

Development Perspectives of Organic Farming in European Union Law

Katarzyna Frączak-Banach

(Faculty of Law and Administration, University of Lodz, Poland)

Abstract: Organic farming is defined as a system of agriculture that aims for the most sustainable production of plant and animal products within a farm, based on natural means (both biological and mineral), unprocessed technologically, ensuring lasting soil fertility, animal health, and high biological quality of agricultural products. Currently, the ambition of the European Union, expressed in programmatic documents, is to achieve a significant increase in organic production within the Union. To this end, the EU legislator has reformed the regulations concerning the principles of organic production, placed greater emphasis on financing this sector within the framework of the Common Agricultural Policy, and has also been interested in undertaking actions to strengthen the position of farmers in relation to businesses that are buyers of agricultural products. The aim of this article is to analyze selected basic regulations of EU law in this area and to attempt to evaluate them from the perspective of the potential for the development of organic farming in the European Union.

Key words: organic farming, European Law, common agricultural policy

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1. Introduction

Organic farming is considered to meet the requirements of sustainable development, sustaining the existence of human civilization, meaning it ensures an abundance of food for society while maintaining the capacity of supporting ecosystems to produce safe food in the long term (Górski M. & Miłkowska-Rębowska J., 2013, p. 158). This system is the most sustainable in terms of ecology (as it does not burden the environment), economy (as it is largely independent of external inputs), and society (as it allows the survival of rural areas and agriculture as social and cultural categories) (Duda-Krynica M., Jaskólecki H., 2010, p. 85). The essence of organic farming is to reconcile the growth of agricultural production with environmental protection (Haman J. & Ryczkowski L., 1987, p. 8).

Organic farming occupies approximately 17 million hectares of agricultural land in the European Union, which constitutes 10.5% of its total area in the Union¹. However, this share varies significantly among member states, ranging from 0.5% to over 25%². The ambition of the European Union, expressed in the political plan “European Green Deal” and the accompanying strategies: the EU Biodiversity Strategy and the “Farm to Fork”

Katarzyna Frączak-Banach, Ph.D. Candidate, Faculty of Law and Administration, University of Lodz; research area: European economic law. E-mail: k.fraczak87@gmail.com.

¹ Developments in organic farming. Statistics explained, Eurostat, available online at: <https://ec.europa.eu/eurostat/statistics-explained/SEPDF/cache/5461.pdf>.

² Developments in organic farming. Statistics explained, Eurostat, available online at: <https://ec.europa.eu/eurostat/statistics-explained/SEPDF/cache/5461.pdf>.

strategy, is to achieve a level of 25% of agricultural land in the European Union for organic farming by 2030³. The purpose of this article is to analyze the basic EU legal instruments from the perspective of solutions supporting the development of organic farming and to identify potential barriers to the development of this type of farming. It should be noted that the EU legislator influences the development of organic farming primarily in three areas: establishing the principles of organic production, financing this sector of agricultural activity through EU subsidies, and counteracting unfair trading practices used by retail chains against farmers as suppliers. For this purpose, the following EU legal provisions were analyzed:

1) Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products⁴, which establishes the objectives, principles, and control and certification system for organic production (hereinafter: Regulation 2018/848);

2) Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by 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)⁵, which establishes the rules for farmers, including organic farmers, to receive subsidies (hereinafter: Regulation 2021/2115);

3) Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain⁶, which establishes solutions aimed at protecting farmers in commercial relations with food distributors, including large food retail chains (hereinafter: Directive 2019/633).

2. The Principles of Organic Production

The paper discusses selected solutions that have reformed the principles of production under the current Regulation 2018/848. It should be noted that the entire body of regulations regarding organic production is not new and dates back to the 1990s in terms of EU regulation, and even earlier for grassroots regulations (Górny M., 2025, pp. 28-30). In the 1990s, Council Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs was established⁷. The regulation introduced an absolute ban on the use of easily soluble synthetic fertilizers, chemically-synthetic plant protection products, hormones, growth substances for crops and livestock, and also established the principles of the control

³ Communication from the Commission to the European Parliament, the European Council, The Council, the European Economic and Social Committee and the Committee of the Regions - The European Green Deal, Brussels 11.12.2019 COM(2019) 640 final, p. 14; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - EU Biodiversity Strategy for 2030. Bringing nature back into our lives, Brussels 20.5.2020, COM(2020) 380 final, pp. 9-10; 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 20.5.2020, COM(2020) 381 final, p. 10.

⁴ Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007, OJ L 150/1, 14.6.2018.

⁵ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by 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 Regulations (EU) No 1305/2013 and (EU) No 1307/2013, OJ L 435/1, 6.12.2021.

⁶ Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, OJ L 111/59, 25.4.2019.

⁷ Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs, OJ L 198/1, 22.7.1991.

system (Articles 6-9 of Regulation 2092/91). The regulation also introduced several regulations regarding imports, making it a reference point for organic farming in third countries (Mikkelsen C., Schlüter M., Sołtysiak U., 2009, p. 9).

In July 2007, Regulation No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 was adopted⁸. The adoption of the new regulation was related to the growing consumer demand for products from organic production and the development of the sector, which necessitated simplifying and increasing the coherence of the rules on organic production (Recitals 4-7 of the preamble to Regulation No 834/2007). The basis for the adoption of the new regulation was the European Action Plan for Organic Food and Farming, presented by the European Commission in 2004⁹.

The current Regulation 2018/848 came into force on January 1, 2022, replacing Regulation 834/2007. Like the previously applicable regulations, it governs both the general and specific principles of organic plant and animal production, as well as the rules for processing organic products, their labelling, transportation, import, and finally, the system of control and certification of said production. The need for the new regulation was driven by the lack of alignment of the previous production rules with consumer expectations, overly complex regulations, excessive administrative burdens on producers, deficiencies in the control system and trade regime, and the need to eliminate exceptions to organic production rules. Regulation 834/2007 allowed for a number of derogations from organic production principles, sometimes to the extent that they effectively equated organic production with conventional production (Leśkiewicz K., 2010, p. 126). The current regulation aimed to remove obstacles to the sustainable development of organic production in the Union, ensure fair competition, enable smoother functioning of the internal market, and deepen consumer trust in organic products¹⁰. Ultimately, Regulation 2018/848 introduced some significant changes in organic production.

Firstly, the scope of products eligible for organic certification was expanded. In addition to the existing scope covering live and unprocessed agricultural products (animals, including aquaculture products, plants, propagation material, mushrooms), processed products, and feed, it is now possible to produce, certify, and label new products such as yerba mate, sweetcorn, vine leaves, palm hearts, hop shoots, and other similar edible parts of plants and products made from them, sea salt and other types of salt used in food and feed, silkworm cocoons suitable for reeling, natural gums and resins, beeswax, essential oils, natural cork stoppers, non-agglomerated and without any binding substances, cotton, not carded or combed, wool, not carded or combed, raw hides and skins, traditional herbal preparations based on plants (Article 2 and Annex 1 of Regulation 2018/848).

Secondly, the catalogue of objectives for organic production was expanded. In addition to the previously important objectives, such as sustainability, good market functioning, and fair competition, new objectives were identified: short supply chains and local production. The need to protect genetic diversity, disease resistance of varieties and breeds, longevity, and adaptation to diverse local soil and climatic conditions was also emphasized (Article 4 of Regulation 2018/848).

Thirdly, the control system has been expanded to cover all operators in the food supply chain (farmers,

⁸ Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91, OJ L 189/1, 20.7.2007.

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an Action Plan for the Development of Organic Production, COM/2021/141 final.

¹⁰ Proposal for a Regulation of the European Parliament and of the Council on organic production and labeling of organic products, amending Regulation (EU) No XXX/XXX of the European Parliament and of the Council [Regulation on official controls] and repealing Council Regulation (EC) No 834/2007, Brussels, 24 March 2014, COM(2014) 180 final, pp. 6-8.

breeders, processors, importers, and sellers). To market a product as organic, these entities are required to participate in the certification and control system. Companies selling only packaged and labelled products will need to register with the system but do not have to be certified. Member States will have the option to exempt producers who sell small quantities from the control requirement. The control and certification systems in different member states can be classified into three subgroups: systems based on approved private certifying entities, systems based on one or more designated public certifying bodies, and systems based on a designated public certifying body and approved private certifying entities (Domagalska J., Buczkowska M., 2015, p. 371). Member states maintain updated lists of entities that have registered their organic production activities and make these lists public, along with information about the certificates issued to them. The certificate is issued electronically and certifies that the reported activity complies with Regulation 2018/848. Each entity within the certification system is required to verify the certificates of its suppliers. The control and certification system ensures to consumers that food products on the market have been produced in accordance with applicable organic farming regulations and are free from contaminants such as pesticide residues and hormones, and that no artificial fertilizers or genetically modified organisms were used in their production (Metera D., 2019, p. 3).

What is more, the frequency of inspections has been reduced. Previously, inspections had to be conducted at least once a year. The new regulation allows for inspections every two years, with a greater emphasis on risk analysis (Article 38(3) of Regulation 2018/848).

In addition to the above, farmers are required to take precautionary measures to avoid unintentional contamination of organic products with unauthorized substances, under the threat of losing the product's organic status (Article 28 of Regulation 2018/848). This measure can be seen as a significant hindrance to conducting organic farming. In the event of contamination in a product sample, certification bodies conduct official investigations, and the product cannot be marketed as organic. It should be noted that this provision shifts the responsibility for contamination to the entity that is essentially the "victim" of the situation, e.g., a farmer whose fields have been contaminated by conventional substances from neighboring fields, or a processor who bought such a product from a farmer. The responsible party for such contamination should primarily be the one who caused it, according to the "polluter pays" principle. However, when it comes to environmental contamination with pesticides or nitrates of agricultural origin, the "polluter pays" principle is difficult to apply — as in cases of dispersed soil contamination, it is often challenging to assign responsibility to specific entities¹¹. Therefore, by shifting the responsibility for preventing contamination to organic producers, EU legislators have focused on the need to increase consumer trust in organic production.

Moreover, the obligation to use organic plant propagation material in plant production has been emphasized (with specified exceptions). To obtain organic plant propagation material, the parent plant should be cultivated according to organic production principles for at least one generation, and in the case of perennial crops, for at least one generation over two growing seasons. For the production of organic varieties suitable for organic production, breeding work should be conducted under organic conditions and aimed at increasing genetic diversity, based on natural fertility, as well as agronomic performance, disease resistance, and adaptation to diverse local soil and climatic conditions. To facilitate producers' access to organic seeds and planting material, as well as organic animals, a requirement has been introduced for each member state to establish a computer database on the

¹¹ Special report of the European Court of Auditors no 12/2021, The polluter pays principle – Inconsistent application across EU environmental policies and actions, p. 26, available online at: https://www.eca.europa.eu/Lists/ECADocuments/SR21_12/SR_polluter_pays_principle_EN.pdf.

availability of organic seeds, planting material, and animals (Article 12(2)(b) and Annex 2, Part 1, point 1.8 of Regulation 2018/848).

Additionally, the use of exceptions to organic production principles has been restricted, with a gradual phasing out of these exceptions. Exceptions primarily include the use of non-organic plant propagation material, non-organically raised poultry, and non-organic livestock for breeding purposes, as well as non-organic feed when sufficient organic alternatives are unavailable. However, a gradual phase-out of these exceptions has been provided for (Article 53 of Regulation 2018/848). At the same time, the duration of these exceptions is long enough to allow for the development of local production in this area.

What is more, the issue of allowing the marketing of organic heterogeneous material has been regulated. Organic heterogeneous material is understood as a group of plants within a single lowest known botanical taxon that exhibits common phenotypic characteristics, high genetic and phenotypic diversity among individual propagation units, is not a variety or a mixture of varieties, and meets specific requirements for organic heterogeneous material (Article 3(18) of Regulation 2018/848). Organic heterogeneous material intended for reproduction is permitted for marketing without having to meet the registration and qualification requirements applicable to conventional heterogeneous seed material. The marketing of organic heterogeneous material can occur after notifying the relevant authorities and meeting the specified requirements for such material (Article 13 of Regulation 2018/848). These requirements have been outlined in the Commission Delegated Regulation 2021/1189 of May 7, 2021, supplementing Regulation (EU) 2018/848 of the European Parliament and Council concerning the production and marketing of organic plant propagation material of certain types or species¹².

Additionally, the possibility of simultaneously conducting organic and conventional production has been maintained, but the need for clear separation between them has been emphasized. In such cases, the farm should be divided into distinctly and effectively separated production units: organic, in conversion, and non-organic. Non-organic production units should maintain different species of animals or different, easily distinguishable plant varieties than those used in organic production. For algae and aquaculture animals, the same species can be kept provided that the production sites or units are clearly and effectively separated (Article 9(7) of Regulation 2018/848).

Finally, the introduction of group certification has been allowed (Article 36 of Regulation 2018/848). However, despite this system being described as a facilitation for small farms, group certification may prove problematic for small farmers in practice. It requires organizing into a legal entity, selling products only as a group, and having its own internal control system. Furthermore, the entire group is subject to inspection, not just the individual supplier. In case of a serious breach of regulations by one member, the entire group could lose its certification (Metera D., 2019, p. 3.).

To conclude, organic producers face many challenges related to compliance with legal regulations and meeting increasing societal expectations concerning environmental protection and biodiversity (Runowski H., 2009, pp. 182-193). Regulation 2018/848 does not necessarily make organic farming easier. On the contrary, some of the introduced solutions establish additional obligations for organic farmers. On the other hand, these increased obligations aim to boost consumer confidence in organic products, which may lead to increased demand for these products. Moreover, the regulation attempts to address issues faced by organic farmers related to access to organic

¹² Commission Delegated Regulation (EU) 2021/1189 of 7 May 2021 supplementing Regulation (EU) 2018/848 of the European Parliament and of the Council as regards the production and marketing of plant reproductive material of organic heterogeneous material of particular genera or species, OJ L 258/18, 20.7.2021.

seeds and planting material or organic animals. Therefore, the introduced changes should be assessed positively.

3. Subsidies for Organic Farmers in the 2021-2027 CAP Financial Framework

Subsidies for organic farming are a significant factor in the choice of this type of activity among farmers (Łuczka W., 2023, p. 291). The primary legal act governing the CAP for the 2021-2027 funding period is Regulation No 2021/2115. The regulation provides for financing environmental objectives through three solutions that create the so-called “green infrastructure” of the CAP: the conditionality system covering basic management requirements and good agricultural and environmental condition standards, eco-schemes, and commitments related to the environment, climate, and other management obligations.

The basic management requirements include obligations arising from widely applicable legal acts related to, among other things, water management, pollution control, protection of certain animal species and natural habitats, food and feed law, animal health and welfare, and the use of plant protection products. Good agricultural and environmental condition (GAEC) standards include: maintaining permanent grassland (GAEC 1); protecting peatlands and wetlands (GAEC 2); prohibition of burning stubble (GAEC 3); establishing buffer zones along watercourses (GAEC 4); managing ploughing to reduce soil degradation and erosion risk (GAEC 5); maintaining a minimum soil cover (GAEC 6); crop rotation (GAEC 7); leaving part of the land as non-productive areas, including natural landscape elements (GAEC 8); and prohibiting the conversion or ploughing of permanent grasslands designated as environmentally sensitive permanent grasslands in Natura 2000 areas (GAEC 9). Both the basic management requirements and the good agricultural and environmental condition standards are mandatory. Failure to comply results in a reduction of the granted payments (Krawczyk W., Paraponiak P., Szewczyk A., 2021, p. 45).

Eco-schemes are payments provided for the voluntary adoption of agricultural practices that benefit climate, environment, and animal welfare, as well as for combating antimicrobial resistance. These payments must cover at least two of the following areas of action: mitigating climate change, including reducing greenhouse gas emissions from agricultural practices, maintaining existing carbon reservoirs, and increasing carbon sequestration; adapting to climate change, including actions to enhance the resilience of food production systems and the diversity of animals and plants to increase resistance to diseases and climate change; protecting or improving water quality and reducing pressure on water resources; preventing soil degradation, restoring soil, improving soil fertility, and managing nutrients (as well as soil fauna and flora); protecting biodiversity, conserving or restoring habitats or species, including maintaining and creating landscape features or non-productive areas; actions for the sustainable and limited use of pesticides, particularly those posing risks to human health or the environment; improving animal welfare or combating antimicrobial resistance. The obligations arising from eco-schemes should go beyond the relevant basic management requirements and the minimum standards for good agricultural and environmental condition established by Member States. Member States must ensure that the actions indicated under eco-schemes are in line with interventions related to environmental, climate, and other management commitments under rural development but cannot duplicate them (Article 31 of Regulation No. 2021/2115).

Finally, payments for commitments related to the environment, climate, and other management commitments under rural development are granted for taking voluntary commitments specified by Member States in their national strategic plans. These commitments should exceed the basic management requirements and minimum standards for good agricultural and environmental condition, the minimum requirements for the use of fertilizers

and plant protection products, animal welfare, as well as other mandatory requirements established under national and Union law. Furthermore, these commitments should go beyond maintaining agricultural land in a state suitable for grazing or cultivation without the need for preparatory actions exceeding the use of ordinary agricultural methods and equipment, and should differ from eco-schemes (Article 70(1) and (2) of Regulation No. 2021/2115).

Organic farming should be taken into account by Member States both when establishing eco-schemes and within the framework of environmental management commitments under rural development. Moreover, allocated support should aim to increase the share of agricultural land managed under organic farming and meet the expected growth in organic production (Recitals 64, 65, and 72 of the preamble to Regulation No. 2021/2115).

Organic farmers are generally required, like conventional farmers, to comply with both basic management requirements and good agricultural and environmental conditions, with the exception of the crop rotation obligation - GAEC 7 (Recital 43 of the preamble to Regulation No. 2021/2115).

Organic farmers receive higher subsidies than conventional farmers (Komorowska D., 2024, p. 88). For example, according to the Strategic Plan for CAP in Poland, the amount of subsidies for organic farming varies depending on several factors: the type of organic crops, the size of the farm, and whether it is in the conversion period. A farmer can apply for the organic farming intervention if they own an agricultural holding located within the borders of the Republic of Poland, with an agricultural area of not less than 1 hectare, with a minimum declared area for support being greater than 0.1 hectares, conducts organic farming in accordance with EU and national regulations, has an organic activity plan, and maintains records of organic activity. A farmer applying for subsidies for fodder crops or grasslands must have livestock and ensure a minimum stocking density of 0.3 livestock units/hectare. If applying for a premium for sustainable plant-animal production, the beneficiary should have livestock at a stocking density of 0.31-1.5 livestock units/hectare. A farmer fulfilling organic commitments must produce an organic product from each crop or plant species, appropriate harvest destination, use crops for so-called green manure, and meet specific requirements for fruit crops. The condition for receiving organic payments is confirmation by the certifying body in the list of organic producers that the production on each declared agricultural parcel is in compliance with organic farming principles. The commitments under the intervention last for 5 years. The highest payment rates apply to basic fruit crops during the conversion period, while the lowest are for maintaining permanent grassland¹³. The granted subsidy rates are more than twice as high as the rates provided for this purpose in the previous CAP financial perspective¹⁴. The amount of the subsidy also depends on the size of the farm: 100% of the basic payment is granted to organic farms with an agricultural area of up to 50 hectares, 75% to farms with an area from 50 to 100 hectares, and 60% to farms larger than 100 hectares¹⁵.

In addition, subsidies for organic production can be combined with certain eco-scheme components: with actions related to the carbon farming and nutrient management eco-scheme, with the water retention on permanent grassland eco-scheme, and with the animal welfare eco-scheme. However, organic payments cannot be combined

¹³ Information Brochure of the Ministry of Agriculture and Rural Development, Organic Farming Intervention, Strategic Plan for the Common Agricultural Policy for 2023-2027, pp. 12-13, available online at: https://bioekspert.pl/wp-content/uploads/2024/05/Broszura_informacyjna_Interwencja_ROLNICTWO_EKOLOGICZNE_PS_WPR_2023-2027.pdf.

¹⁴ Polish Rural Development Program for 2014-2020, pp. 660-675.

¹⁵ Information Brochure of the Ministry of Agriculture and Rural Development, Organic Farming Intervention, Strategic Plan for the Common Agricultural Policy for 2023-2027, p. 22, available online at: https://bioekspert.pl/wp-content/uploads/2024/05/Broszura_informacyjna_Interwencja_ROLNICTWO_EKOLOGICZNE_PS_WPR_2023-2027.pdf.

with practices from the carbon farming and nutrient management eco-scheme, such as extensive use of permanent grassland and simplified cultivation, with the integrated production system eco-scheme, or with the biological crop protection eco-scheme¹⁶.

To conclude, the rules for subsidies for organic farming established in Regulation 2021/2115 seem to provide a genuine incentive for farmers to convert to the specified management system and to continue organic production.

4. Counteracting Unfair Trading Practices in the Supply Chain

In today's economy, food products result from the collaboration of the entire food chain, with the primary source being the work of the farmer (Wilkin J., 2007, p. 3). By combining natural resources (solar energy, soil, water) with human-made production means, the farmer produces primary goods such as cereals, meat, milk, vegetables, fruits, and many others, which directly or after processing meet human food needs. The food supply chain is the primary channel for bringing food to the market. It connects three key sectors of the food industry: agriculture, processing, and wholesale and retail distribution. This chain comprises businesses of various sizes, operating at different levels of the supply chain (Knapp M., 2020, pp. 22-23). The position of small farmers in the supply chain is significantly weaker compared to the position of retail chains purchasing agricultural products for further sale. This disparity results in low incomes for agricultural producers, which sometimes threatens the continuation of agricultural activities and leads to significantly higher prices for end consumers. Furthermore, these imbalances in bargaining power can lead to unfair trading practices, where larger and stronger trading partners attempt to impose favourable practices or contractual terms on weaker parties regarding sales transactions¹⁷.

In response to this issue, the EU legislator has enacted Directive 2019/633. This act aims to protect suppliers of agricultural and food products in their dealings with buyers who have market power over the supplier. The directive identifies five thresholds of economic imbalance between suppliers and buyers that trigger its provisions (Article 1(2) of Directive 2019/633). These thresholds address the need to protect small and medium-sized enterprises in the agri-food sector, as they are most vulnerable to unfair practices by larger and more powerful counterparts (Recital 9 of Directive 2019/633). The directive establishes a presumption of contractual advantage when there is a significant disparity in annual turnover between supplier and buyer as specified in the referenced provision (Sopalski P., 2023, pp. 69-70). The directive sets out a “black” (absolute) list and a “grey” (relative) list of unfair trading practices. The “black” list includes practices such as: prohibiting the use of payment terms longer than 30 days for perishable agricultural and food products, and longer than 60 days for other agricultural and food products; cancelling orders for perishable agricultural and food products with short notice; unilaterally changing delivery contract terms; demanding payments unrelated to the sale of agricultural and food products; requiring payment for deterioration or loss of agricultural and food products occurring in the buyer's facilities or after ownership has transferred to the buyer; refusing to provide written confirmation of delivery contract terms;

¹⁶ Information Brochure of the Ministry of Agriculture and Rural Development, Organic Farming Intervention, Strategic Plan for the Common Agricultural Policy for 2023-2027, p. 24, available online at: https://bioekspert.pl/wp-content/uploads/2024/05/Broszura_informacyjna_Interwencja_ROLNICTWO_EKOLOGICZNE_PS_WPR_2023-2027.pdf.

¹⁷ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the state of the transposition and implementation of Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, Brussels, 27.10.2021, COM(2021) 652 final, p. 3.

unlawfully acquiring, using, or disclosing the supplier's business secrets; threatening or taking commercial retaliation against a supplier exercising their contractual or legal rights; demanding compensation from the supplier for handling customer complaints related to the supplier's products despite no negligence or fault on the supplier's part. The "grey" list of banned practices (i.e., banned unless explicitly and clearly agreed upon in the contract with the supplier) includes practices such as: returning unsold agricultural and food products to the supplier without payment or for disposal; charging the supplier a fee for storing, displaying, or offering their agricultural and food products for sale or making such products available on the market; requiring the supplier to bear all or part of the costs of price reductions for agricultural and food products sold by the buyer as part of promotions; demanding payment from the supplier for advertising and marketing their agricultural and food products; charging for staff involved in setting up premises used for selling the supplier's products (Art. 3 of Directive 2019/633). The directive obliges member states to designate a national authority responsible for enforcing its provisions, including receiving supplier complaints, initiating proceedings, conducting inspections, issuing decisions, and imposing sanctions (Arts. 4-6 of Directive 2019/633).

It should be emphasized that maintaining a list of practices that are automatically prohibited is a significant simplification, as it suffices to establish a violation if the buyer applies these practices against the supplier, provided both parties fall within the relevant threshold of annual turnover. No other circumstances are considered when assessing the unfairness of the practice in question. The Directive somewhat abstractly assumes that the listed practices will always be considered unfair if there is a corresponding difference in the size of the entities (measured by annual turnover). On one hand, this introduces a considerable simplification and increases the effectiveness of enforcement. It allows for the abandonment of time-consuming proceedings that require proving general clauses. This is invaluable support for enforcing authorities. On the other hand, it is pointed out that such simplification may be too far-reaching and not every practice on the list should be deemed an abuse of law in every case. Analysis conducted in economic sciences has shown that the relative difference in size between the parties to a transaction does not directly translate into bargaining power. There are many other factors to consider, such as the nature of the transaction, the economic and legal context of the transaction, and the impact that the prohibited practice has on the supplier. Therefore, abuse of bargaining power in the form of unfair trading practices should be assessed individually in each case. Authorities should apply not only the formal criteria (prerequisites) set out by the relevant legal act but also consider the actual effects of potential violations. Their role is to determine specific economic facts, such as the imbalance of power between the businesses (Knapp M., 2020, pp. 72-73).

The effectiveness of the directive depends on the proper implementation of its provisions into national law by member states. Member States were required to implement the directive by May 1, 2021. Only 15 Member States met this deadline¹⁸. Poland implemented the directive with some delay — in November 2021 — by introducing the Act on Counteracting Unfair Exploitation of Contractual Advantage in the Trade of Agricultural and Food Products (hereinafter: the Act)¹⁹. The President of the Office of Competition and Consumer Protection (further: the POCCP) was designated as the enforcement authority (Article 11 of the Act). The POCCP acts solely in the

¹⁸ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the state of the transposition and implementation of Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, Brussels, 27.10.2021, COM(2021) 652 final, p. 4.

¹⁹ Act of November 17, 2021, on Counteracting Unfair Exploitation of Contractual Advantage in the Trade of Agricultural and Food Products, *Journal of Laws*, 2021, item 2262.

public interest. This means that the POCCP is not the appropriate authority for resolving individual cases/disputes and does not award compensation to private entities; it can only impose financial penalties payable to the state budget. For matters related to claims by private entities, common courts are competent (Article 1(1) of the Act). Administrative proceedings concerning a given practice do not exclude the possibility of pursuing civil claims in court arising from the application of that practice. The objectives of both proceedings are different, and the resolutions taken in each are based on different criteria. The proceedings on counteracting the unfair exploitation of contractual advantage aim to protect the public interest, i.e., the economic interest of potentially many businesses operating in the market. In this process, the POCCP identifies the problem, determines the harmful practice, and takes further steps to eliminate it from the market. Specifically, the entity committing the violation may be subject to a financial penalty payable to the state budget. In the case of an amicable settlement (through a binding decision), the entity accused by the POCCP of unfair practices may be required, for example, to settle overdue payments, pay interest for delays, or refrain from charging additional fees. However, POCCP's actions usually do not fully satisfy the claims of individual entrepreneurs harmed by such unfair practices. Such entrepreneurs can seek their rights by filing a lawsuit in a civil court. The decision of the POCCP may constitute an additional, important argument in the case (Article 4 of the Act). Furthermore, the Act provides for the possibility of presenting a significant opinion on the case to the court by the POCCP. This significant opinion concerns cases involving civil claims related to practices that may constitute unfair exploitation of contractual advantage. It can be presented in a specific case if there is a public interest in doing so. The application of this instrument should contribute to increasing the knowledge of courts adjudicating civil cases between suppliers and purchasers of agricultural or food products, thus improving the situation of weaker entities in such cases and standardizing case law in this area (Article 12 of the Act).

To conclude, it should be noted that the introduction of the discussed regulation addresses the needs of suppliers, which should be positively assessed from the perspective of farmers' interests.

5. Summary

The EU legislator has introduced significant legal measures to support the development of organic farming within the European Union. The solutions adopted, particularly in the regulation on strategic plans, include essential instruments to assist farmers in transitioning towards more environmentally friendly, climate-friendly, and animal welfare-oriented agriculture. Therefore, there are legal instruments and funds within the Common Agricultural Policy (CAP) budget to achieve the ambitious goal of dedicating 25% of EU agricultural land to organic farming by 2030. However, for this goal to be achieved, the willingness of farmers themselves to embrace the challenges and responsibilities associated with organic farming is also needed. It is hoped that, under the current legal conditions, such willingness will become increasingly common.

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