Administrative Sanctions in the Management of Food Safety*, “European Food and Feed Law Review” 2014, No. 4, pp. 216–222; P. Wojciechowski, *Model odpowiedzialności administracyjnej w prawie żywnościowym*, Warsaw 2016; A. Suchoń, *Krótki łańcuch dostaw żywności – wybrane problemy prawne*, “Logistyka” 2015, No. 6, pp. 1531–1537; M. Korzycka-Iwanow, P. Wojciechowski, *Żywność ekologiczna w prawie USA i Unii Europejskiej*, “Studia Iuridica Agraria” 2015, No. 13, pp. 19–38; S. Kowalczyk, *Bezpieczeństwo i jakość żywności*, Warsaw 2016.

³⁶ A. Kapała, A. Suchoń, *Z prawnej problematyki tzw. aktywności powiązanych z działalnością wytwórczą w rolnictwie w Polsce i we Włoszech*, (in:) P. Litwiniuk (ed.), *Kwestia agrarna. Zagadnienia prawne i ekonomiczne*, Warsaw 2016, p. 317 et seq.

³⁷ *Ibidem*, p. 334.

national aid for producers operating in this market. This is all the more important that the current European regulations allow for “gradual granting to Member States broad areas of freedom in a particular division of activities”³⁸. It depends only on the Polish legislators whether these new mechanisms of freedom will be used and entered in the process of re-nationalization of the CAP,³⁹ as well as in “practical recovery of subsidiarity by Member States”⁴⁰.

The discussed elements of the reform of the agricultural market undergo further evolution and change. Economic progress and an increase in threats to animal and plant health can force the search for further solutions for effective aid to agricultural producers. A challenge is also the maintenance of the principles described above in the context of the transatlantic trade agreements. The collision of two or three different legal systems and various market systems can cause unexpected changes whose scope and effects are still difficult to predict and de lege ferenda directed at the national legislature.

NEW ORGANIZATION OF THE AGRICULTURAL MARKET IN THE EUROPEAN UNION AFTER THE REFORM OF THE COMMON AGRICULTURAL POLICY AFTER 2013

Summary

The article presents the basic elements of the Common Agricultural Policy reform after 2013 in relation to the organisation of the single agricultural market. The problems arising from the current regulations are discussed. Reference is made to some legal mechanisms in the context of their use in Poland. In particular, it presents views on the abolition of the quota system in agricultural production or the introduction of instruments of exceptional support to producers in an extraordinary situation on the agricultural market.

³⁸ F. Albisini, *Europejskie kodeksy rolnictwa...*, (in:) P. Litwiniuk (ed.), *Kwestia agrarna...*, p. 346.

³⁹ *Ibidem*, p. 347.

⁴⁰ *Ibidem*, p. 349.

BIBLIOGRAPHY

- Albisini F., *Europejskie kodeksy rolnictwa i ponowne odkrycie rolnictwa jako działalności produkcyjnej*, (in:) P. Litwiniuk (ed.), *Kwestia agrarna. Zagadnienia prawne i ekonomiczne*, Warsaw 2016
- Baer-Nawrocka A., Kiryluk-Dryjska E., *Wpływ likwidacji kwot mlecznych na sytuację produkcyjną i ekonomiczną producentów mleka w Unii Europejskiej (wyniki symulacji modelowych)*, "Więś i Rolnictwo" 2010, No. 3
- Bieluk J., Łobos-Kotowska D., *Płatności bezpośrednio*, (in:) P. Czechowski (ed.), *Prawo rolne*, Warsaw 2015
- Czechowski P., *Dostosowanie polskiego prawa rolnego i żywnościowego do prawa wspólnotowego po akcesji do Unii Europejskiej*, Warsaw 2005
- Czechowski P., Korzycka-Iwanow M., Prutis S., Stelmachowski A., *Polskie prawo rolne na tle ustawodawstwa Unii Europejskiej*, Warsaw 2002
- Czechowski P., Niewiadomski A., *Europejskie rynki rolne*, (in:) A. Stelmachowski (ed.), *Prawo rolne*, Warsaw 2009
- Czechowski P., Niewiadomski A., *Europejskie rynki rolne*, (in:) P. Czechowski (ed.), *Prawo rolne*, Warsaw 2015
- Czechowski P., *Proces dostosowania polskiego prawa rolnego i żywnościowego do prawa Unii Europejskiej*, Warsaw 2001
- Czechowski P., *Proces dostosowania polskiego prawa rolnego i żywnościowego do prawa Unii Europejskiej*, Warsaw 2001
- Czyżewski A., Henisz A., *Aktualne tendencje na światowych i uniijnych rynkach rolnych. Wnioski dla Polski*, "Ruch Prawniczy Ekonomiczny i Socjologiczny" 2000, No. 1
- Czyżewski B., Śmigala M., *Instytucjonalne przesłanki rozwoju gospodarstw mleczarskich w Polsce*, "Journal of Agribusiness and Rural Development" 2012, No. 3(25)
- Interview with the Minister of Agriculture and Rural Development Dr Marek Sawicki at <http://www.money.pl/gospodarka/wiadomosci/arttykul/kwoty-mleczne-odchodza-do-lamusa-dzis,96,0,1749088.html> (visited 11 January, 2017)
- Jeżyńska B., *Znaczenie i funkcje zasady cross-compliance w systemie rolniczych dopłat bezpośrednich*, "Studia Iuridica Lubliniensia" 2010, No. 13
- Jurcewicz A. (ed.), *Prawo i polityka rolna Unii Europejskiej*, Warsaw 2010
- Jurcewicz A., Kozłowska B., Tomkiewicz E., *Polityka rolna Wspólnoty Europejskiej w świetle ustawodawstwa i orzecznictwa*, Warsaw 1995
- Jurcewicz A., Kozłowska B., Tomkiewicz E., *Wspólna polityka rolna. Zagadnienia prawne*, Warsaw 2004
- Jurcewicz A., Kozłowska B., Tomkiewicz E., *Wspólna Polityka Rolna. Zagadnienia prawne*, Warsaw 2006
- Kapała A., Suchoń A., *Z prawnej problematyki tzw. aktywności powiązanych z działalnością wytwórczą w rolnictwie w Polsce i we Włoszech*, (in:) P. Litwiniuk (ed.), *Kwestia agrarna. Zagadnienia prawne i ekonomiczne*, Warsaw 2016
- Karolewska M., *Polskie duże gospodarstwa specjalizujące się w produkcji mleka na tle gospodarstw z wybranych krajów europejskich*, "Roczniki Naukowe Rolnictwa" 2006, Series G, No. 93(1)

- Komorowska D., *Koncentracja produkcji mleka w Polsce*, "Zeszyty Naukowe Ekonomiki Organizacji Gospodarki Żywnościowej" 2006, No. 61
- Korzycka-Iwanow M., Wojciechowski P., *Administrative Sanctions in the Management of Food Safety*, "European Food and Feed Law Review" 2014, No. 4
- Korzycka-Iwanow M., Wojciechowski P., *Żywność ekologiczna w prawie USA i Unii Europejskiej*, "Studia Iuridica Agraria" 2015, No. 13
- Kowalczyk S., *Bezpieczeństwo i jakość żywności*, Warsaw 2016
- Kuziemska B., Pieniak-Lendzion K., Klej P., *Zastosowanie nowoczesnych rozwiązań logistycznych w rolnictwie*, "Zeszyty Naukowe Uniwersytetu Przyrodniczo-Humanistycznego w Siedlcach", Series: Administracja i Zarządzanie, 2016, No. 36(109)
- Lipińska I., *Instrumenty ograniczania ryzyka produkcyjnego na rynku rolnym w aspekcie globalizacji – wybrane zagadnienia prawne i ekonomiczne*, "Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego Problemy Rolnictwa Światowego" 2016, No. 31
- Lipińska I., *Nowe przepisy w zakresie organizacji wspólnotowego rynku rolnego*, "Przeegląd Prawa Rolnego" 2008, No. 1(3)
- Maitah M., Řezbová H., Smutka L., Tomšík K., *European Sugar Production and its Control in the World Market*, "Sugar Tech" 2016, No. 18(3)
- Majczyna B., *Zasada niedyskryminacji we wspólnej polityce rolnej w orzecznictwie Trybunału Sprawiedliwości Wspólnot Europejskich*, "Europejski Przegląd Sądowy" 2006, No. 7
- Marciniuk K., *Rolnictwo wobec integracji europejskiej i globalizacji. Problematyka prawna*, Warsaw 2013
- Niewiadomski A., *Wspólna Polityka Rolna po 2013 r. – wybrane problemy prawne*, "Studia Iuridica Agraria" 2015, Vol. XIII
- Nucera M., Ferrari G., Finizia A., Merciai S., Sorrentino A., *The role of Producer Organisations in the vegetable value chain: an application to the red chicory from Veneto*, "Rivista di Economia Agraria" 2016, No. 71(1)
- Prutis S., *Ochrona środowiska za pomocą instrumentów prawno-finansowych Wspólnej Polityki Rolnej*, "Studia Iuridica Agraria" 2015, Vol. XIII
- Pytlak P., *Znaczenie i charakter umów w systemie mechanizmów regulujących branżowe rynki rolne*, "Rejent" 2006, No. 3
- Snyder F. G., *Common Agricultural Policy of European Economic Community*, London 1990
- Strojny J., *Wpływ eksportu rolno-żywnościowego na produkcję krajów UE*, "Journal of Agribusiness and Rural Development" 2016, No. 2(40)
- Suchoń A., *Grupy i organizacje producentów rolnych wobec wyzwań Wspólnej Polityki Rolnej 2014–2020*, "Studia Iuridica Agraria" 2015, Vol. XIII
- Suchoń A., *Krótki łańcuch dostaw żywności – wybrane problemy prawne*, "Logistyka" 2015, No. 6
- Szajner P., *Ocena wpływu likwidacji kwot mlecznych na konkurencyjność polskiego mleczarstwa w kontekście teorii ekonomii*, "Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego w Warszawie. Problemy Rolnictwa Światowego" 2012, No. 12(27)

- Szajner P., *Wpływ likwidacji kwot mlecznych i zmian regulacji rynku mleka na perspektywę rozwoju polskiego mleczarstwa*, Instytut Ekonomiki Rolnictwa i Gospodarki Żywnościowej – Państwowy Instytut Badawczy, Warsaw 2013
- Sznajder M., *Skutki likwidacji kwot mlecznych dla mleczarstwa polskiego*, Opinie i ekspertyzy. Kancelaria Senatu, Warsaw 2010
- Tomkiewicz E., Kozłowska B., Jurcewicz A., *Zasady ogólne prawa europejskiego we wspólnej polityce rolnej*, "Europejski Przegląd Sądowy" 2006, No. 4, No. 5
- Tomkiewicz E., *Limitowanie produkcji w ustawodawstwie rolnym Wspólnoty Europejskiej*, Warsaw 2000
- von Germeten J. P., Hartmann M., *Analysis of Rural and Urban Supply Chains in the European School Fruit Scheme Using Qualitative Interviews and Network Analysis of Content*, "Journal of Hunger & Environmental Nutrition" 2016, Vol. 11, issue 4
- Waye V., *Regulatory Coherence and Pathways towards Global Wine Regulation*, "Journal of World Trade" 2016, No. 50(3)
- Wodziczko P., *Wymiana towarowa na rynku mleka w ramach Wspólnej Polityki Rolnej (WPR)*, "Prawo i Podatki Unii Europejskiej" 2007, No. 1
- Wojciechowski P., *Cele prawa żywnościowego*, "Studia Iuridica Agraria" 2014, Vol. XII
- Wojciechowski P., *Model odpowiedzialności administracyjnej w prawie żywnościowym*, Warsaw 2016

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CAP reform, agricultural market, quota system, exceptional support on the agricultural market

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reforma WPR, rynek rolny, system kwotowania, pomoc nadzwyczajna na rynku rolnym