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THE DIRECT PAYMENTS SYSTEM IN EUROPEAN AND POLISH AGRICULTURE WITH PARTICULAR EMPHASIS ON THE GREENING POLICY

The direct payments system in European agricultural law in place since 1992 introduced by Mac Sharry's reform has undergone significant evolution¹. However, the goal of introducing regulations and rules for granting farmers direct payments for land was always compensating farmers for the decrease in their income caused by the substantial reduction of guaranteed prices². With this support instrument, farmers' income were to be equaled as much as possible with income in other sectors of the economy taking into account the amount of work put in and other economic aspects.

In practice, applying the right of these payments were initially called "compensation payments"³. This was related primarily to the diversity of agricultural structures in the Member States of the European Union, and hence, the different

¹ Research was funded by the National Science Centre allocated under the internship after obtaining the doctoral degree based on decision number DEC-2012/04/S/HS5/00338. R. Budzinowski, *Przyszłość prawa rolnego*, „Przegląd Prawa Rolnego” 2009, No. 1, p. 13 and next; P. Czechowski, M. Korzycka-Iwanow, S. Prutis, A. Stelmachowski, *Polskie prawo rolne na tle ustawodawstwa Unii Europejskiej*, Warszawa 1997, p. 20 and next; A. Jurcewicz, B. Kozłowska, E. Tomkiewicz, *Polityka rolna Wspólnoty Europejskiej w świetle ustawodawstwa i orzecznictwa*, Warszawa 1995; P. Czechowski, W. Ziętara, *Konkurencja a regulacja w rolnictwie*, Warszawa 1995; A. Lichorowicz, *Problematyka struktur agrarnych w ustawodawstwie Wspólnoty Europejskiej*, Kraków 1996; A. Lichorowicz, *Wspólna polityka rolna*, [in:] *Prawo Unii Europejskiej*, ed. J. Barcz, Vol. II, Warszawa 2003, p. 337–360 and the literature cited there.

² P. Czechowski, *Proces dostosowywania polskiego prawa rolnego i żywnościowego do prawa Unii Europejskiej*, Warszawa 2001; A. Jurcewicz, B. Kozłowska, E. Tomkiewicz, *Wspólna polityka rolna. Zagadnienia prawne*, Warszawa 2004; R. Budzinowski, *Międzynarodowe czynniki rozwoju prawa rolnego*, „Przegląd Prawa Rolnego” 2007, No. 2, p. 27 and next; A. Jurcewicz, *Traktatowe podstawy unijnego prawa rolnego w świetle orzecznictwa. Zagadnienia wybrane*, Warszawa 2012; D. Łobos-Kotowska, *Umowa przyznania pomocy z Europejskiego Funduszu Rolnego na Rzecz Rozwoju Obszarów Wiejskich*, Warszawa 2013.

³ J. Bieluk, D. Łobos-Kotowska, *Płatności bezpośrednie*, [in:] *Prawo rolne*, ed. P. Czechowski, Warszawa 2011.

levels of income derived from agricultural activities⁴. The aid granted was to even out the level of agricultural incomes in the European Union not only between other branches of the economy but above all between the agricultural sectors of the Member States.

Along with the evolution of the system of guaranteed prices and increasing the liberal approach to agricultural activity began the process of change of the direct payments system. As one of the instruments of the Common Agricultural Policy, it is subject to reforms, together with the entire European agricultural policy. In this regard, the question remains open about the future of this mechanism, as a financial measure which does not directly influence the investment processes in agriculture, and is quasi-social. The abandonment of compensation mechanisms for the development of investment instruments is becoming a major challenge for the future in terms of developing agricultural income. Such an approach can be seen through the choice of mechanisms that finance the development of rural areas where investment activities have the primary task of increasing agricultural incomes.

The new system of direct payments for 2014–2020 owes its current position in the political system and legal instruments that contribute to its functioning to successive reforms of the Common Agricultural Policy⁵, indicated by budget periods⁶. The new assumptions that are to match the idea of coexistence of environmental protection⁷ and agricultural activity⁸, cause Polish farmers to be confronted by new challenges in terms of adjusting their holdings to the revised rules of obtaining support from the direct payments system⁹. In this respect, these requirements will also be essential for obtaining support under the Rural Areas Development Programme 2014–2020¹⁰. The question arises only if the new requirements and

⁴ A. Lichorowicz, *Problematyka struktur agrarnych...*, p. 10 and next; P. Czechowski, K. Marciniuk, E. Przybylska, *Polityka wobec rolnictwa i wsi w świetle procesów dostosowujących rolnictwo polskie do warunków Unii Europejskiej – sfera regulacyjna*, Biuro Studiów i Ekspertyz Sejmu, Warszawa 1995, No. 1.

⁵ J. Stoksik, *Wybrane zagadnienia ochrony interesów finansowych Unii Europejskiej w dziedzinie Wspólnej Polityki Rolnej*, „Studia Iuridica Agraria” 2012, Vol. X, p. 424–442.

⁶ W. Czubak, W. Poczta, A. Sadowski, *Wpływ proponowanej reformy systemu dopłat bezpośrednich po 2013 roku na sytuację polskiego rolnictwa*, „Wieś i Rolnictwo” 2011, No. 4; B. Jeżyńska, R. Pastuszko, *Pakiet legislacyjny WPR 2014–2020 w świetle podstaw prawa UE i prawa międzynarodowego. Kompleksowa analiza prawna*, Biuro Analiz i Dokumentów, OE – 186, 2012.

⁷ B. Jankowski, *Oddziaływanie Wspólnej Polityki Rolnej na ochronę środowiska*, „Studia Iuridica Agraria” 2012, Vol. X, p. 515–525.

⁸ W. Czubak, A. Sadowski, *Dostępność informacji oraz czynniki utrudniające ubieganie się o dopłaty bezpośrednie*, „Wieś i Rolnictwo” 2010, No. 3.

⁹ E. Tomkiewicz, M. Bocheński, *Polityka rozwoju obszarów wiejskich w perspektywie lat 2014–2020 w kontekście nowych wyzwań*, „Studia Iuridica Agraria” 2012, Vol. X, p. 239–250.

¹⁰ D. Łobos-Kotowska, *Umowa przyznania pomocy z Europejskiego Funduszu Rolnego na rzecz Rozwoju Obszarów Wiejskich a inne podobne umowy*, „Studia Iuridica Agraria” 2012, No.

the payments offered for meeting them will be financially attractive enough to encourage farmers to respect the principles set out in the greening policy. One of the tasks of the analysis presented below is an attempt to find an answer to this question.

The direct payments system, introduced from 2014 to European regulations by Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing the rules on direct payments to farmers on the basis of the support schemes under the common agricultural policy and repealing Council Regulation (EC) No. 637/2008 and Council Regulation (EC) No. 73/2009¹¹, and in Poland the Act of 5 February 2015 on payments under the direct support schemes¹², combines past experience deriving from the use of such support in the European Union with new challenges in the field of protection of the environment and naturally valuable areas. For Polish farmers it is yet another stage of adjusting domestic agriculture to the European regulations.

These requirements at the outset should be assessed as quite restrictive, which can significantly narrow the circle of those interested in obtaining this type of support at the expense of quite impractical adjustment processes. Many doubts of interpretation, and consequently practical application, are aroused by the new greening policy, which will be the basis for obtaining new direct payments. Farmers face the challenge and the need to answer the question whether it will still be financially viable for them to use this kind of support, in return for the introduction of some new solutions which by assumption are to lead to increased environmental protection in the process of agricultural activity. The procedure associated with direct payments gains particular importance on Natura 2000 sites. In relation to them, the European regulation cited above in a prominent way situates separate rules relating to the greening policy.

Finding the advantages and disadvantages of new legal solutions is one of the objectives of this paper. A historical and legal analysis of direct payments will be conducted below, but also conclusions *lege ferenda* will be presented on the new system of direct payments, particularly in the scope of regulations relating to Natura 2000 sites¹³. These areas have been included in a particular way in the implementation of new requirements in the context of obtaining direct payments.

X, p. 265–280; A. Niewiadomska, A. Niewiadomski, *Structural Funds of Polish Agriculture*, „World Academy of Science, Engineering and Technology” 2012, issue 71, p. 1804–1810; A. Niewiadomski, P. Wojciechowski, *Program Rozwoju Obszarów Wiejskich*, [in:] *Prawo rolne*, ed. P. Czechowski, Warszawa 2011, p. 419 and next.

¹¹ OJ EU L of 2013 No. 347, p. 608 as amended.

¹² OJ of 2015 item 1551.

¹³ M. A. Król, *Obszary o wysokich wartościach przyrodniczych i ich znaczenie w ochronie różnorodności biologicznej na obszarach wiejskich*, [in:] *Administracja publiczna a ochrona przyrody. Zagadnienia ekonomiczne, społeczne oraz prawne*, M. Górski, D. Niedziółka, R. Stec, D. Strus (ed.), Warszawa 2012, p. 47–66.

Farmers working on them can already be recognized as meeting the objectives set out in the greening policy.

The direct payments system has always been a part of the whole Common Agricultural Policy, and its reforms would require changes in the system of obtaining this basic support for agriculture in Europe¹⁴. Today, the direct payments system is still an important element of agricultural subsidies in the EU countries¹⁵. In this regard, the developmental milestones and institutional changes entailed the need to look for new solutions in the direct payments system¹⁶.

In indicating the main stages of evolution of the direct payments system, it should be emphasized that Agenda 2000 made a further reduction in guaranteed prices in exchange for an increase in direct payments¹⁷. Until 2000, the reforms carried out contributed to improving market balance and stabilizing farm incomes. Further reforms of 2003 from Luxembourg introduced a system of payments separated from production amounts. This reform introduced one of the most important principles of the direct payments system – the principle of cross-compliance¹⁸.

The introduction of this principle should be considered a milestone in the development of the Common Agricultural Policy and the principles of agricultural subsidies in Europe¹⁹. It was used not only in terms of the discussed direct payments system but also in the scope of creating and allocating structural funds for European agriculture²⁰, and currently in the rural areas development policy. The

¹⁴ E. Tomkiewicz, *Limitowanie produkcji w ustawodawstwie rolnym Wspólnoty Europejskiej*, Warszawa 2000; A. Jurcewicz, *Prawne formy i skutki wyłączania gruntów z produkcji rolnej*, „Prawo Rolne” 1991, No 2.

¹⁵ *Gospodarstwa rolne na tle gospodarstw Unii Europejskiej – wpływ WPR*, ed. W. Poczta, Warszawa 2013, p. 181–182.

¹⁶ P. Czechowski, A. Niewiadomski, *Tendencje rozwoju polskiego prawa rolnego w związku z nabyciem członkostwa Polski w Unii Europejskiej*, „Studia Iuridica Agraria” 2009, Vol. VII, p. 30–45; A. Jurcewicz, *Wspólna Polityka Rolna Unii Europejskiej*, [in:] *Prawo rolne*, ed. P. Czechowski, Warszawa 2013, p. 79.

¹⁷ Berlin European Council, Agenda 2000, Conclusion of the Presidency, „Newsletter” 1999, No. 10; OJ UE 1999 L 160/80.

¹⁸ A. Germano, *Reforma Wspólnej Polityki Rolnej z 2003 r. i reżim płatności jednolitej*, „Przegląd Prawa Rolnego” 2007, No. 1; T. Kurowska, *Zadania i funkcje instrumentów prawnych wspierania rozwoju obszarów wiejskich*, „Studia Iuridica Agraria” 2005, Vol. IV.

¹⁹ B. Jeżyńska, *Znaczenie i funkcje zasady cross-compliance w systemie rolniczych dopłat bezpośrednich*, „Studia Iuridica Lubliniensia” 2010, Vol. XIII, p. 35–50.

²⁰ S. Prutis, *Dobór instrumentów prawnych służących wsparciu rozwoju obszarów wiejskich*, „Studia Iuridica Agraria” 2009, Vol. VII, p. 192–203; T. Kurowska, *Założenia konstrukcyjne umowy przyznania pomocy z Europejskiego Funduszu Rolnego na rzecz Rozwoju Obszarów Wiejskich*, „Studia Iuridica Agraria” 2009, Vol. VII, p. 163–178; A. Z. Nowak, A. Niewiadomska, *Wpływ funduszy strukturalnych na wzrost konkurencyjności polskiego rolnictwa – wybrane aspekty ekonomiczne*, „Studia Iuridica Agraria” 2012, Vol. X, p. 307–325; P. Czechowski, A. Niewiadomski, *Wpływ funduszy strukturalnych na wzrost konkurencyjności polskiego rolnictwa – aspekty prawne*, „Studia Iuridica Agraria” 2012, Vol. X, p. 326–334; B. Wieliczko, *Mechanizmy oddziaływania*

cross-compliance principle made payments to farmers in the full amount dependent on the maintenance of land belonging to a holding in good agricultural and environmental condition and observance of the cross-compliance requirements in the field of environment, climate change, good agricultural and environmental condition of land, public health, animal health, plant health and animal welfare. This principle also in a way implemented the idea of sustainable development²¹ of agriculture, subsidizing only those operators in the agricultural sector who will meet the requirements set out above.

The 2003 reform separated the direct payments system from agricultural production. The main objective, which should be noted is challenged today, remains to support agricultural income regardless of carried out agricultural production. In order to obtain support under the direct payments system, in principle, the farmer is not obliged to carry out any agricultural production.

As a result of the CAP health check conducted in 2008, the main areas subject to reform under the new challenges faced by agriculture in Europe were identified. In relation to direct payments it was decided to continue the approach initiated by the reform of 2003 on separating payments from current production in order to promote a more market-oriented and sustainable agriculture. Thus another reform of the CAP was begun. New challenges, objectives and directions of action for the Common Agricultural Policy were set out in the report of the European Parliament Commission, the Council, the European Economic and Social Committee, and the Committee of Regions, entitled: CAP until 2020: meet the challenges of the future related to food, natural resources and territorial aspects²². In this act it is emphasized that “the introduction of direct payments was the impetus for permanent market-oriented reforms increasing the competitiveness of the agricultural sector by encouraging farmers to adapt to the prevailing market conditions. Direct payments unrelated to the amount of production is the basic income support and they provide support for basic public goods needed by European society”²³. In the scope of the future of direct payments, the report

funduszy strukturalnych na konkurencyjność polskiego rolnictwa, „Studia Iuridica Agraria” 2012, Vol. X, p. 443–457; J. Mikołajczyk, *Współczesne funkcje obszarów wiejskich na tle koncepcji multifunkcyjnego rolnictwa*, „Studia Iuridica Agraria” 2012, Vol. X, p. 367–384.

²¹ Z. Bukowski, *Zrównoważony rozwój w systemie prawa*, Toruń 2009; *Uwarunkowania ochrony środowiska: aspekty krajowe, unijne, międzynarodowe*, ed. E. Czech, Warszawa 2006; E. Czech, *Szkoda w obszarze środowiska i wina jako determinanty odpowiedzialności administracyjnej za szkodę*; Białystok 2008; A. Niewiadomski, *Europejska Sieć Ekologiczna Natura 2000 a zrównoważony rozwój obszarów wiejskich*, „Studia Iuridica Agraria” 2013, Vol. XI, p. 293–304; B. Jeżyńska, *Proekologiczne instrumenty wsparcia zrównoważonego rozwoju obszarów wiejskich*, „Studia Iuridica Agraria” 2012, Vol. X, p. 251–264.

²² http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com%282010%290672/_com_com%282010%290672_pl.pdf.

²³ *Ibidem*, s. 4.

indicates a few basic principles that underlie the direct payments system in force since 2014.

The report indicated that “supporting the basic income by granting a basic direct payment not associated with the production amount, to establish a uniform level of obligatory support to all farmers in a given Member State (or region) based on the permissions that can be transferred and are activated by matching them to an eligible agricultural area and meeting the requirements of cross-compliance. The introduction of an upper limit of direct payments received by large individual farms (»limiting«) so as to improve the distribution of payments between individual farmers. Any disproportionate effects of this solution in the case of farms employing a large number of employees can be mitigated by taking into account the size of employment in determining the limit of support”²⁴. This system favors active farmers who carry out farming activities in the field of agricultural production.

The main objective of the reform of the direct payments system was making their acquisition dependent on the observance of the principles of environmental protection, currently the greening policy. In this respect, the Report stressed that “improving the environmental performance of the CAP by supporting environmental protection measures applied across the whole EU territory by a mandatory »green« component of direct payments. Priority should be given to activities involving both the objectives of the climate policy and the environmental policy. These measures could take the form of simple, generalized, non-contractual and annual environmental actions going beyond the requirements of cross-compliance and related to agriculture (e.g. permanent pastures, green cover, crop rotation and ecological set-aside)”²⁵. The Report already recognizes the specificity of Natura 2000 areas and their importance in the new direct payments system, emphasizing that “the possibility of including requirements concerning current NATURA 2000 areas and improving certain elements of the good agricultural and environmental condition should be further considered”²⁶. This means a cumulation of rules to protect the environment in these areas. The introduction of another legal regime, compatible with existing European and national regulations, can lead to legal conflicts in terms of new tasks and responsibilities of farmers operating on Natura 2000 sites.

The demands of the European Commission have also stressed the already cited principle of sustainable development as one of the foundations for the functioning of this reform. It determined that “the promotion of sustainable development of agriculture in areas with specific natural constraints by providing an additional income support to farmers operating in such areas in the form of pay-

²⁴ Komunikat KOM(2010) 672, p. 10.

²⁵ *Ibidem*.

²⁶ *Ibidem*.

ments intended for the given area as a supplement to support paid under the second pillar²⁷.

In addition, it was decided to maintain cross-compliance rules insisting that it should be simplified. This idea is only partially reflected in the generally applicable acts following this report.

However, the most important result of the Report was to consider three possible variants of the future of the direct payments system. The first one assumes that it will introduce more equality in the distribution of direct payments between Member States (leaving the current direct payments system unchanged). The second variant, which has now been partially implemented, indicated that there should be more equality in the distribution of direct payments between Member States and a substantial change in their application. In this variant, direct payments will consist of: the basic premium serving as income support, a compulsory additional aid for specific “ecological” public goods, obtained through simple, general annual and non-contractual agri-environmental actions, determined on the basis of additional costs of carrying out such actions²⁸, an additional compensation payment for areas with specific natural constraints, and a voluntary element of support associated with production for specific sectors and regions. In addition, this variant assumed to create a new scheme for small farms and reduce the basic rate, while also taking into account that large farms provide employment in rural areas.

After all, the third variant proposed remains significant, which indicates the need to withdraw from direct payments in their current form. The Commission proposed to provide in return limited payments for environmental public goods and additional payments for areas with specific natural constraints²⁹.

Based on the concepts presented in the Report, a lively discussion was started, which led to the presentation of proposals for changes in the reform of the direct support system by the European Commission presenting in 2011. The effects of this reform, which came into force in 2015, were included in Regulation 1307/2013 cited in the introduction.

The successive stages of development of the direct payments system outlined above placed this system as an important instrument of the CAP responsible for: supporting and stabilizing farm incomes, maintaining agricultural land in good agricultural and environmental condition, compensating costs related to compliance with Community requirements (in terms of quality and methods of production) associated with the implementation of non-production public goods, ensuring equal conditions of competition under a single agri-food market. The

²⁷ *Ibidem*.

²⁸ This idea can be traced to the beginnings of the formal regulation of the greening policy, which is currently the basis for the functioning of the direct payments system. See Komunikat KOM(2010) 672, p. 17.

²⁹ KOM(2010) 672, p. 17.

fact that the new direct payments system became an important aid instrument in the realization of new challenges related to the protection of natural resources, climate change, water management, biodiversity and renewable energy is important.

The possible visions of development of the direct payments system indicated in the Report are a combination of past experience and new environmental challenges. In the new system (as before) the amount of direct payments received by farmers will depend on the fulfillment of cross-compliance, which consists of: standards for maintaining land belonging to a holding of good agricultural and environmental conditions (GAEC) and Statutory Management Requirements (SMR), set out in Annex II to Regulation (EU) No. 1306/2013³⁰ of the European Parliament and of the Council (EU). This primarily concerns the principles of water protection (including the establishment of buffer strips along water courses, protection of groundwater against pollution: prohibition of direct discharge into groundwater and measures to prevent indirect pollution of groundwater through discharge on the ground and percolation through the soil of dangerous substances), soil (including minimum soil cover, minimum land management reflecting site-specific conditions to limit erosion, maintenance of soil organic matter level through appropriate practices including ban on burning arable stubbles, except for plant health reasons), biodiversity (including compliance with the principle set out in the directives governing the issue of Natura 2000 sites) or landscape (including the retention of landscape features, including where appropriate, hedges, ponds, ditches, trees in line, in group or isolated, field margins and terraces, and including a ban on cutting hedges and trees during the bird breeding and rearing season and, as an option, measures for avoiding invasive plant species). The rules of cross-compliance indicate the need to apply Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority for Food Safety and laying down the procedures on food safety³¹ (OJ L 31 of 1.2.2002, p. 1) on public health, animal health and plant health. Also, the need was indicated to apply the Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of β -agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC³² and Council Directives 2008/71/EC

³⁰ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No. 352/78, (EC) No. 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008 (OJ EU of 2013 No. 347, p. 549 as amended).

³¹ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ EU L of 2002 No. 31, p. 1 as amended).

³² OJ EU L of 1996 No. 125, p. 3 as amended).

of 15 July 2008 on the identification and registration of pigs³³. The above examples are only some of the 200 well-defined requirements and rules that farmers should follow in the implementation of cross-compliance.

As follows from previous practices of applying the cross-compliance principle, it indicates the link of the amount of obtained payments with the fulfillment of certain requirements and standards by farmers. If farmers did not observe the aforementioned obligations, a corresponding reduction in the granted payments would occur. These principles are also a prerequisite for applying for support from the Rural Areas Development Programme 2014–2020. These conditions discouraged some farmers from taking advantage of the direct payments system already in the previous financial perspective. It was more advantageous for them to conduct agricultural production without using these principles than introducing the relevant standards and meeting the requirements in return for compensation support obtained.

The addition of new rules in 2014 in the form of requirements for the implementation of the greening policy may, to some extent, increase the process of leaving of farmers who are unable to meet the existing rules. The first project introducing the so-called greening to the requirements of the Common Agricultural Policy was presented by the European Commission in 2013. Objectives are difficult to determine, and Poland has always argued against them being introduced³⁴.

According to the data of the Ministry of Agriculture and Rural Development, the Reform of the Common Agricultural Policy in force as of 1 January 2015 assumes, among others, sustainable development, and this is to reconcile agricultural production with the environment and climate. The widespread character of direct payments (in Poland 1.4 million people and approx. 14 million ha of agricultural land are covered by them)³⁵ is to guarantee a large environmental effect, if farmers are imposed by additional environmental requirements. In addition, receiving subsidies for land in the full amount will depend on greening. Farmers, on the agricultural holdings operated by them, will have to use practices such as: crop diversification; maintenance of existing permanent grasslands and maintenance of an ecological area on farmlands. The aforementioned Regulation 1307/2013 clearly defines each of these practices and the criteria for access to the direct payments system upon fulfillment. Additionally, Member States may introduce mandatory practices that will be equivalent to the above-mentioned practices. This applies above all to agri-environmental and climate programmes or environmental certification mechanisms.

In the case of farmers operating on Natura 2000 sites, special regulations have been introduced which, in a prominent way, lead to a diversification of the legal

³³ OJ EU L of 2005 No. 213, p. 31)

³⁴ See <http://www.minrol.gov.pl/Wsparcie-rolnictwa-i-rybolowstwa/Platnosci-bezposrednie>.

³⁵ See <http://www.minrol.gov.pl/Wsparcie-rolnictwa-i-rybolowstwa/Platnosci-bezposrednie>.

situation of these farmers. The direct payments system covered by green payment automatically includes ecological organic farms and farmers operating on Natura 2000 sites, and also in areas covered by the Water Framework Directive (WFD), provided that they would implement green practices in line with the objectives of the Birds Directive, the Habitats Directive and mentioned WFD. This means that farmers conducting agricultural activities on Natura 2000 sites are automatically entitled to payment for greening upon fulfilling the conditions provided for cross-compliance principles. To some extent, it is a simplification for potential beneficiaries. On the other hand, it should be noted that these farmers must meet a number of stringent requirements set out in the aforementioned directives and national regulations.

The big challenge for farmers who want to benefit from the direct payments system is to adjust their holdings to the ecological focus areas introduced, including woodlots and allocation of arable land for green strips. Regulation 1307/2013 indicates that the surface of eligible agricultural land on the farm with the exception of permanent grasslands covers more than 15 hectares, then the farmer should allocate 5 percent of land for ecological focus areas (EFA) already as of January 2014. In the case where he considers the said 5 percent to be insufficient and does not give good results, EFAs will be able to be raised in each holding up to 7 percent from 2018 onwards.

In accordance with art. 46 sec. 2 of Regulation 1307/2013 ecological focus area are considered to be as follows: land lying fallow; terraces; landscape features, including such features adjacent to the arable land of the holding; buffer strips, including buffer strips covered by permanent grassland, provided that these are distinct from adjacent eligible agricultural area; hectares of agro-forestry that receive, or have received, support under separate regulations; strips of eligible hectares along forest edges; areas with short rotation coppice with no use of mineral fertilizer and/or plant protection products; afforested areas; areas with catch crops, or green cover established by the planting and germination of seeds, subject to the application of weighting factors; areas with nitrogen-fixing crops.

In accordance with art. 77 sec. 6 of Regulation 1306/2013 in the case of not observing greening practices, administrative penalties shall be imposed on farmers in the form of a reduction in the amount received in the given year from direct payments. For the first two years of implementation of greening, these penalties will not exceed the amount of the payment received for greening and, depending on the degree of non-compliance found, it shall cover part or all of the payment for greening. However, in subsequent years, the penalties will be able to even exceed the greening amount received (in 2017 by up to 20%, from 2018 up to 25%), which means that in the event of non-compliance, the penalty for non-compliance with greening practices will also cause a partial reduction of the single area payment scheme. This type of solution to safeguard the legal and economic interests of the European Union may cause farmers to be afraid to use the new forms of support

taking into account the fairly severe penalties for non-compliance with practices beneficial for the climate.

The above issues related to the new direct payments system make it possible at this early implementation stage of the process of distributing them to express certain assessments in the scope of adopted legal solutions. One of the first concerns associated with the new regulations is the issue of the effectiveness of the support. The threat that can be seen in this area is the question whether it will be profitable for farmers to adapt previously conducted agricultural activities to the new requirements making them eligible to receive support. In observing the level of use of direct payments in the previous programming period, it can be predicted that some farmers will not take advantage of this form of support. It may be more profitable to conduct agricultural activities in the previous form than to convert part of their holdings into ecological focus areas. In this regard, it should be considered *lege ferenda* if such a strict system of criteria for access to the proposed support will achieve the intended compensatory objectives.

This postulate has a much broader dimension than just legislative change as it relates to the future of the CAP. Whether it will be green only on paper may seem very real. In the event that some farmers will not take advantage of this support scheme, a third variant may arise laid down in the Report cited in the paper indicating the possible liquidation of such a construction of the support system. Too many legal requirements in this regard and too many responsibilities imposed on applicants can effectively discourage them from applying for support. The effect of the currently implemented system can for years determine the future of not only Polish but also European agriculture and its place on the global market. Balance between a farmer's income for agricultural activities and the protection of the environment can turn out to be such a divisive area that farmers will be left alone to cope with competitive agricultural economies of countries outside the Community.

It should also be indicate that although the new regulations apply to farmers operating on Natura 2000 sites, their implementation may be problematic due to legal conflicts that exist between the regulations in these areas. In addition, the new system may prove to be beneficial for farmers who own properties on Natura 2000 sites, as well as outside them. It should be defined *lege ferenda* the status of Natura 2000 sites and rights, and especially the obligations of farmers engaged in agricultural activities in these areas, and benefiting from the support under the direct payments system.

The above problems are only an exemplification of the various possible legal interpretations related to the introduction and implementation of the new direct payments system. A full evaluation of the current regulation will be possible at the end of the programming period. The mid-term evaluation, thanks to which it will be possible to introduce relevant legislative amendments to the system presented above, is also important.

THE DIRECT PAYMENTS SYSTEM IN EUROPEAN AND POLISH AGRICULTURE WITH PARTICULAR EMPHASIS ON THE GREENING POLICY

Summary

The article indicates the basic legal problems associated with the system of direct payments for 2014–2020. Particularly, the problems of respecting cross-compliance principles, as well as new issues regarding the greening policy have been signaled. The legal situation of farmers operating on Natura 2000 sites, who would like to benefit from the new direct payments system, is also discussed. In this regard, the basic *lex ferenda* postulates have also been indicated.

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KEYWORDS

direct payments system, Natura 2000, greening policy

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