

## Legal status of farmers involved in short food supply chains, a comparative study

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**Abstract:** The legal status of farmers involved in food marketing is not determined by the EU legislator, however, EU policy encourages farmers' participation in short food supply chains. The article aims to determine whether a farmer selling his products, both processed and unprocessed is subject to a favourable legal regime intended for the agricultural sector, or whether this activity qualifies him as a commercial entrepreneur. The legislation of three EU Member States and the law of the USA were subject to a comparative legal analysis, based on the dogmatic method. The study found that under the EU Member States' law, farmers involved in short food supply chains are granted a privileged agricultural status, which certainly strengthens their market position in competition with food businesses and big retailers and is an incentive to undertake and conduct the activity of agri-food marketing. In turn, under American law, agricultural activity and direct marketing are economic activities that cause farmers to operate within a business as an entrepreneur. The main tool to support the participation of US farmers in short food supply chains is financial programmes offering incentives to direct marketing. It was concluded that the systemic legal solutions, as in the presented legislation of the EU countries, in contrast to aid programmes, provides farmers with favourable conditions in the long term, without additional bureaucracy and the need to fill out documents and applications, thus giving them a sense of confidence and stability in engaging in food direct marketing.

## 1. Introduction

The term “short supply chains” has been defined in EU law in article 2 of Regulation (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)<sup>1</sup> and complemented by article 11 of the European Commission Delegated Regulation (EU) No 807/2014 supplementing the Rural Development Regulation<sup>2</sup>. Short Food Supply Chains (SFSC) cover various forms in which direct sale plays an important role<sup>3</sup>.

The legal status of a farmer involved in direct sales of agri-food products is not determined by the EU legislator. Member States are free to adopt their provisions in this regard. However, EU policy encourages farmers’ participation in short food supply chains. The Common Agricultural Policy 2013–2020 provided support for “developing direct sales and local markets” and improving the functioning of the food supply chain<sup>4</sup>. The post-2020 CAP legislative proposal, lists, *inter alia*, “the promotion of short supply chain and local markets” as an aspect of cooperation between at least two entities which should be covered by support,<sup>5</sup> and within the CAP objective “to improve the farmers’ position in the value chain,” aims, for example, to increase fruit and vegetable concentration of supply and

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<sup>1</sup> O.J.E.U. L 347, 20 December, 2013.

<sup>2</sup> Commission Delegated Regulation (EU) No. 807/2014 supplementing Regulation (EU) No. 1305/2013 of the European Parliament and the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions, O.J.U.E. L 227, 31 July 2014.

<sup>3</sup> See more in Anna Kapala, “EU legal instruments supporting short food supply chains and local food systems,” *Revista General de Derecho Europeo*, no. 52 (2020) online.

<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, “The CAP towards 2020: Meeting the food, natural resources and territorial challenges of the future”, 18 November 2010, COM(2010) 672 final.

<sup>5</sup> Recital 45 of the Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by the Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No. 1305/2013 of the European Parliament and of the Council and Regulation (EU) No. 1307/2013 of the European Parliament and of the Council, COM/2018/392 final – 2018/0216 (COD).

the placing on the market, including through direct marketing<sup>6</sup>. As part of The Farm to Fork Strategy, which is at the heart of the Green Deal, the EC's goal is to create sustainability, including short supply chains, to strengthen regional and local food systems<sup>7</sup>. The EC acknowledged that "the calls for shorter supply chains have intensified during the current outbreak" of COVID-19<sup>8</sup>.

The question of how EU Member States determine the definition of direct sales and whether the law contributes to the undertaking of this activity by farmers seems interesting to be investigated. Appropriate legal regulations providing for simplifications and incentives to a farmer conducting food marketing, are important tools strengthening their position in food chains, in relation to food businesses and big retailers, and thus determining the development of local supply chains.

Therefore, it is reasonable to ask what is the legal status of a farmer who sells agricultural products produced on his farm, both unprocessed and processed, within short supply chains. The aim of the article is to determine whether such a farmer is subject to a privileged legal regime intended for the agricultural sector, or whether the activity of processing and selling products qualifies him as a commercial entrepreneur. The legislation of three EU Member States: Italy, France, Poland and the law of the USA will be subject to comparative legal analysis. US legislation has been selected for consideration because the local food system movement has been developing there for two decades, with many interesting forms of short supply chains, which raises the question of how the legislator encourages farmers to participate in these chains. Based on this analysis, conclusions will be formulated as to which legal solutions offer the greatest facilitation for a farmer to participate in short supply chains.

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<sup>6</sup> Article 42 b) Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy [...].

<sup>7</sup> Communication From The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system, Brussels, 20 May 2020, COM(2020) 381 final.

<sup>8</sup> Ibid.

## 2. The legal status of a farmer in Italy

In Italian law, a farmer has the status of an agricultural entrepreneur, which includes the category of direct producer (*coltivatore diretto*) and a professional agricultural entrepreneur (*imprenditore agricolo professionale*). An agricultural entrepreneur is subject to a privileged legal regime, dedicated to the agricultural sector, separate from the commercial entrepreneur's regime, and therefore enjoys privileges in the field of tax law, social security, as well as national and EU support measures. An agricultural entrepreneur is a natural person (as well as a partnership, a capital company or a cooperative) who performs one of the basic agricultural activities listed in the Civil Code (land cultivation, animal husbandry, forestry) or activities related to basic agricultural activities, which include the processing of agricultural products and their marketing<sup>9</sup>. Therefore, two important issues need to be clarified, first, what conditions must be met for a farmer to qualify as an "agricultural entrepreneur" and what criteria must be met by the activity of processing products and their marketing in order to qualify as so-called "related agricultural activities".

Referring to the first issue, a farmer will be an agricultural entrepreneur if the criteria of Art. 2135 of the Civil Code, concerning the activity conducted by him, and art. 2082 of the Civil Code, defining the general category of the entrepreneur are met jointly. According to Art. 2082 of the Civil Code an entrepreneur is a person who carries out an economic activity, i.e. one that is professionally carried out and organized for the purpose of producing or exchanging goods or services (such activity constitutes an "enterprise"). The economic nature of the activity means that it is market-oriented, i.e. that is not an activity conducted solely for a self-supply<sup>10</sup>. An "organized" activity is one that is based on a set of production factors for capital (real estate and movable property) and labour<sup>11</sup>. An activity is "professional" when it is carried out professionally, that is, not occasionally or sporadically but continuously<sup>12</sup>. Therefore, in Italian law, a farmer

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<sup>9</sup> Article 2135 of the Italian Civil Code: Regio Decreto 16 marzo 1942, n. 262, Approvazione del testo del Codice civile, Gazzetta Ufficiale n.79, 4.04.1942.

<sup>10</sup> Alberto Germanò, *Manuale di legislazione vitivinicola* (Torino: Giappichelli, 2017), 30.

<sup>11</sup> Ibid, 29.

<sup>12</sup> Ibid, 30.

who carries out an agricultural activity in a professional manner based on the organization of labour factors and capital, consisting in the cultivation of land, forest, animal husbandry or related activities, provided that the result is market-oriented products, is an “agricultural entrepreneur” in the meaning of Art. 2135 of the Civil Code. In other words, his activity meets the conditions of an “enterprise” according to Art. 2082 of the Civil Code, and due to the type of (agricultural) activity, he belongs to a special category of an agricultural entrepreneur.

An agricultural entrepreneur who performs the activity of processing products and selling processed or unprocessed products, which is not agricultural by nature, but industrial and commercial, does not, however, become a commercial entrepreneur within the meaning of art. 2195 of the Civil Code, thanks to the notion of the so-called “related activities”. These are activities that, *par nature*, are not of an agricultural nature, such as processing, marketing, agritourism, energy production, but their performance in connection with one of the strictly agricultural activities makes them qualify as agricultural and be subject to the same regulation as agricultural activities. *A contrario*, failure to meet the criterion of connection with typical agricultural activity will result in the establishment of a commercial enterprise, within the meaning of Art. 2195 of the Civil Code.

The second issue concerns the clarification of the criteria for linking processing and selling activities with agricultural activities. According to Art. 2135 of the Civil Code “related” are activities carried out by the same entrepreneur aimed at processing, storage, marketing and value-adding, the object of which are products obtained predominantly from land or forest cultivation or animal husbandry. The linkage criteria consist of the fact that the same agricultural entrepreneur performs the basic and related activities, using the resources and equipment of his farm<sup>13</sup>. It should be added that the related activity is not equivalent to agricultural activity, but is an additional, secondary and complementary activity. The activity of this nature is functionally related to the basic agricultural activity, serves

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<sup>13</sup> See more on the definition of agricultural activities in Italian law in Alberto Germanò, “L’impresa Agricola,” *Diritto e Giurisprudenza Agraria e dell’Ambiente*, no. 9/10 (2001): 504.

its development and implementation of the goal set for it, and supplements the income obtained from basic agricultural activity<sup>14</sup>.

Processing involves changing the form or texture of a product in its natural form, resulting in a different end product, for example, cheese or milk butter, grape wine, olive oil. If an agricultural entrepreneur processes raw materials which come “predominantly” from his agricultural production activity, he retains his legal “agricultural” status. The criterion of quantitative advantage stated in the quoted provision<sup>15</sup> allows the purchase of agricultural products from another producer in order to increase the value of the final product, which, however, must mainly consist of its own products. Besides the linkage criteria specified by the Civil Code, more detailed criteria for the performance of direct selling activities are laid down in specific regulations<sup>16</sup>.

Agricultural entrepreneurs who independently and professionally carry out the activity of running a farm (“agricultural enterprise”) are subject to social security for agriculture and in this respect benefit from the same facilities provided for direct agricultural producers (Article 1 (4) of the d.lgs. 99/2004<sup>17</sup>). In addition, a professional agricultural entrepreneur who has entered the social insurance department for agriculture is granted tax facilities in the field of indirect taxes as well as credit, defined by the applicable regulations for natural persons with the status of a direct agricultural producer<sup>18</sup>.

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<sup>14</sup> Alberto Germanò, “L’impresa Agricola,” 514 and Eva Rook Basile, *Impresa agricola e concorrenza, Riflessioni in tema di circolazione dell’azienda* (Milano: A. Giuffrè, 1988), 52.

<sup>15</sup> Germanò, *Manuale*, 36.

<sup>16</sup> See article 4 of *Decreto Legislativo 18 maggio 2001, n. 228 “Orientamento e modernizzazione del settore agricolo, a norma dell’articolo 7 della legge 5 marzo 2001, n. 57”*, (Gazzetta Ufficiale n. 137, 15.06.2001) - *Supplemento Ordinario n. 149*. See more in Anna Kapala, “Legal status of direct sales of agricultural and food products in the legislation of selected EU Member State,” *Przegląd Prawa Rolnego* 26, no. 1 (2020): 65–77.

<sup>17</sup> *Decreto Legislativo 29 marzo 2004, n. 99, Disposizioni in materia di soggetti e attività, integrità aziendale e semplificazione amministrativa in agricoltura, a norma dell’articolo 1, comma 2, lettere d), f), g), l), ee), della legge 7 marzo 2003, n. 38*, (Gazzetta Ufficiale n. 94, 22.04.2004).

<sup>18</sup> Art. 1 par. 5 bis decreto legislativo 99/2004.

The taxation of agricultural enterprises is treated in a privileged way by Italian tax law. There is a special tax regulation<sup>19</sup> on agricultural income that applies to basic agricultural activities as well as to related agricultural activities, but only to the processing, storage, manipulation, marketing and enhancement of products obtained mainly from soil or forest cultivation or animals husbandry, provided that these products belong to the catalogue of products specified in the ministerial decree<sup>20</sup>. In particular, income from direct sales qualifies as agricultural (subject to cadastral taxation following article 34 of the income tax decree), if a product, being a result of a related activity consisting in processing, is included in the List of the Ministerial Decree.

The conducted analysis allows us to answer the question formulated in the introduction. Under Italian law, a farmer who sells unprocessed and processed food produced mainly from his own crops or from livestock farming qualifies as an agricultural entrepreneur subject to a privileged legal regime. This is possible thanks to the broad definition of agricultural activity, including the so-called related activities, to which belong processing, marketing, increasing the value of the product. However, a number of conditions with regard to the performance of related activities must be met, mainly the criterion of the unity of the entity and the farm, and the use of a majority share of their own products. The Italian regulation thus supports the participation of the farmer in short supply chains, allowing him to produce and sell food while granting him the privileged status of an agricultural entrepreneur.

The current wording of Art. 2135 of the Italian Civil Code was introduced in 2001 (by Decree-Law 228/2001), although from the beginning of the Civil Code, i.e. from 1942, the definition of agricultural activity also included the processing and sale of agricultural products. Consequently, the Italian farmer has long been legally allowed to participate in short supply chains. According to the Italian Institute of Services for the Agricultural

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<sup>19</sup> Art. 32 and 34 of Testo unico delle imposte sui redditi (TUIR) di cui al Decreto del Presidente della Repubblica No. 917/1986 (Gazzetta Ufficiale n. 302, 31.12.1986, Supplemento Ordinario, as amended).

<sup>20</sup> Currently biding is: Decreto 13 febbraio 2015 Individuazione dei beni che possono essere oggetto delle attività agricole connesse, di cui all'articolo 32, comma 2, lettera c), del testo unico delle imposte sui redditi (Gazzetta Ufficiale n. 62 of 16.03.2015, Serie Generale).

Food Market (ISMEA) elaboration of the Italian Statistics Office data, in 2010 direct sales were practised by 26% of agricultural enterprises that place their own product on the market (i.e. about 1 million companies, excluding those that produce exclusively for self-consumption) with significant differences depending on the type of prevailing production sold by the company. In the case of processed products, direct sales are carried out by 76% of the companies<sup>21</sup>. What can be seen from a recent ISMEA survey in 2020 the number of farms, of the analysed sample, that decided to start direct sales increased by 22%<sup>22</sup>.

### 3. The legal status of a farmer in France

The French Civil Code does not establish the category of an agricultural entrepreneur but introduces a definition of agricultural activity performed by a farmer (*exploitant agricole*) in article L.311-1 of the Rural Code<sup>23</sup>. The farmer is a separate legal category in relation to the entrepreneur and is subject to specific regulations in the field of civil law, social security and tax law. A farmer (*exploitant agricole*) is a person who conducts agricultural activity as defined in the civil code. The definition, unlike the Italian one, does not mention *expressis verbis* the activity of marketing or transformation of agricultural products. However, it not only includes a typical agricultural activity, defined in the doctrine *par nature* but also agricultural activity *par relation* or *dérivées* (also referred to as *accessoires*),<sup>24</sup> taking into account the farm diversification and multi-activity<sup>25</sup>.

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<sup>21</sup> Flaminia Ventura and Mario Schiano lo Moriello, “Opportunità e minacce per la filiera corta e la vendita diretta in Italia, Documento realizzato dall’ISMEA nell’ambito del Programma Rete Rurale Nazionale Piano 2016,” *Scheda Progetto Ismea 10.2 Competitività e Filiere agroalimentari*, (settembre 2017): 8.

<sup>22</sup> Antonella Finizia, Mariella Ronga, Mario Schiano Lo Moriello, and Franco Torelli, “I canali commerciali alternativi per le aziende agricole: vendita diretta e filiera corta I modelli, le criticità e le opportunità di sviluppo,” *Documento realizzato nell’ambito del Programma Rete Rurale Nazionale 2014–20*, (ottobre 2020): 4.

<sup>23</sup> Code rural et de la pêche maritime, version consolidée au 14 avril 2020, article L. 311-1 as amended by LOI n° 2019-469 du 20 mai 2019 – article 4(V) (Journal Officiel de la République Française No. 0117, 21.05.2019).

<sup>24</sup> Luc Bodiguel and Micheal Cardwell, “Evolving definitions of ‘agriculture’ for an evolving agriculture?,” *The Conveyancer and Property Lawyer*, no. 5 (2005): 430.

<sup>25</sup> Véronique Barabé-Bouchard and Marc Hérail, *Droit rural* (Paris: Ellipses, 2011), 6.



Typical agricultural activity (*par nature*) is based on the criterion of the biological cycle. It includes “all the activities corresponding to the harnessing and the exploitation of a biological cycle of vegetable or animal character and constitutes one or more stages necessary for the progress of this cycle.” More important for the current study is the concept of so-called “derived agricultural activity” or *par relation*, which includes “activities carried out by a farmer that constitute an extension of the act of production or are to support a farm.” These are various activities, often of a “commercial” nature, which, however, benefit from the special treatment accorded by rural law to agricultural activities, if they are carried out under several predetermined conditions<sup>26</sup>. Direct sales, as well as the processing of agricultural products obtained on the farm, are recognized, by interpretation, as belonging to the second category of agricultural activity, being an extension of the act of production<sup>27</sup>.

What criteria must be met for the activity to be considered an agricultural derivative? One condition results directly from article L. 311-1 of the Code rural. The activity should be carried out by persons who already have the status of a farmer (*exploitant agricole*), due to their activity based on the biological cycle criterion<sup>28</sup>. Other criteria were further specified in the jurisprudence, according to which, to fall under the notion of the activity of an “extension of the production act,” direct sales must be conducted simultaneously on the same farm with an agricultural activity by nature, which is a similar criterion to the Italian one. If this is the case, this activity will not be considered an act of commerce but it remains within the sphere of agriculture<sup>29</sup>. The condition of the inseparability of direct sales from

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<sup>26</sup> The activities, thus very broadly defined, present a civil character. They, therefore, fall within the jurisdiction of the civil courts and not that of the commercial courts, cit. *Mémento Agriculture 2017–2018* (Levallois-Perret: Editions Francis Lefebvre, 2016), 13.

<sup>27</sup> Barabé-Bouchard and Hérial, *Droit rural*, 7; Didier Krajeski, *Droit rural* (Issy-les-Moulineaux: Defrénois, 2016), 19; Luc Bodiguel and Micheal Cardwell, “Évolution de la définition de l’agriculture pour une agriculture évoluée. Approche comparative Union européenne/Grande Bretagne/France,” *Revue du Marché commun et de l’Union européenne*, no. 490 (2005): 458. Kapała, “Legal status of direct sales,” 72–73.

<sup>28</sup> *Mémento Agriculture 2017–2018*, 14.

<sup>29</sup> Bodiguel and Cardwell, “Evolving definitions of ‘agriculture,’” 432; *idem* “Évolution de la définition de l’agriculture,” 459, see there endnote no. 48, in which the authors give rulings regarding the condition of coexistence of agricultural activities *par nature*, like for

the agricultural activity by nature must, therefore, be met<sup>30</sup>. Otherwise, the activity being an extension or having the farm as support will come under commercial law or another civil law branch<sup>31</sup>.

In relation to direct sales, the qualifying condition is, additionally, the origin of the products being in a sale. The processing or sale of products bought from third parties, if there is no link with an intervention in the biological cycle after their purchase, cannot be considered as an extension of the production act, but is a commercial activity<sup>32</sup>. However, the exteriority of certain products, if they constitute necessary and minority additives that cannot be derived from agricultural activities, will not give rise to commercial activities<sup>33</sup>. Therefore, farm production must outweigh the external supply<sup>34</sup>.

Direct sales that meet these criteria remain in the sphere of agriculture, irrespectively of whether agricultural products have previously been processed and whether the sale takes place at a fixed point and with the help of specialised staff<sup>35</sup>. The method of sale (direct sale to the consumer at a market, on the farm, via the catalogue, via the Internet), as well as the method of processing - industrial or simply artisanal - are irrelevant<sup>36</sup>.

In the field of tax law, the definition from article L 311-1 of the Code rural is not applied. However, the criterion of “farm support activities” was

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instance: Cour Administrative d'Appel de Bordeaux, du 9 octobre 2001, published in “Recueil Lebon” n° 99BX02611; Cour de Cassation, Chambre Sociale, du 6 décembre 2001, published in “Bulletin Cassation” n° 5130; Cour de Cassation, Chambre Sociale, du 11 juillet 2002, published in “Revue de Droit Rural”, février 2003, n° 310.

<sup>30</sup> Bodiguel, who points out that the sale of agricultural products must “inextricably bound up with an *activité agricole par nature*”: Bodiguel and Cardwell, “Evolving definitions of ‘agriculture,’” 433.

<sup>31</sup> Bodiguel and Cardwell, “Évolution de la définition de l’agriculture,” 456, who provides rulings: Cour de Cassation Chambre Sociale, 6 décembre 2001, published in “Bulletin Cassation” 2001, n° 5130 (conditionneuse de légumes); Krajeski, *Droit rural*, 19; Kapala, “Legal status of direct sales,” 73.

<sup>32</sup> Krajeski, *Droit rural*, 19.

<sup>33</sup> Bodiguel and Cardwell, “Évolution de la définition de l’agriculture,” 460 and the ruling cited there: Cour de Cassation, Chambre Sociale, du 23 mai 1991, pourvoi n° 89-13.098. See also Barabé-Bouchard and Hérial, *Droit rural*, 8.

<sup>34</sup> *Mémento Agriculture 2017-2018*, 15.

<sup>35</sup> *Ibid*, 14.

<sup>36</sup> *Ibid*, 15; Barabé-Bouchard and Hérial, *Droit rural*, 8.

taken over in tax law by applying a limit on the amount of income obtained from ancillary commercial and non-commercial activities. Farmers can retain the receipts coming from these activities, to determine the agricultural profits, if their average for the three calendar years preceding the opening date of the financial year does not exceed either 50% of the average agricultural receipts gained in the same period or 100,000 Euro<sup>37</sup>.

The social security scheme for the self-employed in agricultural professions applies to persons engaged in the activities or on the holdings, enterprises or establishments listed in article L 722-1 of the Code rural<sup>38</sup>. As regards *activité accessoire*, social security applies to all forms of establishments managed by the farmer for the purpose of processing, packaging, and marketing agricultural products, provided that these activities constitute an extension of the act of production<sup>39</sup>.

Synthetically, it can be said that in French law, as in Italian law, a farmer performing the processing of his farm products and their marketing, together with the agricultural activity by nature, retains his agricultural status and his activities are considered agricultural in civil law. As a consequence, he can benefit from tax facilitations granted to agricultural activities, and a special treatment under the social protection scheme, established for “self-employed in agricultural professions”<sup>40</sup>. Article L 311-1 in its first version was introduced in 1993 with further amendments<sup>41</sup>. Therefore, French farmers, like Italian farmers, have had the legal ability to process and sell food for decades. Data from the 2010 agricultural census reveals that 21% of farm businesses – some 107,000 enterprises – sell some of their produce through *circuits courts*. What is more for 40% of enterprises distributing via *circuits courts*, this type of sale represented more than 75% of turnover<sup>42</sup>.

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<sup>37</sup> Article 75 Code général des impôts arrêté du 6 avril 1950 (Journal Officiel de la République Française No. 0103, 30.04.1950).

<sup>38</sup> Barabé-Bouchard and Héral, *Droit rural*, 17.

<sup>39</sup> Bodiguel and Cardwell, “Evolving definitions of ‘agriculture,’” 431.

<sup>40</sup> Kapała, “Legal status of direct sales,” 75.

<sup>41</sup> Création Loi 93-934 1993-07-22 annexe Journal Officiel de la République Française 23 juillet 1993.

<sup>42</sup> Fabien Santini and Sergio Gomez y Paloma, eds., *Short Food Supply Chains and Local Food Systems in the EU. A State of Play of their Socio-Economic Characteristics* (European Commission Joint Research Centre, 2013), 86.

#### 4. The legal status of a farmer in Poland

In Polish law, farmers have a privileged position in terms of business law, taxes and social security. They are not regarded as entrepreneurs, thus they do not have to register their business, nor incur income taxes thereof<sup>43</sup>. Their activity is limited, however, as a general rule, only to agricultural activities, which, according to its definition in the Entrepreneurs' Law Act, include manufacturing activities in the area of crops, animal husbandry, horticulture, forestry and inland fishery<sup>44</sup>. The income from such activities is not subject to income tax<sup>45</sup>. In addition, the legislator created a separate, more privileged social insurance system for farmers, that allows them to pay significantly lower contributions compared to those paid by entrepreneurs<sup>46</sup>.

The processing of agricultural products and the marketing of food by a farmer is not covered by the definition of agricultural activity, therefore, like any other activity not included in this definition, performed on a continuous and organized basis, leads to an economic activity that requires its registration, and the entity running it becomes an entrepreneur. However, the legislator made an exception to this rule by introducing regulation on "retail agricultural trade" which allows farmers to process their agricultural products and to market the food produced on their farm<sup>47</sup>. Although the "agricultural retail trade" has not been included in the legal definition of agricultural activity as, for example, in the case of Italian law, thus it is still not a typical "agricultural" activity carried out by farmers, however, its

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<sup>43</sup> Anna Kapala, "Agricultural Retail Trade Regulation as a Legal Instrument to Support Local Food Systems," *European Food and Feed Law Review* 15, Issue 3 (2020): 231–236.

<sup>44</sup> Article 6, paragraph 1 (1) Ustawa z dnia 6 marca 2018 r. prawo przedsiębiorców, (t.j. Dz.U. z 2019 r. poz. 1292, ze zm.), Act on Entrepreneurs' Law of 6 March 2018, consolidated text Journal of Laws 2019, item 1292, as amended.

<sup>45</sup> Article 2, paragraph 1, (1), Ustawa z 26 lipca 1991 r. o podatku dochodowym od osób fizycznych (t.j. Dz.U. z 2019 r. poz. 1387 ze zm.), Act on Personal Income Tax of 26 July 1991, consolidated text Journal of Laws 2019, item 1387, as amended.

<sup>46</sup> Ustawa z dnia 20 grudnia 1990 r. o ubezpieczeniu społecznym rolników (t.j. Dz.U. z 2019 r. poz. 299), Act of 20 December 1990 on social insurance for farmers, consolidated text Journal of Laws 2019, item 299; Kapala, "Agricultural Retail Trade," 233.

<sup>47</sup> Agricultural retail trade was introduced into the Polish legislation by the Act of 16 November 2016 on amending certain acts to facilitate the sale of food by farmers, Journal of Laws 2016, item 1961.

regulation allows farmers to participate in short food supply chains without losing their legal status.

Significant is the provision that excludes the processing and direct sales of the food from the business law regime. As a result, these activities can be carried out by the farmer without the obligation to register a business<sup>48</sup> and with the possibility of remaining in the agricultural social security system. In addition, agricultural retail trade enjoys special and favourable treatment in terms of income tax, as the income from this activity is exempt from taxation with personal income tax if it does not exceed PLN 40,000 per year (about EUR 8 845,54). Annual income above that limit is taxed at only 2%<sup>49</sup>.

Hence, farmers conducting agricultural retail trade do not lose their privileged legal status and do not become entrepreneurs. They benefit from the exemptions and simplifications which certainly strengthen their market position in competition with food businesses and are an incentive to undertake and conduct the activity of food sales<sup>50</sup>. As pointed out by the legislator in the justification of the draft law on agricultural retail trade, new provisions restore “the farmer’s traditional role of a food producer and processor, and at the same time open up a new market of natural and healthy food for consumers”. They also provide an opportunity “to improve the household budgets of farms with additional income from sales of products, which is important for small and medium-sized farms losing the price war with a large food producer”.

What criteria the processing and the direct sales activities must meet to qualify for an exemption from business regulation? One criterion is that food processing should be “non-industrial”, which can be interpreted as processing without the use of production lines and technologies specific to large-scale production and processing. The final product should consist of at least 50% of plant or animal products originating from their farm, without counting the water, therefore farmers can purchase products from outside their farms in order to produce a wide variety of food, including complex products and ready meals. The next criterion assumes that the

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<sup>48</sup> See Article 6, paragraph 1 (4) Act on the Entrepreneurs’ Law.

<sup>49</sup> Article 21, paragraph 1 (71a) Act on the Personal Income Tax.

<sup>50</sup> Kapała, “Agricultural Retail Trade,” 233.

processing and sales of products ought to be, with some exceptions, conducted without intermediaries, i.e. personally by the farmer or members of his household.

The law also sets requirements regarding to whom the food can be sold. The list includes not only final consumers but also retail stores and other retail sales establishments, like local restaurants or canteens, delivering food to final consumers, though only to those located in the same province as the farm. Such provision enables farmers to participate in all forms of short supply chains, not limited only to direct sales. The retail agricultural trade regulation entered in force only in January 2017, before that the legal situation as to the possibility of conducting direct sales was unclear, however, farmers were selling directly only their unprocessed agricultural products. The data show how the introduction of the regulation encouraged farmers to participate in SFSC. According to data from the Chief Veterinary Inspectorate Register<sup>51</sup>, in April 2018 1,776 registered entities were conducting agricultural retail trade in products of animal origin or complex food in Poland. The number has grown four times within a little more than a year (in April 2017 this number amounted to 387), and currently, it is 12 748. What is more, this number does not include farms selling products only of plant origin, due to the lack of availability of such data from inspection bodies, thus the real number of all farmers undertaking agricultural retail trade is much bigger. These data prove the new regulations encourage farmers to undertake this activity.

## 5. The legal status of a farmer in the USA

In the US legal system, a farmer is an entrepreneur and the farming and marketing of agricultural products is an economic activity<sup>52</sup>, just like any other, to which, however, many aid programs are directed. Farms, as a consequence, are organized in business. Most of them are a form of simplest business, i.e. sole proprietorships. This kind of business structure is effective without any legal filings. It arises automatically when an individual starts

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<sup>51</sup> <https://pasze.wetgiw.gov.pl/spi/demo/index.php>, accessed February 28, 2021.

<sup>52</sup> Neil Hamilton, "The study of agricultural law in the United States: Education, Organization and Practice," *Arkansas Law Review* 43 (1990): 505.

their own business or farming operation<sup>53</sup>. As a rule, it refers to a person who owns the business. The owner is personally responsible for debts and any actions taken on behalf of the business and has in his name lawsuits, taxes, permits, licenses, patents, etc. Since the income earned by a sole proprietorship is the income earned by its owner, taxes are paid by the sole proprietor (often as self-employment taxes) and not by the business itself<sup>54</sup>.

A farm business may be also organized as a partnership or limited partnership, corporation (for-profit or nonprofit), S-corporation, limited liability company (LLC), and cooperative<sup>55</sup>. The concept of American law is to facilitate the formation of business in order to allow an individual farmer to engage in the efficient production of food<sup>56</sup>. The ability to use various legal entities to form and operate agricultural-related businesses gives the sector access to financing, limited liability, and business operation benefits provided by flexibility in the organizational structure<sup>57</sup>.

Due to the complex US law system, farmers often have to deal with multiple legal issues deriving from federal, state, and local laws<sup>58</sup>. In the field of direct marketing, they would have to face, for example, federal authorities requirements regarding financial grants for the activity, and at

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<sup>53</sup> Rusty Rumley, "Sole Proprietorships, Business Organizations Reading Room," *The National Agricultural Law Center Publications*, 3, accessed June 16, 2020, <https://nationalaglawcenter.org/wp-content/uploads/assets/readingrooms/businessorgs-sole.pdf>.

<sup>54</sup> Ibid, 3; Anna Kapała, "Legal status of direct marketing in US law," *Diritto agroalimentare*, f. 3 (2020): 553–54.

<sup>55</sup> See more, for instance: Michaela Tarr, Charles Cunningham, and Rusty W. Rumley, *Texas direct farm business guide* (United States Department of Agriculture, 2013), 16–22, accessed June 16, 2020, <https://nationalaglawcenter.org/wp-content/uploads/assets/articles/TX-DFB.pdf>.

<sup>56</sup> Hamilton, "The study," 506.

<sup>57</sup> Ibid, 507–08; Kapała, "Legal status of direct marketing in US law," 553–54.

<sup>58</sup> See, for example, the Oregon Farm Direct Marketing Law (FDML) of 2011, which took effect in 2012. The law clarified licensing and food safety requirements for direct-to-consumer sales at farmers markets, farm stands, and similar venues. It also included a «cottage food» provision allowing farms to make and sell certain low-risk, value-added products from farm-grown ingredients, direct to consumer, without a food processor's license. See more about it: Lindsay Trant, Christy Anderson Brekken, and Lauren Gwin, "Farm Direct at five years: An early assessment of Oregon's farm-focused cottage food law," *Oregon State University Journal of Agriculture, Food Systems, and Community Development* 8, Issue 3 (2018): 85–104.

the local level, zoning regulations. Numerous federal statutes subsidize, regulate, or otherwise directly affect agricultural activity, and there is no uniform definition of agricultural activity in US law. It is specified in various legal acts, for the purposes of these acts<sup>59</sup>.

Direct marketing of agricultural products is not included in the definitions of agriculture. Generally, it is described as any kind of commercial enterprise in which the producer sells directly to the consumer. It takes many forms, like roadside stands, pick-your-own operations; open-air markets; farmers' markets, including those in inner cities; and street-selling from trucks<sup>60</sup>. Its legal definition is provided by the act "Farmer to Consumer-Direct Marketing Act of 1976 7 USC 3001" now included in the 7 U.S. Code § 3002. The term "direct marketing" for purposes of the act means: "the marketing of agricultural commodities at any marketplace (including, but not limited to, roadside stands, city markets, and vehicles used for house-to-house marketing of agricultural commodities) established and maintained for the purpose of enabling farmers to sell (either individually or through a farmers' organization directly representing the farmers who produced the commodities being sold) their agricultural commodities directly to individual consumers, or organizations representing consumers, in a manner calculated to lower the cost and increase the quality of food to such consumers while providing increased financial returns to the farmers".

The Act recognizes the importance of direct farm-to-consumer marketing businesses, stating explicitly that its purpose is "to promote, through appropriate means and on an economically sustainable basis, the development and expansion of direct marketing of agricultural commodities from farmers to consumers". It is aimed to encourage the undertaking of this activity, which would result in lower prices to consumers, higher returns for farmers, reduction in middleman costs, and improved

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<sup>59</sup> Richard G. Heifner, "A history of government's role in the food and agricultural marketing system," in *US Programs affecting food and agricultural marketing*, eds. Walter J. Armbruster and Ronald D. Knutson (New York: Springer Science and Business Media, 2013), 43; Kapala, "Legal status of direct marketing in US law," 550.

<sup>60</sup> Facts About: Farmer-to-Consumer Direct Marketing, Agricultural Marketing Service Report Number 575, U.S. Department of Agriculture. Agricultural Marketing Service 1978, accessed June 11, 2020, <https://www.nal.usda.gov/exhibits/ipd/localfoods/items/show/120>.



farmer-to-consumer understanding<sup>61</sup>. To achieve this, it set up a state assistance program: The Federal-State Marketing Improvement Program, specially designed to facilitate direct marketing. It provided matching funds to state agencies for exploring new marketing opportunities for food and agricultural products and to improve and expand farmers' markets, roadside stands, community agricultural development programs, agritourism activities, and other farmer-to-consumer direct marketing activities<sup>62</sup>.

Owing to the Farmer-to-Consumer Direct Marketing Act, direct marketing became an officially recognized program<sup>63</sup>. Funds were authorized, and appropriations of \$1/2 million for fiscal 1977 and \$1.5 million for 1978 were made available for grants to States<sup>64</sup>. It was observed in the literature that the economic incentives of both producers and consumers contributed to the increasing use of direct marketing strategies by U.S. farmers<sup>65</sup>. After enacting the Direct Farmer to Consumer Act of 1976, according to the 1978 Census of Agriculture, 125,186 farms, or 5.6% of farms, engaged in direct sales to consumers (non-edible products are excluded). Since that time, the number has slowly increased and direct marketing support programs have been continued. According to the 2007 Census of Agriculture, the number of farms that reported sales of agricultural products directly to individuals was 136,817 (U.S. Department of Agriculture - USDA 2007). The value of direct marketing sales has increased by about 50% over 2007–2009 (USDA 2009)<sup>66</sup>.

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<sup>61</sup> Facts About: Farmer-to-Consumer Direct Marketing, Agricultural Marketing Service Report Number 575.

<sup>62</sup> Heifner, "A history of government's role," 52–53.

<sup>63</sup> Allison Brown, "Counting farmers markets," *Geographical Review* 91, Issue 4 (2001), Issue online (2010): 655.

<sup>64</sup> Facts About: Farmer-to-Consumer Direct Marketing, Agricultural Marketing Service Report Number 575.

<sup>65</sup> Hiroki Uematsu and Ashok Mishra, "Use of direct marketing strategies by farmers and their impact on farm business income," *Agricultural and Resource Economics Review*, no. 40/1 (2011): 1–2, accessed June 15, 2020, [https://www.researchgate.net/publication/227365483\\_Use\\_of\\_Direct\\_Marketing\\_Strategies\\_by\\_Farmers\\_and\\_Their\\_Impact\\_on\\_Farm\\_Business\\_Income](https://www.researchgate.net/publication/227365483_Use_of_Direct_Marketing_Strategies_by_Farmers_and_Their_Impact_on_Farm_Business_Income).

<sup>66</sup> Ibid.

An important direct marketing support program was envisaged in the recent Farm Bill of 2018<sup>67</sup>. Under the Local Agriculture Market Program (LAMP), contained also in 7 U.S. Code § 1627c, “direct producer-to-consumer marketing” is one of the activities eligible for grants. The term “direct producer-to-consumer marketing” has the meaning given the term “direct marketing from farmers to consumers” in section 3002 of this title, which was cited above and which repeats the definition set out in the Act of 1976. The program sets up the state grants for each of fiscal years 2019 through 2023 for the conduct of activities to support and promote a diversity of operations concerning direct marketing, such as domestic direct producer-to-consumer marketing; farmers’ markets, roadside stands, community-supported agriculture programs, agritourism activities, and other direct to consumer marketing practice, local and regional food business enterprises (both direct-to-consumer and intermediated market channels). It is also aimed to support the processing, aggregation, distribution, and storage of local and regional food products that are marketed locally or regionally, and value-added agricultural products, as well as marketing strategies for producers of local food products and value-added agricultural products in new and existing markets.

Although the program refers to the definition of “direct marketing from farmers to consumers” which concerns “agricultural commodities”, it also provides grants for the marketing of “value-added agricultural product”. The latter, according to its definition, can be a product marketed as “a locally produced agricultural food product” or which is “a result of the change in physical state or the manner in which the «agricultural commodity or product was produced, marketed, or segregated (...)”<sup>68</sup>. This means that within the LAMP program direct marketing may concern also processed agricultural and food products<sup>69</sup>.

The analysis of the legislation concerning direct marketing shows that in US law the main method of supporting a farmer to participate in short supply chains are programmes offering financial aid to conduct and expand strategies of direct marketing. Nevertheless, the farmer managing a direct

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<sup>67</sup> Agriculture Improvement Act of 2018, P.L. 115–334.

<sup>68</sup> See the definition of «value-added agricultural product» in 7 USC § 1627c(a)(12).

<sup>69</sup> Kapala, “Legal status of direct marketing in US law,” 557.

farm business, besides having the opportunity to use these incentives of financial character, encouraging different direct marketing strategies, must deal with lots of laws and regulations. These rules concern not only obvious aspects of the activity, such as paying taxes or hiring employees but they refer to nearly every action a producer might take. What makes it even more complicated is that local, state, and federal government authorities in implementing and enforcing the direct farm business regulations, make their own (sometimes overlapping) requirements<sup>70</sup>. The data of the U.S. Department of Agriculture show that in 2018 in the USA about 8% of U.S. farms market foods locally, through direct-to-consumer or intermediated sales<sup>71</sup>, which is an increase of 2,4% from the 1978 data.

## 6. Conclusions

The study found that under Italian, French and Polish law, the farmer involved in short food supply chains, retains his privileged agricultural status. In Italian and French law this is possible due to a broad definition of agricultural activity encompassing food processing and marketing carried out by a farmer jointly with the agricultural activity *par nature*, whose products originate in prevalence from his farm. In Polish law, direct marketing and processing are not included in the agricultural activities definition, however, a farmer who conducts them does not become an entrepreneur due to an explicit exemption of these activities (named “agricultural retail trade”) from being subject to the business regime. The fact that farmers can benefit from a favourable treatment in terms of tax law, social security and business law, certainly strengthens their market position in competition with food businesses and are an incentive to undertake and conduct the activity of food sales. Therefore, in the presented legislation of three Member States, the main tool encouraging a farmer to become involved in the SFSC is the special treatment of food sales by farmers and the privileged legal status granted to the farmer.

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<sup>70</sup> Bryan Endres, Lisa R. Schlessinger, and Alexander B. Gura, *New York Direct Farm Business. A Legal Guide to Market Access* (2013), 5, accessed June 15, 2020, <https://nationalaglawcenter.org/wp-content/uploads/assets/articles/NYdirectmarket.pdf>.

<sup>71</sup> Christopher Burns and James M. Macdonald, “America’s Diverse Family Farms,” 2018 Edition, *Economic Information Bulletin*, no. 203 (2018), accessed November 3, 2021, <https://www.ers.usda.gov/webdocs/publications/90985/eib-203.pdf?v=6080>.

In contrast, in US law agricultural activity and direct marketing are business activities. Farmers interested in conducting them must choose the legal structure under which the business will operate. Direct marketing is mainly conducted by smaller farms, for which the simplest form of business structure would be the sole proprietorship. The main tool to support the participation of the farmer in short food supply chains is financial programs funded for the development of direct marketing. Programs offering financial incentives to direct marketing certainly contribute to the development of this activity, which is proved by the economic results. However, the complexity of laws and overlapping local, state and federal authorities' requirements and restrictions regarding different aspects of the activity, and local zoning laws, can cause farmers a significant impediment to conducting it. Therefore, some researchers recommend that the role of public policy is to reduce market barriers to local food production and to provide assistance with regulatory compliance<sup>72</sup>.

Applying for financial support from programs requires time, knowledge and effort to prepare the appropriate documentation and meet the conditions of the programs, which can discourage small farmers. Moreover, such programs are prepared for a certain period of time, with no guarantee that they will be provided for the following years, as it depends on the state policy and state financial capacities. While the systemic legal solutions, as in the presented legislation of the EU countries, in contrast to aid programmes, provides farmers with favourable conditions in the long term, without additional bureaucracy and the need to fill out documents and applications, thus giving them a sense of confidence and stability in engaging in food direct marketing. The mere offering of financial aid to farmers, without creating a legal opportunity for them to legally sell their agri-food products, is not a sufficient and effective solution. Certainly, a combination of both tools presented: a special privileged legal status granted to a farmer marketing food with financial aid, would be the most advantageous solution to encourage farmers to participate in the SFSC. The first tool lies in the discretion of national legislators, the second, as regards the EU Members, so

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<sup>72</sup> Renée Johnson, *The Role of Local and Regional Food Systems in U.S. Farm Policy*, Congressional Research Service Report (2018), 35–36, where the Author points out to Robert P. King, *Can Local Go Mainstream?*, C-FARE webinar, April 11, 2011.

far has been foreseen by the EU in its agricultural policy, which will hopefully provide similar support measures for the SFSC also in the next programming period of 2022–2027.

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