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Preface

Dear Reader

The corona pandemic continues to have a strong grip on Europe and the world and is not without consequences for agriculture. The current focus of this issue is on the various COVID measures taken in individual CEDR countries in relation to the agricultural sector. To this end, by popular demand, the CEDR JRL is being published for the first time in the DOI (Digital Object Identifier) system according to ISO 26324, which means that each contribution is assigned a unique and permanently valid name (identifier) which is found in the table of contents. On the basis of this, the URL, at which the object is currently accessible, can be retrieved from a central database. This is a further step towards professionalising our journal.

Roland Norer

Editorial Director

Chère lectrice, cher lecteur

La pandémie de corona continue de sévir en Europe et dans le monde et n'est pas sans conséquences pour l'agriculture. Ce numéro se concentre actuellement sur les différentes mesures COVID prises dans les différents pays de la CEDR en ce qui concerne le secteur agricole. À cette fin, à la demande générale, le LCRD-CDRE est publié pour la première fois dans le système DOI (Digital Object Identifier) selon la norme ISO 26324, ce qui signifie que chaque contribution se voit attribuer un nom (identifiant) unique et valable en permanence, qui se trouve dans la table des matières. Sur cette base, l'URL à laquelle l'objet est actuellement accessible peut être récupérée dans une base de données centrale. C'est un pas de plus vers la professionnalisation de notre revue.

Roland Norer

Editorial Director

Sehr geehrte Leserinnen und Leser

Die Corona-Pandemie hat Europa und die Welt weiterhin fest im Griff und ist auch nicht ohne Folgewirkungen auf die Landwirtschaft. Aktuell widmet sich der Schwerpunkt diese Ausgabe den verschiedenen COVID-Maßnahmen, die in einzelnen CEDR-Ländern in Bezug auf den Agrarsektor getroffen wurden. Dazu erscheint das CEDR-JRL auf vielfachen Wunsch erstmals im DOI-System (Digital Object Identifier) nach ISO 26324, was bedeutet, dass den einzelnen Beiträgen ein einzigartiger und dauerhaft gültiger Name (Identifikator) zugewiesen wird, der sich im Inhaltsverzeichnis findet. Anhand dessen kann aus einer zentralen Datenbank die URL abgefragt werden, unter der das Objekt derzeit zugänglich ist. Dies ein weiterer Schritt zur Professionalisierung unseres Journals.

Roland Norer

Editorial Director

President's Corner

Views of the President Geoff Whittaker

Once again, a warm welcome to the Journal of CEDR, the first of 2020. Many thanks to all who have contributed and, as always, to Prof. Roland Norer, our Delegate General, who has compiled those works.

The principal event which has affected us all this year and which may well have wider implications as yet unknown, is the dreadful Covid-19 pandemic which has enveloped our planet. Within Europe, various measures have been and are being taken which affect our special topics of agriculture, the environment and rural business, and several contributions appear in this Journal on those subjects.

The disease has already affected the way in which many businesses are being conducted, and there are lessons for us to adapt our working practices to the new environment.

It is clear that personal meetings are, in some cases, impossible and, in any event, rarer. Much is now done by video-conferencing. Whilst that may have been driven by restrictions on travel and by requirements of 'social distancing', businesses have noted the large savings being made in terms of costs of travel, accommodation and time as a result of doing business online.

Not only that, but evidence is appearing from widespread parts of the world that the reductions in travel are leading to declines in environmental pollution as less carbon is released to the atmosphere. We can expect that to be taken into account on a political level both while the pandemic continues and after it is fully controlled.

It is clear therefore that there are positive economic and environmental benefits to working remotely, regardless of the existence of the pandemic.

These are difficult times for us all and the future of the pandemic and the methods of controlling it remain uncertain. Doubtless, it will be managed in due course but we cannot be sure how long it will take, nor what the shape of the business world will be when it is done. It is more certain that the world is changing already its ways of working and it is possible that there will never be a time when we can run our lives in the manner in which we did before the pandemic.

We in CEDR are alert to this. It does not need to be said that personal meetings remain the best way to create strong relationships and friendships. There is no substitute for being able to share a cup of coffee or a glass of beer or wine with a colleague in order to establish a strong bond.

This was underlined at the III Mediterranean Forum which was held in Rome in February. It goes without saying that our grateful thanks go to Prof. Luigi Russo and to the Associazione Italiana dei Cultori di Diritto Agrario for their effort and support in organising and managing the Forum and to the Sapienza Università di Roma for hosting it.

Although, by its nature, it focused on subjects of interest in Mediterranean territories, it was notable that there were participants from nations with no border to the Mediterranean Sea! To make a serious point, it demonstrated that although subjects will have stronger, or different, application according to the geography, all are of general relevance and can fuel good discussion.

However, the onset of the pandemic has meant that it has been necessary to research alternative methods of conducting our business during the time that we are unable to meet personally.

As always, we are interested to know about our members' experiences and if anyone wishes to share those with us and offer advice or assistance as we develop our future, we shall be very pleased to speak with you.

Meanwhile, stay well and keep yourselves and your families safe.

News

IV CEDR Regional Forum Central Europe

2nd Central European Regional Rural Law Conference

17th September 2020, Miskolc (Hungary)

organized by the Hungarian Association of Agricultural Law (HAAL), the Comité Européen de Droit Rural (CEDR), the Faculty of Law of the University of Miskolc, the Ferenc Mádl Institute of Comparative Law and the Hungarian Academy of Sciences` Miskolc Regional Committee, supported by the Agricultural Ministry

Legal frame of the agricultural land/holding succession and the acquisition by legal persons

Webinarium; for detailed informations see the CEDR-Website

Publications

Busse Christian, Ein Jahrhundert landwirtschaftliches Grundstücksverkehrsrecht in Deutschland. Rechtsgeschichtlicher Überblick, aktueller Diskussionsstand und Materialien (Forum Umwelt-, Agrar- und Klimaschutzrecht, Bd. 15), Baden-Baden 2019

Czybulka Detlef/Köck Wolfgang (Hrsg.), Landwirtschaft und Naturschutzrecht. Beiträge des 13. Deutschen Naturschutzrechtstages in Leipzig, Baden-Baden 2019

Karimi-Schmidt Yvonne, Grüne Gentechnik in Europa, Wien/Graz 2019

Miribung Georg, The Agricultural Cooperative in the Framework of the European Cooperative Society. Discussing and Comparing Issues of Cooperative Governance and Finance in Italy and Austria, Cham 2020

Muñiz Espada Esther, Hacia unas nuevas relaciones entre el Registro Mercantil y la actividad agraria, Madrid 2020

Peters Anne (ed.), Studies in Global Animal Law, Open Access 2020

Sand Peter H. (ed.), International Environmental Agreements, Cheltenham/Northampton 2019

Recensión por L. BOURGES

Esther Muñiz Espada, Hacia unas nuevas relaciones entre el Registro Mercantil y la actividad agraria, Ed. Colegio de Registradores. Madrid, 2020. 146 páginas.

La obra referida aborda una reflexión crítica para plantear la reconstrucción de la organización actual de los registros administrativos de ámbito agrario en España – la cual sigue la intrincada división de la estructura del Estado español – con el objetivo de que buena parte de estos registros administrativos relacionados con la actividad agraria sean integrados en el Registro mercantil. La autora propone reordenar toda la materia registral que alude a la información agraria, dispersa entre numerosos registros del Estado y de Comunidades autónomas, de manera tal de concentrarla en torno a una única institución o en torno a un único punto de información.

La naturaleza del Registro mercantil y de sus funciones justifican una propuesta de esta naturaleza a su favor. El valor de los efectos que otorga el propio Registro mercantil, que, sin embargo, no pueden aportar los registros administrativos agrarios, favorece esta propuesta de integración, resultando una ordenación mucho más eficiente. En la obra también se aborda una alternativa a esta idea: que el Registro mercantil al menos coordine toda la información de los registros administrativos agrarios.

La idea central es que todo operador jurídico y económico que entrara a contratar o a negociar con cualquier empresario agrario, o adquiriera derechos de éstos o formara parte de una determinada transacción, tuviera, a través de una única institución, con seguridad y eficiencia, toda la información relativa a esa actividad empresarial agraria. Esto implicaría una considerable simplificación teniendo en cuenta la enorme dispersión de los registros administrativos de estas características, la variedad del sector agrario, el reparto autonómico, e incluso, el desconocimiento de la existencia de buena parte de estos registros.

La integración y unificación, ya sólo a través de la simple coordinación de toda la información procedente de tales registros administrativos, implicaría para el operador económico, y en ámbito empresarial, un inestimable ahorro de costes, de tiempo y de disfunciones de orden jurídico y patrimonial. Además, se podría responder a las exigencias de una simplificación administrativa y legislativa, que forma parte de los principios de ordenación y de interés público, y que ya fue exigido a nivel gubernativo desde los inicios de la crisis económica. Para sostener esas necesidades el trabajo evidencia también las nuevas necesidades del sector empresarial agrario y agroalimentario, tanto por lo exigido en los últimos documentos e intervenciones normativas de la UE, como por lo previsto ya para la futura PAC.

La obra busca poner en discusión o en debate la utilidad y organización de los instrumentos actuales y de reclamar la racionalidad y coherencia del sistema.

Según la autora, aceptando la reestructuración del Registro mercantil se conseguirían con ello numerosas finalidades de mayor amplitud: de carácter publicitario, informativo, probatorio, estadístico, programático, tutela del mercado y de la libertad de competencia, actualidad en los datos, facilidad de un control efectivo y profesional de toda la actividad que la ley califica de naturaleza agraria. En definitiva, tal revisión permitiría abordar con mayor realismo las políticas de estructuras agrarias y su evolución, maximizando los recursos y su destino.

COVID-19-Pandemie: Die Sondermaßnahmen der EU im Agrarmarktbereich vom Mai/Juni 2020

Christian Busse

*Regierungsdirektor, Bundesministerium für Ernährung und Landwirtschaft, Berlin/Bonn (Germany)**

1. Einleitung

Die COVID-19-Pandemie hat kaum einen Wirtschaftsbereich in der EU unberührt gelassen und zu einer Fülle von sektorspezifischen Sondermaßnahmen der EU geführt.¹ Im Agrarsektor kam es bei der Erzeugung, Verarbeitung und Vermarktung zu Schwierigkeiten. In der Erzeugung entstanden durch den Ausfall von Arbeitskräften – vor allem wegen der Reisebeschränkungen, aber auch auf Grund von Corona-bedingten Hygieneauflagen und der Quarantäne von Beschäftigten – Probleme. Im Rahmen der Verarbeitung mussten durch die Unterbrechung von Lieferketten punktuell Rezepturen geändert werden. Auch die Bereitstellung von Verpackungsmaterialien gestaltete sich mitunter schwierig. Bei den Lebensmittelbehörden war durch eine Verminderung des Personals und erhöhte Hygieneanforderungen die Kontrollseite betroffen.

Um den Schwierigkeiten im Bereich der Verarbeitung und Vermarktung zu begegnen, reagierte die EU zunächst durch eine vorübergehende Änderung des Rechts zu den amtlichen Kontrollen im Lebensmittel- und Futtermittelbereich, was mit Hilfe der Durchführungsverordnung (EU) 2020/466 (ABl. 2020 L 98, S. 30) geschah. Anschließend gestattete die Europäische Kommission im Wege eines Hinweisschreibens den Mitgliedstaaten, vorübergehende Corona-verursachte Fehletikettierungen zu akzeptieren, soweit dadurch nicht gesundheitsrelevante Aspekte – etwa die Allergenkennzeichnung – betroffen waren.² Eine Verschiebung des am 01.04.2020 erfolgten Beginns der Herkunftskennzeichnung der primären Zutat erfolgte hingegen nicht.

Die Vermarktungsseite war zugleich durch eine Störung des Absatzes betroffen. So brachen binnen kurzer Zeit die Absatzwege der Gastronomie, des Beherbergungsgewerbes und der Wochenmärkte weitgehend weg. Dies betraf vor allem Erzeugungs- und Verarbeitungsunternehmen, die auf solche Absatzwege spezialisiert sind. Betroffen waren die Bereiche Milch und Fleisch sowie einige Bereiche der pflanzlichen Erzeugung. Zu letzteren gehörten vor allem frisches Obst und Gemüse sowie Wein.

* Der Beitrag gibt allein die persönliche Ansicht des Verfassers wieder und bildet den Stand Anfang Juli 2020 ab. Anschließend ist am 06.07.2020 als weitere Maßnahme die Durchführungsverordnung (EU) 2020/975 (Amtsblatt der EU Nummer L 215 vom 07.07.2020) mit einer Sonderkartellfreistellung für den Weinbereich ergangen.

¹ Vgl. den Überblick von Mögele, Die EU und COVID-19: Befugnisse und Initiativen, Europäische Zeitschrift für Wirtschaftsrecht 2020, 297-300, mit Stand 2.4.2020.

² European Commission/Directorate-General for Health and Food Safety, Risk-based adaptations during the COVID-19 crisis v. 20.4.2020; vgl. zur Frage der Übertragung von COVID-19 im Lebensmittelbereich dies., COVID-19 and food safety – Questions and Answers v. 8.4.2020 (abrufbar über die Internetseite der Europäischen Kommission).

Außerdem ging der Absatz von Blumen und anderen Erzeugnissen des Gartenbaus massiv zurück. Im Bereich frisches Obst und Gemüse kam es zudem durch den Absatzzrückgang zu Rückwirkungen auf die Förderungsfähigkeit von Erzeugerorganisationen. Probleme ergaben sich auch in den Förderprogrammen der beiden Bereiche Olivenöl und Tafeloliven sowie Imkerei. Die in einigen Mitgliedstaaten erfolgte Verlängerung des Schuljahres 2019/20 zeitigte zugleich Auswirkungen auf das EU-Schulprogramm.

Um dieser Situation zu begegnen, beschloss die Europäische Kommission am 30.04.2020 elf Verordnungen und am 04.05.2020 eine zwölfte Verordnung, die alle auf die Verordnung (EG) Nr. 1308/2013 (GMO) gestützt wurden. Die elf Verordnungen vom 30.04.2020 sind im Amtsblatt der EU Nummer L 140 vom 04.05.2020 veröffentlicht worden. Die zwölfte Verordnung vom 04.05.2020 wurde im Amtsblatt der EU Nummer L 205 vom 29.06.2020 veröffentlicht, nachdem das Europäische Parlament am 17.06.2020 beschlossen hatte, gegen die Verordnung keine Einwände zu erheben. Es handelt sich um neun Durchführungsverordnungen und drei Delegierte Verordnungen, die zum Teil Standardinterventionen der GMO eröffnen und zum Teil Sondermaßnahmen regeln. Die Maßnahmen sind größtenteils von den Mitgliedstaaten zwingend durchzuführen, während bei einem kleinen Teil die Anwendung für die Mitgliedstaaten optional ist. Im Folgenden wird unterteilt in die drei Bereiche private Lagerhaltung (PLH), Sonderkartellfreistellung und sonstige Maßnahmen ein Überblick über den Inhalt der zwölf Verordnungen gegeben.

2. Private Lagerhaltung

Die PLH ist seit Jahrzehnten ein Standardinstrument der GMO. Anstatt Erzeugnisse durch staatlichen Ankauf in öffentliche Lager zu übernehmen, werden die Kosten für die von den Wirtschaftsunternehmen selbst vorgenommene Lagerhaltung ganz oder teilweise erstattet. Die Eröffnung der PLH erfolgt nach Art. 17 Unterabs. 1 in Verbindung mit Art. 18 Abs. 2 GMO durch die Europäische Kommission. Im Milch- und Fleischsektor ist dies am 30.04.2020 für bestimmte Erzeugnisgruppen geschehen. Die Durchführungsverordnungen (EU) 2020/595, (EU) 2020/596, (EU) 2020/597 und (EU) 2020/598 betreffen Schaf-, Ziegen- und Rindfleisch sowie Butter und Magermilchpulver. Dabei wird näher bestimmt, welche Erzeugnisse unter welchen Bedingungen erfasst werden.

Eine Besonderheit gilt für die PLH betreffend Käse, da Art. 17 Unterabs. 2 GMO als Standardmaßnahme nur die Bezuschussung der Lagerhaltung bei geogeschütztem Käse vorsieht. Gestützt auf die Krisenermächtigung des Art. 219 Abs. 1 GMO hat die Europäische Kommission durch die Delegierte Verordnung (EU) 2020/591 vom 30.4.2020 die PLH auf grundsätzlich jeden Käse erstreckt, soweit er lagerfähig ist und bereits eingelagert wurde. Für jeden Mitgliedstaat legt ein Anhang Höchstmengen fest. Anträge auf Beihilfengewährung konnten vom 07.05.2020 bis 30.06.2020 eingereicht werden. Zur Begründung erläutert Erwägungsgrund 1 Delegierte Verordnung (EU) 2020/591 zunächst allgemein: "Auf Grund der derzeitigen COVID-19-Pandemie und der umfangreichen Beschränkungen der Bewegungsfreiheit in den Mitgliedstaaten ist die Nachfrage nach bestimmten Erzeugnissen im Sektor Milch und Milcherzeugnisse, insbesondere Käse, zurückgegangen. Durch die Ausbreitung der Krankheit und die ergriffenen Maßnahmen stehen weniger Arbeitskräfte zur Verfügung, wodurch es insbesondere auf den Stufen der Erzeugung, der Sammlung und der Verarbeitung von Milch zu Engpässen kommt. Zudem hat die verordnete Schließung von Geschäften, Märkten, Restaurants und anderen Gastrono-

miebetrieben das Gastgewerbe und die Gastronomie zum Stillstand gebracht, was zu erheblichen Veränderungen bei der Nachfrage nach Milch und Milcherzeugnissen geführt hat. Auf das Gastgewerbe und die Gastronomie entfallen rund 15 % der Binnennachfrage nach Käse in der Union. Darüber hinaus kündigen Käufer in der Union und auf dem Weltmarkt Verträge und zögern den Abschluss neuer Verträge hinaus, da sie mit weiteren Preisrückgängen rechnen. Die Käseausföhren in Drittländer machen 8 % der gesamten Käseproduktion der Union aus.“ Eine derart allgemeine Begründung findet sich in ähnlicher Weise in den drei anderen PLH-Verordnungen.

Erwägungsgrund 2 Delegierte Verordnung (EU) 2020/591 ergänzt, dass es vielen Käse herstellenden Betrieben nicht möglich sei, die angelieferte Rohmilch zu anderen Milcherzeugnissen zu verarbeiten. Gemäß den Erwägungsgründen 4 und 5 sind die “im Rahmen der Verordnung (EU) Nr. 1308/2013 verfügbaren Interventionsmaßnahmen unzureichend“, da sie nur geogeschützten Käse erfassen und solcher Käse „einen geringen Anteil der gesamten Käseherstellung der Union“ ausmacht. Es wird sich zeigen, ob dieser Punkt im Rahmen der laufenden GAP-Reform zu einer Änderung der GMO führt, indem die Standardintervention auf alle lagerfähigen Käse ausgeweitet wird.

3. Sonderkartellfreistellung

In Art. 222 GMO ist vorgesehen, dass im Falle schwerer Ungleichgewichte auf den Märkten die Europäische Kommission unter engen Voraussetzungen über die bereits in der GMO vorgesehenen Freistellungen vom allgemeinen Kartellverbot des Art. 101 Abs. 1 AEUV hinaus eine zusätzliche Kartellfreistellung eröffnen kann. Diese Sonderkartellfreistellung ist auf sechs Monate befristet und darf einmalig um sechs Monate verlängert werden. Sie dient dazu, eigentlich kartellrechtswidrige Vereinbarungen und Beschlüsse von Marktbeteiligten zu ermöglichen, um einer schweren Marktkrise zu begegnen. Die bislang einzige Nutzung der Bestimmung geschah 2016 mittels der Durchführungsverordnung (EU) 2016/559 im Rahmen der damaligen Milchpreiskrise. Da nach der ursprünglichen Fassung des Art. 222 GMO nur anerkannte Agrarorganisationen freigestellt werden konnten, jedoch eine Freistellung aller Organisationsformen im Milchbereich gewollt war, wurden gestützt auf Art. 219 GMO mittels der Durchführungsverordnung (EU) 558/2016 auch Genossenschaften und nicht anerkannte Erzeugerorganisationen im Milchbereich freigestellt.

Sowohl Art. 222 GMO selbst als auch die beiden Freistellungsverordnungen von 2016 warfen zahlreiche Auslegungsfragen auf und offenbarten zugleich Mängel in der Konzeption des Art. 222 GMO. Der Verfasser hat diese Punkte 2017 eingehend dargestellt und diskutiert.³ In Deutschland beispielsweise wurde die Sonderkartellfreistellung nicht genutzt, was einerseits an den konzeptionellen Mängeln und andererseits an der sehr disparaten deutschen Milchwirtschaft lag. So existiert in Deutschland bislang kein Branchenverband im Milchbereich. Außerdem wurde die Maßnahme erst zu einem Zeitpunkt beschlossen, als die Marktkrise ihrem Ende entgegen ging. Auch in anderen Mitgliedstaaten fand sich kaum eine Nutzung der insgesamt ein Jahr währenden Sonderfreistellung.

Mit der Ende 2017 beschlossenen Änderungsverordnung (EU) 2017/2393 wurde der Anwendungsbereich des Art. 222 GMO auf landwirtschaftliche Erzeugerbetriebe und nicht anerkannte Organisationen erweitert. Insofern trug der EU-Gesetzgeber den Erfahrungen von 2016 Rechnung, indem nun

³ Busse, Die Sonderkartellverordnungen der Europäischen Kommission vom April 2016 zur Planung der Milcherzeugung, Zeitschrift für Kartellrecht 2017, S. 88-112.

zusätzlich zu den anerkannten Agrarorganisationen sämtliche Akteure eines Erzeugnissektors, die auf der Urerzeugerebene existieren, von Art. 222 GMO erfasst werden. In Bezug auf den personellen Anwendungsbereich ist mithin ein Rückgriff auf die allgemeine Krisenermächtigung des Art. 219 GMO nicht mehr erforderlich. Die anderen konzeptionellen Probleme des Art. 222 GMO wurden hingegen nicht angegangen und bestehen damit nach wie vor.

Durch die drei Durchführungsverordnungen (EU) 2020/593, (EU) 2020/594 und (EU) 2020/559 vom 30.04.2020 hat die Europäische Kommission die Sonderkartellfreistellung für sechs Monate in den drei Bereichen a) Kartoffeln, b) lebende Pflanzen und Waren des Blumenhandels, Bulben, Zwiebeln, Knollen, Wurzelknollen und Wurzelstücke, Schnittblumen und Pflanzenteile zu Binde- und Zierzwecken sowie c) Milch und Milcherzeugnisse eröffnet. Für die Bereiche a) und b) begann der Sechsmonatszeitraum am 05.05.2020 und für den Bereich c) rückwirkend ab dem 01.04.2020. Vermutlich werden die Sonderkartellfreistellungen wie 2016 vor ihrem Auslaufen um sechs Monate verlängert.

Grundsätzlich sind alle drei Durchführungsverordnungen konzeptionell und sogar größtenteils wörtlich der Durchführungsverordnung (EU) 2016/559 nachgebildet. Einige mit der Durchführungsverordnung (EU) 2016/559 verbundenen Unklarheiten – etwa, dass im Milchbereich nicht jegliche Milch, sondern nur Rohmilch erfasst ist – wurden dabei gelöst, andere sind jedoch bestehen geblieben. Wie 2016 wiederholen die drei Durchführungsverordnungen die Vorgabe des Art. 222 Abs. 1 GMO, dass die getroffenen Vereinbarungen und Beschlüsse “das ordnungsgemäße Funktionieren des Binnenmarktes nicht unterminieren“ dürfen. Es ist Aufgabe der Mitgliedstaaten, dies zu prüfen und bei Nichteinhaltung die erforderlichen Maßnahmen zu treffen.

Welche Behörde als für die Durchführung zuständig bestimmt wird, ist Angelegenheit der Mitgliedstaaten. Erwägungsgrund 16 Durchführungsverordnung (EU) 2020/593, Erwägungsgrund 16 Durchführungsverordnung (EU) 2020/594 und Erwägungsgrund 13 Verordnung (EU) 2020/559 sprechen zwar gleichlautend davon, dass, falls es sich nicht um Kartellbehörden handelt, die Kartellbehörden über die Vereinbarungen und Beschlüsse zu informieren sind. Dies findet jedoch keine Entsprechung im verfügbaren Teil der Durchführungsverordnungen und ist daher nur eine Empfehlung. In Deutschland ist 2016 die Maßnahme durch die Bundesanstalt für Ernährung und Landwirtschaft (BLE) als deutscher Agrarmarktbehörde auf Bundesebene durchgeführt worden.

Während für den Milchbereich wie 2016 nach Art. 1 Durchführungsverordnung (EU) 2020/559 nur “die Planung der erzeugten Rohmilchmenge“ unter die Freistellung fällt, um zu einer Verringerung der zukünftig erzeugten Rohmilchmenge beizutragen, geht die Freistellung in den anderen beiden Bereichen über die Erzeugungsplanung weit hinaus. Art. 1 Durchführungsverordnung (EU) 2020/593 gestattet für den Kartoffelbereich, “Vereinbarungen für Kartoffeln zur Verarbeitung zu schließen und gemeinsame Beschlüsse über Kartoffeln zur Verarbeitung betreffend Marktrücknahmen und kostenlose Verteilung, Umwandlung und Verarbeitung, Lagerung, gemeinsame Absatzfördermaßnahmen und die vorläufige Planung der Produktion zu fassen“. Für den Gartenbaubereich erlaubt Art. 1 Durchführungsverordnung 2020/594, “Vereinbarungen zu schließen und gemeinsame Beschlüsse betreffend Marktrücknahmen und die kostenlose Verteilung, gemeinsame Absatzfördermaßnahmen und die vorläufige Planung der Produktion zu fassen“. Offenbar beinhaltet die etwas missglückte deutsche Sprachfassung, dass die Vereinbarungen denselben Anwendungsbereich wie die gemeinsamen Beschlüsse besitzen.

Während für den Milchbereich die Erwägungsgründe zur Durchführungsverordnung (EU) 2020/559 hinsichtlich der Marktsituation weitgehend die schon zitierten Erwägungsgründe zu den PLH-Maßnahmen im Milchbereich wiederholen, beschreiben die Erwägungsgründe zur Durchführungsverordnung (EU) 2020/593 vor allem die schwierige Situation betreffend die "Ausfuhren tiefgefrorenen Kartoffeln und insbesondere tiefgefrorener Pommes Frites". Diese Produkte waren sowohl im Binnen- als auch im Außenhandel erheblich durch die Beherbergungs- und Gastronomiebeschränkungen betroffen. Dies sei durch die Erhöhung der Nachfrage bei "bestimmten verarbeiteten Kartoffelerzeugnissen wie Chips und Kartoffelbreipulver" nicht ausgeglichen worden. Besonders problematisch sei zudem, dass zur Verarbeitung bestimmte Kartoffeln noch in erheblichen Umfang gelagert seien und rechtzeitig für die Kartoffeln der Kampagne 2020 ausgelagert werden müssten. Entweder würden Kosten für die Transport- und Vernichtungskosten anfallen oder die Erzeuger die Kartoffeln auf die Felder verteilen, was "langfristige Folgen für die Umwelt und den Pflanzenschutz" haben könnte. Wie genau die Sonderkartellfreistellung an diesen Punkten helfen soll, beschreiben die Erwägungsgründe allerdings nicht.

Den Bereich Gartenbau traf die COVID-19-Pandemie zu einem besonders ungünstigen Zeitpunkt, wie Erwägungsgrund 4 Durchführungsverordnung (EU) 2020/594 ausführt: "Die meisten lebenden Pflanzen und Blumen werden im Frühjahr für besondere Anlässe wie den Muttertag oder Ostern erzeugt, und Zimmerpflanzen werden zur Anpassung an die saisonale Nachfrage speziell in kleinen Töpfen erzeugt. Die meisten Verkäufe finden in der Regel im Frühjahr statt. In einigen Teilsektoren wie einjährige Beetpflanzen und Schnittblumen werden zwischen März und Juni 40 % bis 80 % der Verkäufe abgewickelt." Inzwischen würden – so Erwägungsgrund 9 – Beetpflanzen und Schnittblumen "in großen Mengen vernichtet". In hoch konzentrierten Märkten wie dem niederländischen Blumenmarkt sind in der Vergangenheit kartellrechtswidrige Absprachen von den Kartellbehörden aufgedeckt und geahndet worden.⁴ Insofern lässt sich vorstellen, dass diese Sonderkartellfreistellung durchaus Wirkungen erzeugen könnte.

4. Sonstige Maßnahmen

Die sonstigen Maßnahmen in den fünf Bereichen frisches Obst und Gemüse, Wein, Olivenöl und Tafeloliven, Imkerei und Schulprogramm sind sehr heterogener Natur und können vorliegend nur kurz skizziert werden. Allen fünf Bereichen ist gemeinsam, dass es für sie sektorspezifische Förderprogramme gibt, deren ordnungsgemäße Durchführung durch Folgen der COVID-19-Pandemie gefährdet ist. Insofern enthalten die Art. 3 bis 5 Durchführungsverordnung (EU) 2020/600 vom 30.04.2020 für die Bereiche Olivenöl und Tafeloliven, Imkerei sowie Schulprogramm vor allem Verlängerungen von Fristen. Im Bereich frisches Obst und Gemüse verlängert Art. 1 dieser Verordnung die Frist für bestimmte Beihilfeanträge im Bereich frisches Obst und Gemüse. Art. 1 Delegierte Verordnung (EU) 2020/592 vom 30.04.2020 befreit von der Drittelgrenze für "Ausgaben für Krisenprävention und -managementmaßnahmen im Rahmen der operationellen Programme".

⁴ Vgl. etwa Richli/Busse, Generalbericht der Kommission I, in: CEDR (Hrsg.), Agriculture and Competition. XXIX European Congress and Colloquium of Rural Law, Lille, 20-23 September 2017, S. 216.

Eine ganze Reihe weiterer Maßnahmen für den Bereich frisches Obst und Gemüse ist in der Delegierten Verordnung vom 04.05.2020 enthalten. Anders als die beiden anderen Delegierten Verordnungen ist sie nicht im Dringlichkeitsverfahren des Art. 228 GMO, sondern im normalen Verfahren des Art. 227 GMO erlassen worden, so dass sie erst verkündet werden konnte, nachdem das Europäische Parlament beschlossen hatte, keine Einwände zu erheben.⁵ In ihr geht es nicht nur um die Verlängerung von Fristen und Erleichterungen bei Fördervoraussetzungen, sondern auch um die Einführung neuer Maßnahmen im Rahmen der operationellen Programme. Die Mitgliedstaaten können insofern entscheiden, ob sie diese Maßnahmen in das Förderprogramm aufnehmen.

Im Weinbereich sind durch die Art. 2 bis 10 der Delegierten Verordnung (EU) 2020/592 mehrere Änderungen im Hinblick auf das Stützungsprogramm im Dringlichkeitsverfahren beschlossen worden. Hierzu gehören die befristete Einführung einer Krisendestillation und einer PLH. Den Mitgliedstaaten ist freigestellt, ob sie diese Maßnahmen auf ihrem Hoheitsgebiet anbieten. Art. 2 Durchführungsverordnung (EU) 2020/600 regelt die Verlängerung von Fristen im Weinbereich und die Durchführungsverordnung (EU) 2020/601 vom 30.04.2020 die Verlängerung der Gültigkeit von Rebpfanzungsgenehmigungen, die 2020 schon ausgelaufen sind oder noch auslaufen werden. Verlängert wurden sie bis zum 05.05.2021. Denn die COVID-19-Pandemie kann dazu führen, dass die notwendigen Mittel für die entsprechenden Investitionen fehlen.

5. Schlussbemerkung

Im Agrarmarktbereich hat die EU auf die COVID-19-Pandemie relativ schnell reagiert. Die Nahrungsmittelversorgung war dabei zu keiner Zeit ernsthaft gefährdet. Inzwischen hat sich die Situation wieder weitgehend entspannt. Allerdings werden einige Erzeugnissektoren vermutlich Spuren davon tragen. Auch bleibt abzuwarten, ob die weiteren Entwicklungen auf dem Weltagrarmarkt in nächster Zeit zu einem verfestigten niedrigeren Preisniveau führen. Vorstellbar ist dies beispielsweise im Milchbereich. Auswirkungen könnten die Geschehnisse ebenfalls auf die Diskussion der Stärkung von Selbsthilfemaßnahmen zur Verringerung von krisenbedingten Risiken im Rahmen der derzeit laufenden GAP-Reform besitzen.

Auf längere Sicht bedeutsamer werden aber vermutlich die Wirkungen der COVID-19-Pandemie auf den Agrarbereich allgemein sein. Die Farm-to-Fork-Mitteilung der Europäischen Kommission, die in den "Green Deal" der EU eingebettet ist, legt davon Zeugnis ab. So könnten tiefgehende Umstellungen in der Bewirtschaftungsweise und damit einhergehend Änderungen der Agrarstrukturen bevorstehen. Wichtig ist dabei, dass stets die ökonomischen Folgewirkungen der gewünschten Reformen berücksichtigt werden.⁶ Denn ohne rentable Betriebe kann die Landwirtschaft nicht aus sich selbst heraus funktionieren, sondern ist weiterhin und eventuell sogar noch mehr als bisher auf staatliche Unterstützung angewiesen. Insofern stehen schwierige Diskussionen und Entscheidungen an.

⁵ Europäisches Parlament, P9_TA-PROV(2020)0154 v. 17.6.2020 (abrufbar über die Internetseite des Europäischen Parlaments).

⁶ Vgl. näher Busse, Editorial: Gedanken zur „Farm-to-Fork“-Debatte, Agrar- und Umweltrecht 2020 (im Erscheinen).

Coronamaßnahmen im Landwirtschaftsbereich in Österreich

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1. Bundesebene

Die Auswirkungen der Coronakrise auf die Landwirtschaft sind vielfältig: zum einen waren und sind eine Vielzahl von landwirtschaftlichen Betrieben vom Einbruch der Exportmärkte sowie von der monatelang fehlenden Nachfrage in Gastronomie- und Beherbergungsbetrieben betroffen, auch fehlten ausländische Erntehelfer vor allem im Obst- und Gemüsebau. Zum anderen hat die Krise deutlicher denn je die Notwendigkeit der Versorgungssicherung mit qualitativ hochwertigen Lebensmitteln aus der Region deutlich gemacht.

Auf Grund des COVID-19-Gesetzes¹ und der darauf gegründeten, mit 30.04.2020 außer Kraft getretenen Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz betreffend vorläufige Maßnahmen zur Verhinderung der Verbreitung von COVID-19² waren vom Verbot des Betretens des Kundenbereichs von Betriebsstätten des Handels und von Dienstleistungsunternehmen sowie der Inanspruchnahme von Dienstleistungen u.a. ausgenommen:³

- Lebensmittelhandel (einschließlich Verkaufsstellen von Lebensmittelproduzenten und bäuerlichen Direktvermarktern,
- veterinärmedizinische Dienstleistungen,
- Verkauf von Tierfutter sowie
- Agrarhandel einschließlich Schlachttierversteigerungen sowie der Gartenbaubetrieb und der Landesproduktenhandel mit Saatgut, Futter und Düngemitteln

Das BMLRT⁴ führte hierzu ergänzend aus: "Die Ausgangsbeschränkungen und das Verbot von Versammlungen von mehr als fünf Personen gelten nicht für landwirtschaftliche Betriebe, da sie zur kritischen, systemerhaltenden Infrastruktur zählen. Das bedeutet, landwirtschaftliche Betriebe können ihrer Tätigkeit möglichst uneingeschränkt nachgehen. So ist Feldarbeit nach wie vor möglich." Da im Zusammenhang mit den in Österreich festgelegten COVID-19-Maßnahmen vermehrt Fragen aufgetreten sind, welche Unternehmen im Bereich der Lebensmittelproduktion als zur Aufrechterhaltung der Grundbedürfnisse des öffentlichen Lebens erforderlich und damit als systemrelevante Unternehmen

¹ BGBl I 12/2020.

² BGBl II 96/2020.

³ § 2 COVID-19-Verordnung.

⁴ Bundesministerium für Landwirtschaft, Regionen und Tourismus.

gelten, erfolgte seitens des BMLRT die Klarstellung, dass dies alle Unternehmen und Betriebe entlang der Lebensmittelkette (Lebensmittelproduktion sowie alle vorgelagerten und nachgelagerten Bereiche) sind.

Im Zuge der COVID-19 Lockerungsmaßnahmen⁵ durften Wein- und Mostbuschenschankbetriebe sowie Almausschankstätten ab 15. Mai 2020 unter Einhaltung bestimmter Vorsichtsmaßnahmen ihre Räumlichkeiten wieder für Gäste öffnen, Beherbergungsbetriebe wie Urlaub am Bauernhof ab 29. Mai 2020.

Eine wesentliche Frage für die Wirtschaft im allgemeinen und die Landwirtschaft im besonderen ist jene nach einem wenigstens teilweisen Ausgleich der durch die CORONA-Maßnahmen verursachten finanziellen Schäden. Durch das COVID-19-Gesetz wurde der "COVID-19-Krisenbewältigungsfonds" mit dem Ziel errichtet, die notwendigen finanziellen Mittel für CORONA-Hilfsmaßnahmen zur Verfügung zu stellen.⁶ An wesentlichen Hilfsmaßnahmen für die Land- und Forstwirtschaft sind zu nennen:

a) Härtefallfonds

Unterstützt werden als "Erste-Hilfe-Maßnahme" Nebenerwerbs- und Vollerwerbsbetriebe bis zu neun Arbeitskräften und einem Umsatz von max. 2 Millionen €,

- die von einem behördlich angeordneten Betretungsverbot aufgrund von COVID-19 betroffen sind;
- die einen Umsatzeinbruch von mindestens 50 % zu einem vergleichbaren Zeitraum des Vorjahres nachweisen können;
- die eine Kostenerhöhung zu einem vergleichbaren Zeitraum des Vorjahres bei Fremdarbeitskräften zu verzeichnen haben;
- die einen Preisverlust von mindestens 50 % aufgrund des Qualitätsverlustes bei Sägerundholz zu verzeichnen haben;
- Jungunternehmer (die seit 2019 einen neuen Betriebszweig führen), wenn in den Betriebszweigen ein Umsatzeinbruch von mindestens 50 % vorliegt.

Für alle anspruchsberechtigten Betriebe wurde eine Mindestfördersumme von 500 € und eine maximale Förderung von 2.000 € je Bewirtschafter festgelegt. Die Förderung kommt insbesondere für folgende Betriebszweige in Betracht:

- Wein- und Mostbuschenschankbetriebe;

⁵ COVID-19-Lockerungsverordnung – COVID-19-LV), BGBl II 197/2020 idF II 266/2020.

⁶ Art 1 COVID-19-Gesetz. Im Fall der Erlassung einer COVID-19-VO gelangen gem. Art 8 COVID-19-Gesetz die Bestimmungen des Epidemiegesetzes 1950, BGBl 186/1950, betreffend die Schließung von Betriebsstätten und damit auch die diesbezüglichen Entschädigungsbestimmungen nicht zur Anwendung. In der Begründung des Initiativantrages IA 396/A vom 14.03.2020, XXVII.GP wird hierzu ausgeführt, dass sich mit dem Fortschreiten der Corona-Pandemie herausgestellt habe, dass die Maßnahmen des Epidemiegesetzes 1950 nicht ausreichend bzw. zu kleinteilig sind, um die weitere Verbreitung von COVID-19 zu verhindern.

- Spezialkulturen im Wein,- Obst,- Garten- und Gemüsebau sowie mit Christbaumkulturen (hinsichtlich Fremdarbeitskosten);
- Landwirtschaftliche Betriebe, die Privatzimmer oder Ferienwohnungen vermieten (Urlaub am Bauernhof);
- Betriebe, die landwirtschaftliche Produkte direkt, an die Gastronomie, Schulen und die Gemeinschaftsverpflegung sowie gärtnerische Produkte direkt und an den Groß- und Einzelhandel vermarkten;
- Betriebe, die agrar- und waldpädagogische Aktivitäten anbieten;
- Betriebe, die auf Basis von Verträgen Sägerundholz erzeugen, dieses aber durch die Maßnahmen gegen die Ausbreitung von Covid-19 nicht mehr zur Abholung kommt.

Die Phase 1 der Zahlungen aus dem Härtefallfonds endete mit 15.04.2020. In Phase 2 können Betriebe bei Nachweis eines Einkommensrückgangs jeweils bis zu 2.000 € pro Monat für die nächsten drei Monate beantragen.

b) Corona-Hilfsfonds für die Land- und Forstwirtschaft

Der Hilfsfonds steht allen land- und forstwirtschaftlichen Betrieben zur Verfügung und beinhaltet zwei Instrumente:

1. Überbrückungsgarantien für land- und forstwirtschaftliche Betriebe

Zum Ausgleich von Umsatzausfällen haben land- und forstwirtschaftliche Betriebe die Möglichkeit, über ihre Hausbank Überbrückungsgarantien für Kredite zu beantragen. Die Laufzeit beträgt maximal fünf Jahre. Abhängig vom Kreditrahmen stehen drei Garantievarianten (100 %, 90 %, 80 % de minimis-Garantie) zur Verfügung (Einreichfrist bis 15.12.2020).

2. Fixkostenzuschüsse

Dabei handelt es sich um steuerfreie, nicht rückzahlbare Zuschüsse zur Deckung von Corona bedingten Fixkosten. Der Zuschuss ist gestaffelt und wird unter folgenden Voraussetzungen gewährt (Einreichfrist bis 31.08.2021):

- Sitz oder Betriebsstätte und operative Tätigkeit in Österreich;
- Der Betrieb erleidet zwischen den 16.03.2020 und 15.09.2020 einen Umsatzausfall von zumindest 40 %, der durch die Ausbreitung von COVID-19 verursacht ist. Für die Berechnung kann ein gewisser Betrachtungszeitraum gewählt werden;
- Der Betrieb muss zumutbare Maßnahmen gesetzt haben, um Fixkosten zu reduzieren;
- Der Betrieb darf sich am 31.12.2019 nicht in finanziellen Schwierigkeiten befunden haben, kein Insolvenzverfahren eröffnet oder die Voraussetzungen für ein Insolvenzverfahren gegeben sein.

c) Arbeitskräfte für die Lebensmittelkette

Um dem Arbeitskräftemangel in der Lebensmittelwirtschaft und bei der Ernte entgegenzuwirken, richtete das BMLRT gemeinsam mit den Landwirtschaftskammern und dem Maschinenring eine zentrale Plattform zur Vermittlung von Arbeitskräften ein. Neben der Online-Plattform wurde eine eigene Hotline eingerichtet, an die sich sowohl Arbeitssuchende als auch Arbeitgeber entlang der Lebensmittelkette wenden können.

d) Fristverlängerungen für Land- und Forstwirte wegen COVID-19

Die von Österreich beantragte Verlängerung der Antragsfrist für den Mehrfachantrag (MFA)-Flächen 2020 wurde von der EU-Kommission genehmigt. Damit verschieben sich die relevanten Fristen um einen Monat und es gilt die elektronische Abgabe des MFA 2020 bis inklusive Montag, den 15. Juni 2020.

Weitere Fristverlängerungen betreffen: Direktzahlungen und Zahlungen für Junglandwirte, Rinderkennzeichnungsverordnung, Schulmilch-, Schulobst- und Schulgemüseprogramm sowie Beihilfeanträge zu Marktordnungsmaßnahmen im Weinbereich.

e) Entlastungspaket für die Land- und Forstwirtschaft

Die österreichische Bundesregierung hat im Juni 2020 ein umfangreiches Entlastungspaket für die heimische Land- und Forstwirtschaft im Ausmaß von 400 Millionen € vorgelegt, die dafür notwendigen Gesetz- und Verordnungsentwürfe sind in Ausarbeitung.⁷ Ziel ist die Stärkung einer leistungsfähigen und flächendeckenden Land- und Forstwirtschaft, die die Versorgung mit Lebensmitteln und Holzprodukten sichert. Die geplanten steuer- und sozialpolitischen Maßnahmen sollen rückwirkend mit 01.01.2020 wirksam werden und umfassen:

- Anhebung der steuerlichen Buchführungsgrenzen;
- Anpassung der forstlichen Einheitswerte;
- Anhebung der Umsatzgrenze für landwirtschaftliche Nebentätigkeiten;
- Steuerliche Ergebnisglättung durch einen dreijährigen Durchrechnungszeitraum;
- Steuerliche Erleichterungen bei der forstlichen Kalamitätsnutzung;
- Sozialpolitische Entlastungen (Angleichung der Krankenversicherungs-Mindestbeitragsgrundlage, Senkung des anzurechnenden fiktiven Ausgedinges, Entfall des Solidaritätsbeitrages der Bauernpensionisten).
- Schließlich kommen den land- und forstwirtschaftlichen Betrieben auch die von der Bundesregierung geplanten allgemeinen steuerlichen Entlastungsmaßnahmen (Senkung des Steuersatzes der Lohn- und Einkommenssteuer für die 1. Tarifstufe, Kinderbonus) zugute.

⁷ BauernZeitung.at 17.06.2020.

2. Landesebene

Auch im Zuständigkeitsbereich der Bundesländer wurden einzelne Maßnahmen zur Existenzsicherung landwirtschaftlicher Betriebe getroffen. Um den markanten Umsatzeinbrüchen in Buschenschankbetrieben entgegenzuwirken, wurden die Buschenschankgesetze von NÖ und Wien dahingehend geändert, dass die Ausschankzeiten bis Jahresende 2020 verlängert wurden.⁸

⁸ NÖ LGBl 7045 idF 44/2020; für Wien: Wiener Zeitung 11.05.2020

COVID 19-Measures taken in Bulgaria

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According to the Ministry of Health (MH), the COVID - 19 infections in Bulgaria started on 08.03.2020. As of June the 22nd, 3 905 cases were reported and the recorded deaths were 199.

In compliance with article 57 paragraph 1 of the Constitution of Bulgaria a "state of emergency" has entered into force on 13.03.2020. A new Law on Measures and Actions during the State of Emergency and overcoming the consequences (LMASEOC) had been adopted by the government. The Health Act (HA) and the Civil Penalty Codex were amended accordingly. In total, 99 Orders by the Minister of Health¹ have been issued for the introduction of the measures for combating the Covid-19. As of 14.05.2020 the wording "State of Emergency" is been replaced by the wording "Emergency epidemic Situation" with a deadline 30.06.2020.

The doctrine however argues whether a minister can impose "measures" throughout a general administrative act. According to Valchev, 2020², the act must be a normative act.

The measures taken that have been imposed:

Measures of coordination: the National Crisis-management Staff for combating Covid-19 has been established as well as a Single unified system for registration and information RD-01-150/25.03.2020, RD-01-158/26.03.2020.

Medical measures: It has been adopted a list of:

- Covid-29 diagnostic centers RD-01-193/10.04.2020

- Hospitals for "uncomplicated" and "intensive" patients RD-01-159/27.03.2020

-Instructions for Mandatory isolation RD-01-130/17.03.2020 and mandatory hospitalization RD-01-129/16.03.2020 (14/28 day quarantine) as well as symptoms for detection of the coronavirus specified in RD-01-166/30.03.2020

The wearing of protective equipment/masks: RD-01-168/30.03.2020 has become mandatory.

¹ The orders are RD – 01 - ...

² Valchev, D. 2020 about the virus, law and other important things, Lex.bg, available in electronic format on 20.04.2020.

- Treatment with Hydroxychloroquine Sulfate and Azithromycin Dispersible RD-01-266/14.05.2020 was allowed in hospitals.

Disinfection: Cleaning algorithms have been introduced.

Movement restrictions: Quarantine for the people and settlements have been introduced:

- City of Bansko RD-01-132/17.03.2020 and the village of Panicherevo RD-01-217/14.04.2020 are isolated for 14 days (canceled).

For the same period an isolation has been put on all of the arrivals coming from certain countries listed in RD-01-130/17.03.2020; RD-01-183/06.04.2020.

A border crossing regime has been applied at the borders of the country by RD-01-127/16.03.2020; RD-01-128/16.03.2020; RD-01-183/06.04.2020.

The transit through the Bulgarian's territory is also limited by RD-01-334/12.06.2020 and RD-01-140/19.03.2020.

By order ПД-01-143/20.03.2020 checkpoints outside provincial centres were settled up and the entries and exits to the cities at regional level were limited.

A special regime for managing the Easter holidays has been introduced through order RD-01-224/16.04.2020.

Cluster limitation and physical distance: the teaching process was only conducted through distance form of learning. Sports, cultural, conferences events, visits in the parks have been forbidden by orders RD-01-124/13.03.2020; RD-01-131/17.03.2020.

By order RD-01-144/22.03.2020 the food establishments were only allowed to work for food delivery to address.

Separation as regards the risky groups: Persons under 60 are prohibited to do their shopping for food and medicine from 8.30 to 10.30 hours RD-01-124/13.03.2020.

Limited export: of quinine-based drugs RD-01-141/19.03.2020.

Guidelines for the instructions of the Ministry of Health as regards the functioning of medical institutions, kindergartens, nurseries, shops, fitness, libraries, theaters.

Restrictions related to agricultural sector and the farmers: New organization of the farmers' markets and the sale of products have been introduced by RD-01-179/06.04.2020. On 28 of April the Bulgarian Prime minister stated that despite of corona restrictive measures sectors such as Agriculture, Construction and IT continued to operate. Seasonal agricultural workers were allowed to be hired again; agricultural land started to be cultivated by virtue of RD-01-196/10.04.2020. On the farmers market it is only allowed food to be offered by farmers RD-01-199/11.04.2020.

Ban on the trade at the farmers' markets by RD-01-218/15.04.2020 during Easter Holiday was applied.

On 20-th of April began "loosening" of the measures RD-01-236/24.04.2020. Medical consultations and immunizations RD-01-225/20.04.2020, planned operations RD-01-243/29.04.2020, "assisted reproductions" RD-01-238/26.04.2020 have started again. However the export of Analgin-Chinin RD-01-237/24.04.2020 remains limited.

From 26.04 on walks in the parks № RD-01-239/26.04.2020 were allowed, and from 01.05.2020 the national parks RD-01-247/01.05.2020 were reopened.

From 6.05.2020 on the checkpoints outside provincial centres were removed and restrictions limiting the inter-city travel lifted order RD-01-251/05.05.2020. The food consumption (nutrition) indoor at public sites and the use of outdoor swimming pools (RD-01-249/03.05.2020) were restored. Museums, libraries, cinemas are allowed to operate with a maximum of 30% of their capacity (RD-01-256/11.05.2020); sports events are still under restrictions (RD-01-259/11.05.2020). The "separation" of adults in shopping is preserved.

The anti-epidemic measures applied on 14.05-14.06.2020 have been alleviated by order RD-01-272/20.05.2020. The mall centers are re-opened again (18.05), the entry and transit through the Bulgarian territory for of the citizens coming from the European Economic Area, Turkey, Serbia, Northern Macedonia, Montenegro has been facilitated with RD-01-275/20.05.2020 and RD-01-274/21.05.2020. The kindergartens mention in order RD-01-270/19.05.2020 are foreseen to be reopened on 21.05.2020. On 01.06.2020 forewords it is possible to move to the neighboring countries. The use of protective masks is extended by order RD-01-262 /14.05.2020.

By order RD-01-337/13.06.2020, anti-epidemiological measures have been extended for the period 15.06.2020 until 30.06.2020. During public transport, in pharmacies and hospitals wearing of facial mask remains to be mandatory. The schools and the universities remained closed; visits in the hospitals are prohibited. The restrictions for entering and passing through the territory of the country as regards order RD-01-334/12.06.2020 are gradually being dropped down.

The list of the countries from which citizens will be put under quarantine once they entered in Bulgaria imposed by order RD-01-341/17.06.2020 is decreasing constantly. As of 20.06.2020 the quarantine for arrivals from Sweden, Great Britain, Northern Ireland and Belgium continues to be applied by RD-01-338/13.06.2020. Cultural and sports events are allowed if the capacity of the establishment is filled up to 50%.

The "separation" of people more than 60 years of age when shopping RD-01-277/ 26.05.2020 is eliminated.

By Decree 70/2020 of the Bulgarian President the established unconstitutionality of Art. 63, paragraphs 2 to 7 was referred to the Constitutional Court, due to the reason that the fundamental rights of people are affected; the principle of the law is violated. The case is essentially pending.

The Supreme Administrative Court has canceled 4 orders concerning the extraordinary measures - case N 3706 from 2020, due to illegally imposed preliminary execution. The final decision is forthcoming. With Decree N55 of 30.03.2020, the Council of Ministers introduces economic measures for the

closed enterprises. The compensation is the so called "60/40 measure"³. The Agricultural sector has not been covered by this measure. The extraordinary measure for Agriculture is pointed out in Regulation 1305/2013 where it is foreseen to increase the budget of the Rural Development Program 2014-2020 by 2 %.

The subsidies are released for:

Livestock: cattle - 53 BGN leva⁴; buffaloes - 63 BGN leva; sheep/goats - 10 BGN leva; poultry - 0.08 BGN leva; pigs – BGN leva; beehives - 5 BGN leva.

"Crop production": vegetables in the open areas – 65 BGN leva/decare; or 65 BGN leva on every 1,000 BGN leva of income according to the submitted annual tax state payment declaration for 2020) revenue under an annual tax return for 2020. The industry will choose which approach to apply; support for vegetables in the greenhouses- 540 BGN leva/decare; fruits - 50 BGN leva /decare; rose production - BGN 90 / decare and for wine grapes - 30 BGN leva/decare.

For the other producers it is 30 BGN leva for each permanent appointed worker.

The total maximum value of support - 7000 euros for the manufacturers, and for small and medium enterprises - 50,000 euros.

The European Commission has approved a € 150 million (approx. BGN 294 million) Bulgarian scheme to support small and medium-sized enterprises (SMEs) in the context of the coronavirus outbreak. The scheme was approved under the State aid Temporary Framework adopted by the Commission on 19 March 2020, as amended on 3 April 2020.

Bulgaria notified to the Commission under the Temporary Framework a State aid scheme with an estimated budget of € 150 million (approx. BGN 294 million) to support companies affected by the coronavirus outbreak.

Under the scheme, the public support will take the form of equity and quasi-equity investments.

The scheme, which will be open to SMEs active in all sectors with certain exceptions defined by Bulgaria, aims at enhancing access to liquidity by those companies, which are most severely affected by the economic impact of the coronavirus outbreak, thus helping them to continue their activities, start investments and maintain employment.

The Commission found that the Bulgarian scheme is in line with the conditions set out in the Temporary Framework. In particular, (i) the support will not exceed € 800,000 per company as provided by the Temporary Framework, (ii) equity and quasi-equity will be granted only to solvent companies, and (iii) aid can be granted until 31 December 2020.

³ Decree 55, the state will cover 60 % of employees' insurable earnings as well as the social insurance contributions owed by the employer and at the expense of employers remain 40 %.

⁴ 1 EUR = 1.95583 BGN.

The Commission therefore concluded that the Bulgarian measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the conditions set out in the Temporary Framework.

On this basis, the Commission approved the measures under EU State aid rules.

State Aid Scheme: Temporary Support for primary agricultural Enterprises in the COVID-19 outbreak in Finland

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1. Planned action

The support is in the form of direct grants. It aims to support companies in the primary agricultural sector whose markets have diminished substantially or disappeared completely due to the coronavirus outbreak and thereafter companies are experiencing economic difficulties.

The Finnish scheme is open to companies operating in primary agricultural production (TFEU ANNEX I products), excluding fishery and aquaculture products.

The amount of the grant is at least € 5.000 and at most € 10.000 for a maximum period of 6 months. The aid can cover 80 % of the company's essential adaptation needs.

The aid authority is the Centre for Economic Development, Transport and the Environment.

2. Economic impact of the COVID-19 outbreak

The difficulties in the primary product sector are due to the sudden change in consumption patterns. Most of the restaurants are closed or functioning under heavy restrictions and therefore food products are sold mainly through conventional retail market channels. Therefore, niche products, tailored for restaurants or direct sales, are facing severe difficulties, when markets either have declined substantially or have fallen away totally. There are also other, non-food annex I products that are facing similar impacts on their markets with obstacles in their marketing channels and customer loss. The losses for the companies referred to herein are estimated to be multiple times higher than the available public funding allocated for this scheme.

3. Fulfilment of state aid rules

The state aid is granted under the Temporary Framework.

The aid is granted to companies that were not in difficulty before the COVID-19 outbreak. The cumulated support does not exceed € 100.000 per company as provided by the Temporary Framework for companies active in the primary agricultural production. Aid under the scheme can be granted until 31 December 2020.

4. Objective

The objective is to prevent negative economic and employment impacts by providing support to companies in order to adapt and continue to operate after the crisis. The scheme helps companies cover their immediate liquidity needs and thus ensure they can continue their core activities during the crisis.

5. Legal basis

Act on State Budget (Laki valtion talousarviosta, 423/1988)

The grant decisions will base on the Act on Discretionary Government Transfers (Valtionavustuslaki, 688/2001, <https://www.finlex.fi/en/laki/kaannokset/2001/en20010688>).

Specific rules are laid down by government decree (Valtioneuvoston asetus maatalouden alku-tuotannon yritysten väliaikaisesta tuesta, 370/2020).

6. Budget

The total notified budget of the temporary agricultural primary production aid scheme is EUR 30 million.

Les conséquences du confinement sur les produits agricoles en France: L'adaptation des cahiers des charges des produits laitiers et carnés bénéficiant d'un signe d'identification de la qualité et de l'origine

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Les fromages d'appellation d'origine protégée ou d'indication géographique protégées (AOP-IGP), qui représentent 15 % de la filière lait en France, sont mis en péril par le coronavirus. Un mois après le début du confinement, les producteurs de fromages AOP ou IGP ont subi de plein fouet le changement de consommation des Français confinés et la perte d'un certain nombre de débouchés. La vente pour l'ensemble des produits des AOP et IGP Laitières a chuté de 60% en raison de l'arrêt de la restauration hors domicile et la fermeture des rayons à la coupe dans la grande distribution, ainsi que l'absence de vente directe en zone touristique conduisant parfait à l'arrêt de la fabrication ou de la collecte du lait dans 16 filières d'appellation, et parfois contraignant à détruire du lait ou des fromages dans une dizaine de filières AOP, représentant sur la période du 15 mars au 30 avril 2020, une perte de chiffre d'affaires au minimum de 157 000 000 €. ¹ Par ailleurs, le confinement et la chute des ventes s'est produit dans certains cas, au moment du pic saisonnier de collecte du lait, ce qui a été notamment le cas pour le fromage de Comté.

Les filières se sont organisées afin de limiter les pertes au niveau régional par la mise en place de plateforme de produits régionaux, drive fermiers, référencements des points de vente en ligne. C'est ainsi que diverses initiatives se sont multipliées pour favoriser ces circuits de vente locaux. Puis, progressivement les cahiers des charges ont été modifiés, afin d'adapter les conditions de fabrication des produits pour en favoriser le stockage des fromages. C'est ainsi qu'une vingtaine de cahiers des charges des AOP, IGP et labels rouges ont été assouplis temporairement entre le 8 avril et le 7 mai 2020² par arrêtés du ministère de l'agriculture.

Toutefois, le sort d'un millier de tonnes de fromages de première qualité, dont la durée de vie est limitée, restait néanmoins incertain début mai, avant la fin du confinement, la réouverture des rayons de fromages à la coupe et les marchés de plein air, et corrélativement celui d'une dizaine de milliers d'emplois de ce secteur économique. Pour cela, les professionnels du secteur ont créé un collectif « Soutenons nos fromages » afin de soutenir les 50 AOP, les 10 IGP laitières ainsi que tous les acteurs de la filière touchés par la crise sanitaire, de l'éleveur, aux fromagers et en passant par les distributeurs.

¹ Selon le Conseil National des appellations d'origine laitières (CNAOL)

² Bleu d'Auvergne, Brocciu, Charolais, Comté, Emmental, Emmental français est-central, Fourme d'Ambert, Fourme de Montbrison, Gruyère, Laguiole, Mâconnais, Morbier, Ossau-Iraty, Rocamadour, Roquefort, Saint-Nectaire, Sainte-Maure de Touraine,

Il en est de même pour les produits carnés, pour les mêmes raisons. Ainsi, les cahiers des charges de nombreuses viandes sous signe de qualité (Label rouge, AOP et IGP) ont été temporairement assouplis, par des arrêtés parus au milieu du mois avril 2020. Ce n'est pas moins d'une vingtaine de textes concernant les veaux, les ovins, les volailles fermières Label rouge et le porc noir de Bigorre AOP. Contrairement à la filière fromagère, où les modifications visent essentiellement la modification du délai entre la collecte du lait et la « mise en fabrication » des fromages, les modifications sont plus variées dans le secteur de la viande.

Pour les veaux et agneaux, l'âge et le poids maximum sont augmentés. En effet, la désorganisation des circuits de commercialisation provoque « des retards dans la sortie » de ces animaux. De plus, la fréquence de paillage normalement exigée par les cahiers des charges est réduite, à cause de difficultés de transport de paille pendant la période de confinement. Par ailleurs, le temps minimal passé en exploitation pour les animaux qui n'y sont pas nés (nourris au lait entier), est réduit en raison de la difficulté de rotation de ces animaux dans ces établissements. Pour les volailles, poulets et pintades, principalement, les arrêtés modifiant les cahiers des charges permettent de modifier l'alimentation.

Summary of State Measures concerning Coronavirus in Agriculture in Germany

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1. Agriculture is a "systemically relevant infrastructure"

On 23 March 2020 the Bundeskabinett (Federal Cabinet/Government) for the first time expressly declared the agriculture and food industry to be a "systemically relevant infrastructure". The term "systemically relevant infrastructure" is not a standardised legal term, but it is a consequence of the constitutional obligation to ensure efficient agriculture.¹ The agriculture and food industry is obliged to maintain the agricultural production during the coronavirus pandemic, which requires especially financial security, working supply chains, access to all necessary means of production, including work force.

2. Regulations

Therefore the following regulations were enacted in Germany:

a) Regulations concerning work force

Incentives and placement for work in agriculture

- The Bundesagentur für Arbeit (Federal Employment Agency) has issued a general approval in order to enable foreigners without a ban on employment to work in agriculture as quickly as possible.
- In order to increase the financial incentives to take up secondary employment as a seasonal worker, legal reliefs regarding the secondary income in agricultural work has been enacted for:
 - recipients of Kurzarbeitergeld (short-time work benefits)
 - unemployed people
 - asylum seekers
 - persons in early retirement (income-limit has been raised significantly in the statutory pension insurance and has been completely abolished in the special pension insurance for farmers)
 - recipients of payments under the Bundesausbildungsförderungsgesetz (Ba-fög-Law)
- More flexibility in the transfer of employees: Employee transfers between different sectors of the economy or between different companies requiring permission under

¹ Martínez, Corona - Die Land- und Ernährungswirtschaft als systemrelevante Infrastruktur, beck-blog 23.03.2020.

the Arbeitnehmerüberlassungsgesetz (Law on the Transfer of Employees) are now possible without such permission.

- Seasonal workers are exempt from the current immigration restrictions.
- Establishing free placement platforms for local workers. The platforms connect farmers and citizens in order to place them for work in agriculture.

Making working time arrangements more flexible

- The Bundesarbeitsministerium (Federal Ministry of Labour) has enacted a regulation that allows an extension of the maximum working time per day from 10 to 12 hours for a limited period. The minimum rest period can be reduced to 9 hours.

Extension of the 70-day rule

- The 70-day-rule from the social security law allows short-term employments with no social security obligation and no income limit. Whereas such short-term employments were so far possible for up to 70 days, now short-term employments are possible up to 115 days until 31.10.2020.

b) Regulations concerning securing liquidity

- The Landwirtschaftliche Rentenbank (development bank for agriculture) has launched a liquidity assurance programme for agricultural and forestry enterprises, gardening and winegrowing as well as fisheries and aquaculture enterprises that have been adversely affected by the Corona crisis. To secure liquidity, the bank issues loans that include a repayment-free year.
- This liquidity assurance programme is flanked by a state guarantee programme.
- Corona emergency aid: Amount: EUR 9,000-15,000; application condition: economic difficulties resulting from Corona + company must not have been in economic difficulties before March 2020 + damage occurring after 11.03.2020.
- Deferment of contributions for social security and for contributions for the Tierseuchenkasse (animal disease insurance).
- The obligation to apply for insolvency for companies is suspended until 30.09.2020 if the insolvency has been caused by the effects of the Corona crisis and if there are reasonable expectations of recovery.

c) Regulations concerning supply chains and necessary means of production

- In order to ensure the nationwide availability of goods for daily consumption (food), driving and rest periods in working day transport have been made more flexible and separate fast lanes have been created.
- The ban on driving on Sundays and public holidays for trucks has been abolished and exemptions have been made for the use of rest areas and truck stops for driving personnel.
- Checks at exit points and border inspection stations of animal transports are reduced to the legally required level.

- Protection against dismissal for lease contracts: Farmers who have difficulties in paying their leases due to the Corona crisis cannot be unilaterally terminated until 30.06.2020.
- Small agricultural enterprises are entitled to refuse their payments in continuous obligations, which are necessary for the appropriate continuation of the farm, until 30.06.2020, if they cannot provide the payment or cannot do so without endangering the economic basis of the farm.

COVID-Measures in Hungary

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Unfortunately, we can say that each sector of the agriculture has suffered serious losses due to the pandemic, nevertheless the food supply remained uninterrupted and ensured in Hungary. The most important measures taken by the Hungarian Government and the Ministry of Agriculture are of financial nature.

The Ministry has developed the National Food Economy Crisis Management Programme as part of the Economic Protection Action Plan, and the Government provided 25 billion Hungarian forints (approximately 70,5 million euros) within its framework for the agricultural producers, producer organisations and food industry enterprises in order to address the economic impact of the pandemic.¹ The transitional subsidy may take the form of a non-repayable grant, an interest rate subsidy or a guarantee fee subsidy. The applicants shall be enterprises dealing with primary agricultural production, food processing, forestry, hunting or fishing.²

Under the construction of the so-called 'Agrár Széchenyi Card', agricultural enterprises can apply for a current account loan (an overdraft) up to a maximum loan amount of 200 million Hungarian forints per enterprise for a period of one, two or three years if the eligibility conditions are met. The Government provides a full interest rate subsidy, a full guarantee fee subsidy, and a full administration costs subsidy for the loans during the entire period, but other costs in connection with the loans may also be taken over completely by the Government in some cases.³

Within the framework of Economic Protection Action Plan, there are a number of measures that has been taken in connection with taxation: reducing the burden on employers and employees will be extended to a part of the ornamental horticulture sector, wine producers, brandy producers and small-scale breweries until 30 June; reducing the social contribution tax by 2 percentage points; postponing the deadlines for annual reports and tax declarations to 30 September; speeding up the process of VAT-refunds (from 75 to 30 days in case of a normal taxpayer, from 30 to 20 days in case of the so-called reliable taxpayers).

¹ Government Resolution no. 1196/2020. (IV. 30.) on providing additional resources for tackling the economic problems caused by the coronavirus pandemic in the agricultural sector under the Economic Protection Action Plan.

² Decree no. 20/2020. (VI. 19.) of the Minister of Agriculture on laying down general conditions for the application of transitional subsidy for agricultural and food processing enterprises in difficulty due to the coronavirus pandemic, 2. § (1) and (3).

³ Decree no. 14/2020. (IV. 10.) of the Minister of Agriculture on the de minimis aid provided to the construction of Agrár Széchenyi Card within the framework of Economic Protection Action Plan.

Besides these, the agricultural sector was exempted from the obligation to pay water resources contributions during the state of danger triggered by the pandemic.⁴

The Ministry of Agriculture managed to ensure that agricultural work was unhindered even during the curfew and that foreign seasonal agricultural workers could also enter the country. The commander-in-chief of the police decided that the citizens of neighbouring states and Hungarian citizens with no Hungarian residence could enter Hungary in order that the labour force demand of the agricultural sector be ensured.⁵

In order to ensure the smooth running of production, bearing in mind the special labour needs of the agricultural sector, the rules for working in the agricultural sector under simplified employment have become more flexible. In 2020 the yearly limit of casual and seasonal work can be 180 days instead of 120 days.⁶

According to the Hungarian minister of agriculture, the most emphasised aim after the crisis should be the further development. In light of this, the Ministry of Agriculture has announced a new agricultural investment tender package worth 80 billion Hungarian forints (approximately 225 million euros) for the livestock and horticultural sectors.

Furthermore, a new website called 'Termelői kosár' (Producers' basket) was launched by the Ministry in order to provide an online trading platform, which helps agricultural producers find their costumers even during the more difficult situation of social distancing.

⁴ Decree no. 123/2020. (IV. 16.) of the Government on the fulfillment of the obligation to pay water resources contribution during the state of danger.

⁵ Announcement of the commander-in-chief of the police (6 May, 2020).

⁶ Act LVIII of 2020, 169. §.

Special Measures on Agriculture, Food Production and Food Supply Chain due to COVID-19 in Portugal

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Similar to what occurred in other European jurisdictions, the COVID-19 pandemic led to several legislative changes in all economic sectors in Portugal. The Portuguese Government was obliged to provide support credit lines, change administrative and procedural requirements, and adapt the existing legislation in accordance with the current needs and limitations. In addition to the general measures to all sectors, such as support financing lines, several other measures were specifically designed for the agricultural sector (non-exhaustive list):

1. Promotion and Solidarity

A new online platform “**Alimente quem o Alimenta**” (“Feed who Feeds you”) developed by the Ministry of Agriculture was launched at www.alimentequemalimenta.pt. This platform for the promotion and dissemination of short food supply chains aims to bring together producers and consumers and to encourage the consumption of local products, as well as to dynamize local markets.

DOURO + SOLIDÁRIO!: The Douro and Port Wine Institute, jointly with representatives of production and trade in the Douro Demarcated Region, promote a campaign aimed at providing an antiseptic solution for alcohol base (alcohol gel) to hospital centers in the North Region.

2. Rural development – PDR2020

Assignment of advances to settle payment requests under the PDR2020 measure, with subsequent settlement.

The deadlines for submitting applications, in the context of ongoing announcements, are extended by 30 days.

A set of integrated measures has been established in the LEADER measure, which aims to promote and streamline the marketing channels for **local food products (short food supply chains)**, expanding the possibilities of disposal to specific concentration points, located in the geographical area of production, in addition to local markets (Ordinance No. 86/2020, of 4 April, amended by Ordinance No. 107/2020, of 4 May).

3. Market Measures – Organisations of Fruit and Vegetable Producers

Allocation of **advances** to settle payment requests under the Operational Programs for Fruits and Vegetables (Paragraph a) of No. 2 - Resolution of the Council of Ministers No. 10-A / 2020, of 13 March).

Withdrawals from the market – Support to Fruit and Vegetable Producers’ Organizations with difficulties in disposing due to market losses that, within the scope of their Operational Programs, withdraw products from the market to deliver them to private institutions of social solidarity and to the Food Bank . Under this measure, support is 40 % of the average market value in the previous five years, and eligibility for the products “raspberry”, “blackberry”, “blueberry” and “strawberry” (Ordinance no. 88-E / 2020, of April 6)

Withdrawals from the market – Expansion of the universe of admissible destinations for products withdrawn by Fruit and Vegetable Producers’ Organizations, so that, alongside with charitable organizations, penitentiary institutions and holiday camps other institutions can also benefit from this action such as children’s hospitals and nursing homes (Order No. 4946-A / 2020, 23 April).

4. Market Measures – Private Storage

Granting of **aid for private storage**, in order to restore the balance of supply and demand, for the following products: skimmed-milk powder; butter; cheese; beef; sheep and goat meat.

5. Credit Lines

Subsidized credit line to support the flower sector, worth € 30M (in operation).

6. Vineyard and Wine Sector

Eligibility of expenses proven to be supported by beneficiaries in initiatives or actions canceled or postponed for reasons related to COVID-19 (in operation).

No penalty for projects that, due to the negative impacts resulting from COVID-19, do not reach the budget or the expected financial execution rate (in operation).

Flexibility in the execution period of the projects: extension until the end of 2021 of the projects contracted for 2020 that are in progress (in operation).

Extension and priority for payments of support for the production of alcohol for hospital and pharmaceutical purposes, within the scope of the by-product distillation measure (Ordinance No. 82-A / 2020, of 30 March)

Allocation of € 10M from the financial envelope of the National Support Plan for the wine sector to create measures aimed at minimizing the effects of the pandemic COVID-19 (crisis distillation and crisis storage) (under study and operationalization).

7. Other Administrative Measures

Temporary easing of communications to the National Animal Information and Registration System.

The extension of the legal deadlines for the application of individual identification in cattle up to 50 days of age and in small ruminants up to 10 months of age is authorized, applicable during the period declared as a State of Emergency.

Suspension of face-to-face training actions for farmers, giving priority to the continuity of theoretical training by electronic means.

The validity of the identification cards of the responsible technicians, sales operators and applicators of plant protection products, including specialized applicators, is extended.

Coronavirus related Measures in Agriculture, Food Processing and Food Supply in Slovenia

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In Slovenia, the pandemic of contagious disease Covid-19 was declared with a decree issued by the minister of health on 12 March 2020. The decree entered into force the same day at 6 pm.¹

On 15 March 2020 the public transport of passengers was temporarily stopped.² On 19 March 2020, a temporary general ban on the movement and on gathering of people in public places and areas in the Republic of Slovenia followed. Several exceptions from the ban were foreseen, including those necessary for the supply of the population and animals with necessary products (food, feed, medicines etc.) and for travelling to perform work tasks and carrying out necessary activities, including agriculture and forestry.³

The State Assembly adopted a special Act which introduced temporary measures with a view to provide sufficient food supply to the population due to the consequences of the SARS-CoV-2 (COVID-19) pandemic, the prevention of the spread of viral infection, the protection of human health and life, the possibility of restricting trade in agricultural products, foodstuffs or animals intended for human consumption, restrictions on forest wood assortments, measures in the field of veterinary medicine, plant protection products and agricultural plant seed, extension of the mandate of the Chamber of Agriculture and Forestry of Slovenia and some other related measures.

This Act foresaw extraordinary measures for regulation the food market that could be taken during the pandemic if a sufficient supply with food could not be ensured in any other way: restrictions of placing certain products on the market, price control, appointment of temporary operators (if the head, members and employees of the holding would be unable to carry out agricultural activities due to infection) and temporary installation, use or maintenance of storage facilities of agricultural products or foodstuffs by the state.

The state did not charge rent or part of the rent (depending on the maximum amount of allowed aid) for the farmland and other state-owned immovables during the period of the declared pandemic of

¹ Decree on declaration of contagious disease SARS-Cov-2 (COVID-19), Official Journal RS, No. 19/20 and 68/20.

² Ordinance on the restriction of public transport of passengers in the Republic of Slovenia, Official Journal RS, No. 24/20, 54/20 and 65/2.

³ Ordinance on the temporary prohibition of the gathering of people at public meetings at public events and other events in public places in the Republic of Slovenia. Official Journal RS, No. 30/20 and 38/20.

the infectious disease COVID-19 in the territory of the Republic of Slovenia, ie from 13 March 2020 until the cancellation of the declaration of the pandemic.⁴

Another Act regulated conditions for a partial reimbursement of wage compensations paid to employees with employers who were temporarily unable to provide work due to the consequences of the pandemic, the reimbursement of salary compensations to workers who were unable to perform work due to the ordered quarantine and the suspension of the payment of social security contributions for workers, self-employed persons and farmers.⁵

Farmers included in the compulsory pension and disability insurance on the basis of agricultural or forestry activities who were infected with the COVID-19 were entitled to financial assistance for the duration of incapacity for work. Farmers were entitled also to financial compensation on the basis of the income foregone due to the coronavirus outbreak.

⁴ Act on Additional Liquidity to the Economy to Mitigate the Effects of the COVID-19 Infectious Disease Epidemic, Official Journal RS, No. 61/20, Art. 34.

⁵ Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy, Official Journal RS, No. 49/20 and 61/20.

Legislative Developments, as a result of COVID 19, in Spain

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Royal Decree 463/2020, of March 14, instituting a state of alarm for the management of the health crisis situation caused by COVID-19, as the compulsory starting point in the topic. The aforementioned norm, which declares a state of alarm, considers the agri-food sector strategic and establishes that the authorities will adopt the necessary measures to guarantee food supply and, with it, agricultural, live-stock, agro-food industries, as well as food distribution until the consumer. Likewise, customs transit is guaranteed.

Within this background, through **Royal Decree-Law 8/2020, of March 17**, extraordinary urgent measures applies to the agrarian sector to face the economic and social impact of COVID-19. These measures are: Extraordinary benefit for self-employed or self-employed workers due to end of activity, Line of loans guaranteed by the State with up to € 100,000 million, Aid in the form of direct subsidies, repayable advances or tax advantages to those companies and SMEs that have been affected by the COVID-19 crisis and Postponement of drought credits in 2017.

In this same period, the essential nature of the agro-food activity (agriculture, livestock, aquaculture, fishing and food industry) is recognized in the **Annex to Royal Decree-Law 10/2020, of March 29, which regulates a permit recoverable paid for working people employed who do not provide essential services, in order to reduce the mobility of the population in the context of the fight against COVID-19.**

Likewise, within **Royal Decree-Law 11/2020, of March 31, which adopts urgent complementary measures in the social and economic field to face COVID-19**, support measures have been adopted for the self-employed, such as tax holiday on the payment of Social Security contributions based on exceptional circumstances or requesting the deferment of payment of your debts with Social Security.

Through **Royal Decree-Law 13/2020, of April 7**, certain urgent measures have been adopted, of a temporary nature, in the field of agricultural employment. With them, it is intended to guarantee the availability of labor to meet the needs of farmers and ranchers. To do this, it enables potential workers to combine some social benefits with the remuneration obtained from work, through a procedure that prioritizes the situation of the unemployed person and the fact that they reside close to the workplace.

In order to improve the viability of the agrarian sector, through **Royal Decree-Law 15/2020, of April 21, of complementary urgent measures to support the economy and employment**, the inclusion rules in the Special System of self-employed agricultural workers (SETA). For this, all the conditions that were required until now related to the economy of the farmers are eliminated, facilitating their incorporation to small farmers and ranchers who are engaged in agricultural activity. Likewise, it is included as a measure related to the agrarian sector: □ Reduction of the resulting quotas during the periods of inactivity in 2020 for workers with a maximum of 55 real days paid in 2019.

To make it easier for farmers and ranchers to manage the CAP in the current circumstances of the health alert, through **Order APA / 377/2020, of April 28, which modifies, for the year 2020, various deadlines established in the Royal Decrees 1075/2014, 1076/2014, 1077/2014 and 1078/2014, all of them dated December 19, issued for the application in Spain of the Common Agricultural Policy**, the duration of the period of single application of the CAP until June 15, 2020 and other related periods.

Lastly, the **Royal Decree-Law 19/2020, of May 26, which adopts complementary measures in agrarian, scientific, economic, employment, Social Security and tax matters to mitigate the effects of COVID-19**, in agricultural matters, it comes primarily extend for 3 months content of the Royal Decree-Law 13/2020, in order to ensure sufficient manpower to meet the summer farming.

Corona Measures of the Swiss Confederation concerning Agriculture¹

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On 1 April 2020, the Swiss Federal Council decided on comprehensive measures to cushion the economic consequences of coronavirus for agriculture.² The package of measures for the economy as a whole amounts to over CHF 60 billion. These measures are intended to ensure the supply of the population on the one hand and to prevent a collapse in prices on the markets on the other. It also relieves the meat industry with longer payment periods and relaxes control regulations. The most important measures and regulations relating to agriculture will be briefly summarised below.

1. Health measures

The hygiene and social distancing rules also apply in agriculture. People in self-quarantine or self-isolation are advised to stay at home and avoid contact with other people and animals as much as possible.

2. Protection concept

Where non-family labour is employed on a farm, the holdings concerned must have a protection scheme.

3. Seasonal workers

The employment of seasonal workers is still possible. For the entry of foreign seasonal workers, proof of employment and a settlement permit are still required. Employees on short-time work can take up interim employment without the income earned from this being offset against the short-time work compensation.

4. Field work

Field work is still possible in principle. If several people work together, the hygiene and clearance rules must be observed.

¹ Source: www.blw.admin.ch.

² Verordnung über die Massnahmen zur Abfederung der wirtschaftlichen Auswirkungen des Coronavirus im Landwirtschaftsbereich (COVID-19-Verordnung Landwirtschaft).

5. Compensation for economic losses

The measures decided by the Federal Council to cushion the economic consequences of the Corona crisis also apply in principle to agriculture. Farmers can apply for bridging loans and short-time work will be extended to agricultural employees. In the event of liquidity shortages, operating aid loans may be granted. The payment of direct payments and individual crop contributions may be brought forward. Direct payments are also paid if the authorities order measures and as a result certain direct payment regulations can no longer be complied with. Provided farmers meet the general requirements, they also have access to bridging loans guaranteed by the Confederation.

6. Short time work

Farmers can apply for short-time working for their employees at the relevant cantonal offices. In this case, unemployment insurance pays part of the wage costs for those employees whose normal working hours are reduced.

7. Compensation for loss of earnings

Farmers who manage agricultural holdings can, like other self-employed persons, claim compensation for loss of income. The conditions are the same. Anyone who is self-employed and suffers a loss of income due to the closure of a business or the ban on events ordered by federal law is entitled to compensation.

8. Wine industry

Wine sales in Switzerland have collapsed massively as a result of the closure of catering establishments and the ban on events. For this reason, the Federal Council decided on 20 May 2020 to provide the Swiss wine industry with extraordinary support amounting to CHF 10 million.³ This support is based on two pillars:

- Declassification of AOC (certificate of protected designation of origin) wine as table wine; granting a contribution of a maximum of 2 francs per litre.
- Reduction of the maximum yields set by the cantons for the 2020 wine harvest.

9. Supply of production and food

According to the Swiss Federal Office for Agriculture (FOAG), the supply of agricultural inputs such as animal feed to farms is generally guaranteed. Similarly, no supply bottlenecks for plant protection products are known and the supply of food to the Swiss population is also guaranteed. The international movement of goods and the import of food also functions well.

³ Verordnung über die ausserordentliche finanzielle Unterstützung der Deklassierung von Wein mit kontrollierter Ursprungsbezeichnung zu Tafelwein im Zusammenhang mit dem Coronavirus (COVID-19-Verordnung Deklassierung von Wein) vom 20. Mai 2020, SR 916.141.

Covid-19 Agri-food Measures in the United Kingdom

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1. Labour

In April 2020, the UK Government confirmed that workers who had been furloughed could seek alternative employment as fruit and vegetable pickers.¹ It has been estimated that the UK needs around 80,000 casual and seasonal employees annually to pick such food, with this measure being therefore welcomed on the basis that it would ‘help farmers feed the nation’.² To further respond to this lack of man-power, a UK cross-industry online platform was created to link fruit and vegetables farms to job-seekers.³

2. Administration of Support Schemes

Extended windows to submit applications for multiple support schemes were put in place, including the Basic Payment Scheme, Countryside Stewardship Scheme and Environmental Stewardship Scheme (from 15 May 2020 to 15 June 2020).⁴ In the case of England, for example, this extension was carried into effect through The Direct Payments to Farmers (Application Deadlines) (Coronavirus) (Amendment) (England) Regulations 2020, SI 2020 No. 510; and The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) (Coronavirus) (Amendment) (England) Regulations 2020, SI 2020 No. 477.

¹ Department for Environment, Food and Rural Affairs (DEFRA), Seasonal work on farms: guidance for workers (29 April 2020): <https://www.gov.uk/guidance/seasonal-work-on-farms-guidance-for-workers>. Due to Brexit having taken effect on 31 January 2020 and the end of the EU principle of free movement of persons, there were already challenges in recruiting agricultural worker in the UK: see e.g., L. Petetin, ‘Cloud Nine or Down to Earth? The Implications of a No Deal Brexit on Agriculture’ (The UK in a Changing Europe, 15 August 2019): <https://ukan-deu.ac.uk/cloud-nine-or-down-to-earth-the-implications-of-a-no-deal-brexite-on-agriculture/>.

² Country Land and Business Association, ‘Government Clarifies Furloughing Rules after CLA Lobbying’ (7 April 2020): <https://www.cla.org.uk/government-clarifies-furloughing-rules-after-cla-lobbying>.

³ See Pick for Britain: www.pickforbritain.org.uk.

⁴ DEFRA, Extra month to claim for farm payments (27 April 2020): <https://www.gov.uk/government/news/extra-month-to-claim-for-farm-payments>.

3. Financial Support

To solve cash flow issues, bridging payment were made available for unpaid claims in respect of the Countryside Stewardship Scheme and Environmental Stewardship Scheme;⁵ and over 3,800 payments worth around £43m were made to farmers and land managers by the end of May 2020.⁶

Dedicated financial support was made available to dairy farmers affected by Covid-19 in England and Wales.⁷ Under the Dairy Response Fund in England and the Welsh Dairy Support Scheme, they were able to access up to £10,000 each to help them to overcome challenges in respect of excess milk, lower prices and reduced demand from the hospitality sector.

In addition, the more general Self-employment Income Support Scheme may offer income support to those working in agriculture who are either self-employed or members of a partnership.⁸ The amount of support was originally calculated by reference to 80% of average monthly trading profits up to a maximum of £2,500 per month; and the Scheme has since been extended (at a reduced rate).

4. Competition Law

Alongside financial support for the dairy sector, there has been relaxation of competition rules.⁹ Under The Competition Act 1998 (Dairy Produce) (Coronavirus) (Public Policy Exclusion) Order 2020, SI 2020 No. 481, agreements between dairy produce suppliers and agreements between logistics service providers which are intended to address the effects or likely effects of coronavirus on the demand for dairy produce in the UK are excluded from the Chapter 1 prohibition in the Competition Act 1998.¹⁰ And similar provisions apply in the groceries sector: The Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020, SI 2020 No. 369.

⁵ DEFRA, Bridging payments give cash injection for stewardship customers (28 April 2020): <https://www.gov.uk/government/news/bridging-payments-give-cash-injection-for-stewardship-customers>.

⁶ Rural Payments Agency, Bridging payments for stewardship agreements complete (1 June 2020): <https://www.gov.uk/government/news/bridging-payments-for-stewardship-agreements-complete>.

⁷ See, eg, DEFRA, New funding to support dairy farmers through coronavirus (6 May 2020): <https://www.gov.uk/government/news/new-funding-to-support-dairy-farmers-through-coronavirus>.

⁸ HM Revenue and Customs, Check if you can claim a grant through the Self-Employment Income Support Scheme (first published on 26 March 2020): <https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme>.

⁹ DEFRA et al, Dairy industry to join together to manage milk supply (17 April 2020): <https://www.gov.uk/government/news/dairy-industry-to-join-together-to-manage-milk-supply>. For this and further measures applicable in respect of the dairy sector, see House of Lords, 'Dairy Farming: Coronavirus: Written question - HL3681' (29 April 2020): <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2020-04-29/HL3681/>.

¹⁰ The Chapter 1 prohibition as a general rule precludes 'agreements between undertakings, decisions by associations of undertakings or concerted practices which – (a) may affect trade within the United Kingdom, and (b) have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom': Competition Act 1998, s. 2(1).

5. Working Practices

Guidelines have been published for those working in food businesses and also, more specifically, seasonal workers on fruit and vegetable farms, these extending to social distancing and other mitigating actions.¹¹

6. Food and Essential Supplies

Government guidance has been issued in respect of accessing food and essential supplies.¹² In the case of persons categorised as ‘clinically extremely vulnerable’, this guidance extended to: (i) the delivery of a government food box to their home (until 31 July 2020); and DEFRA passing their details to the supermarkets in order for their names to be added to the priority list for food delivery slots.

7. Schools

Government guidance has been issued which states that, during the Covid-19 outbreak, schools are expected to continue supporting children eligible for benefits-related free school meals who are at home.¹³ And, following the intervention of the Premier League footballer Marcus Rashford,¹⁴ this support has been extended to cover the provision of vouchers to support pupils eligible for free school meals over the summer holiday period (the COVID Summer Food Fund).¹⁵ There has, however, been considerable evidence of difficulties in the operation of vouchers, with delays and other technical hitches.¹⁶ Further, at the end of March 2020, the Government suspended the School Fruit and Vegetable Scheme;¹⁷ and, following findings that the diets of disadvantaged children had contained less fruit and vegetables following school closures,¹⁸ there have been calls for it to be reinstated.¹⁹

¹¹ DEFRA et al, Guidance for food businesses on coronavirus (COVID-19) (last updated on 26 June 2020): <https://www.gov.uk/government/publications/covid-19-guidance-for-food-businesses/guidance-for-food-businesses-on-coronavirus-covid-19>; and Agriculture and Horticulture Development Board, Best practices to avoid the spread of coronavirus for seasonal workers on fruit and vegetable farms: <https://ahdb.org.uk/coronavirus/social-distancing-farm-businesses>.

¹² DEFRA, Coronavirus (COVID-19): Accessing food and essential supplies (first published on 29 April 2020): <https://www.gov.uk/guidance/coronavirus-covid-19-accessing-food-and-essential-supplies>.

¹³ Department for Education, Providing free school meals during the coronavirus (COVID-19) outbreak (last updated on 15 July 2020): <https://www.gov.uk/government/publications/covid-19-free-school-meals-guidance/covid-19-free-school-meals-guidance-for-schools>.

¹⁴ See, e.g., BBC, ‘Marcus Rashford calls for government free school meals U-turn’ (15 June 2020): <https://www.bbc.co.uk/sport/football/53042684>.

¹⁵ Department for Education, COVID-19 Summer School Fund (first published on 25 June 2020): <https://www.gov.uk/guidance/covid-summer-food-fund>.

¹⁶ See, e.g., J, Burns, ‘Schools give emergency food to families with nothing to eat’ (BBC, 21 April 2020): <https://www.bbc.co.uk/news/education-52325332>.

¹⁷ School Fruit and Vegetable Scheme: <https://assets.nhs.uk/prod/documents/SFVS-factfile-2017.pdf>.

¹⁸ G. Defeyter and E. Mann, The Free School Meal Voucher Scheme: What are children actually eating and drinking? (2020): <https://northumbria-cdn.azureedge.net/-/media/corporate-website/new-sitecore-gallery/news/documents/pdf/covid-19-free-school-meal-vouchers-final.pdf?modified=20200605160553>.

¹⁹ See, e.g., M. Busby, ‘Calls to restart fruit and vegetable scheme in English schools’ (Guardian, 30 June 2020).

Latin America facing COVID19 effects in Food Systems

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1. Introduction

FAO and ECLAC consider that the impact of the crisis deriving from COVID-19 will be much more important than any previous crisis.¹

During the pandemic isolation, one of the problem has been to ensure food access. This creates a need to ensure that the logistic system functions to maintain the viability of food supply chain and to implement policies in order to support the most vulnerable part of population whose incomes derive especially from the informal economy or who were in a special situation (mothers or children, schooled or not).² In 2018, there were already 42,5 million people suffering hunger in the region, but the people suffering food insecurity (uncertainty in quality or quantity terms) has risen to a third of the population.³

Assuring the viability of food supply has generated the necessity to officially declare that an activity involves essential, strategic or of public interest, needing particular public and population support.

The COVID-19 effects have been shown in food demand and food availability. This has required special attention to be paid to ensure production and trade. The impact in each country differs among them because of the different economic, geographic and political characteristics of each of them.

2. Provisions concerning agricultural production

In order to ensure normal functioning of the food supply chain, the maintenance of agricultural production is vital.

¹ FAO-CELAC, Sécurité alimentaire pendant la pandémie de la COVID-19, 2020.

² http://www.fao.org/fileadmin/user_upload/rlc/docs/covid19/declaracion_26paises.pdf In April, the ministries from 26 countries of the region have signed a declaration El Covid-19 y los Riesgos en las Cadenas de Abastecimiento de Alimentos (COVID-19 and the risks in food supply chain), taking into account the need to take state measures and to communicate and coordinate among them.

³ FAO-CELAC, Sécurité alimentaire pendant la pandémie de la COVID-19, 2020. Idem, p.3 and ss. Hunger: Guatemala 15.2%, Bolivia 17%, Venezuela 21%. Other nutrition concerns are added: undernutrition, chronic malnutrition, obesity. Food Security Information Network, 2020: in 2019, almost 20 million people have been assessed as being in acute food insecurity.

One of the big concerns has been the access to imported inputs and capital; but also labour, in particular seasonal labour, hand labour⁴ – notably for horticulture – and related professionals (agronomists, veterinarians etc.).

The variations in the rates of exchange have a great impact on inputs and so on the evolution of production. In reference to inputs, it is relevant to ensure access to them in order to warrant production and productivity. This means facilitation of transport but also acquisition by favoured credit lines (Colombia AgroProduce or Panama new Green line of credit; Costa Rica INDER has established a moratorium; Dominican Republic, a grace period) or tax policy. The financial aid and the measures related to logistics have been vital for family farms as food demand has generally decreased and the local sites for selling have been generally closed from the first moment of the pandemic.

Others risks consist of the difficulties to access in delivery, deposit, storage and commercialization. The lack or deficiency in storage has been noted.

The state of infrastructure is also a relevant point to be taken into consideration in direct relation to the ability to overcome this pandemic time.⁵ In this area, the structural deficits have been relaxed.

The permission to circulate labour has been necessary in agricultural and related activities, such as delivery and commercialization. Even at the first lockdown, transport of agricultural products was expected from restrictions. The state assumed the need for labour circulation, notably in relation to seasonal workers and immigrant workers, their migration documents and the COVID-19 information and protection. In Chile, a guide has been elaborated by INDAP (Institute for agricultural development)⁶ in order to provide extreme care, to restrict visitors and to recommend sanitary care. Similar measures concerning fishing and aquaculture have been elaborated.⁷

The rescheduling, moratorium, and interest diminution in credits have been stated as tools to contribute to the normal evolution of farms.

3. Provisions concerning food trade

In the region concerned, the isolation or health security measures imposed to stop the spread of virus included in most of the countries a lockdown of economic activities that has impacted the power

⁴ Haiti in the first place, followed by Honduras, Guatemala, St. Vincent Grenadines, Antigua and Barbuda, the multi-national state of Bolivia, Peru, St. Lucia and Trinidad and Tobago, are the most at-risk countries as a significant disruption in labour availability would have the greatest impact on food production (FAO-CELAC, Sécurité alimentaire pendant la pandémie de la COVID-19, 2020, p.14).

⁵ Political decisions may have a great impact. In Argentina, some provinces have close borders affecting the normal work at farms with a crossing-border-surface.

⁶ <https://www.indap.gob.cl/docs/default-source/default-document-library/manual-indap-recomendaciones-covid19-para-peque%C3%B1a-agricultura.pdf?sfvrsn=0>

In Peru : <https://www.gob.pe/institucion/minagri/informes-publicaciones/570059-protocolo-para-la-actividad-agricola-frente-al-covid-19>.

⁷ In Peru:

https://www.sanipes.gob.pe/documentos_sanipes/guias/2020/6fbfc97de22bdb44dce39944d28621d7.pdf

In Chile: <http://www.sernapesca.cl/informacion-utilidad/plan-de-accion-coronavirus>.

of the part of a large section of the population, and not only those getting their income from informal economy or precarious employment, to acquire what they need. The variations in purchasing power directly influence food demand. Certain Latin American countries forecast decreases in the economy of at least 5%.⁸

The isolation or restrictions imposed on mobility have severely impacted several sectors but especially the supply chain. Food availability and accessibility are the characteristics that have been most affected by that restrictive framework.

From the point of view of the economic actors of the food supply chain, declaring them essential activities has been vital to their survival and to ensure food security, notably in big cities. Nevertheless, restricting the mobility of population has changed the way of purchasing, making more relevant short routes or proximity of shops at the same time that popular markets have been closed or adapted.⁹ Additionally, protocols should have been elaborated in particular for those spaces like open air markets, as they are vital to family or small farmers. Also, there is need to reduce also food losses and waste, improve storage and improve ways to link smallholder farmers to markets.

It should have been taken into consideration that any alteration in availability of supply will provoke a significant variation in prices. The same occurs when some information has circulated in relation to the consumption of some products (e.g. eating more oranges). Prices may also be impacted by alterations in international trade flows. Monitoring prices and informing consumers in detail should have been assumed more seriously by state authorities.

In the context of COVID-19, the isolation and the consequent diminution in economic activities have given a diminution in some raw material, notably oil or cereals. In fact, trade almost stopped until protocols were elaborated and put in place. Border controls increased and other tests or new controls were stated. Nevertheless, the restrictive situation imposes an updating or a simplification of administrative processes.

In reference to food or agricultural trade, it should be taken into consideration that Latin America countries are greatly food exporters, but in the Caribbean there are some net importer countries.¹⁰ In the first case, the economy may be affected by the alteration in agricultural international trade flows as those countries are greatly dependant on incomes thus generated. The exchange rate is also a sensible question for those countries.

Some countries have suspended tariffs on medicines, sanitary implements and food (Antigua&Barbuda, El Salvador) or have strengthened their integration (free movement of food stuff between Nicaragua and Honduras). Also, the private sector has risen as an important actor.¹¹

⁸ IMF, World Economic Outlook Update, 2020. Global growth is projected at -4.9 percent in 2020 while projection for Latin America is around -10%.

⁹ Lima Market has organized delivery.

¹⁰ Some of the Caribbean countries import more than 80% of the food they consume.

¹¹ In Dec. 2018, the Conference of Heads of Government of the Craibbean Community concluded that deeper involvement of the Private sector in integration process will be beneficial. Its structured participation has been achieved by the formation of the CARICOM Private Sector Organization (CPSO), July 2019. There is a strongly

Food accessibility has been affected by the alteration in purchasing power. COVID-19 has given rise to new groups of population that have problems in accessing food different from most people because of living in remote areas or being older or having different capacities. The food aid that was given before the pandemic had to be redesigned in some cases – like school meals – but also the places and routes of distribution to make possible the access to food. Policies should have paid attention to the protection of basic consumption needs of the vulnerable population and ensuring emergency food needs.

Another problem related to access to food is the need to prevent nutrition problems: malnutrition, undernutrition and others. There has been an increase in the consumption of elaborated/processed foodstuffs, with a diminution of fresh food and some shocks of consumption because of panic and misinformation. These consumption habits in pandemic time have impacted on the food supply chain but also on health parameters. In addition, the nutrition problems increased by a diminution in physical activity and all these result in health troubles that will impact on health systems.¹²

4. Conclusions

The COVID-19 has shown the relevance of agriculture and the complexity of the food system, but also the need of a systemic approach.

Assuring food in available and accessible terms is determinant to maintaining people's nutritive balance. Monitoring the volatility of prices because of food supply chain deficits and considering taking action in order to stabilize the payment chain have been also key policies that governments have had to take into account to ensure that the food supply chain for basic products continues uninterrupted. The pandemic has also made clear that international trade flows are necessary to ensure food security.

The target of the new measures is to maintain a continuous and sustainable food supply chain at local, regional and global level. Decision makers must prevent themselves from stating any measure that may affect food supply chain integrity or that restricts the internal movement of food stuff, and at the same time they must take into consideration the assurance of the health of workers and actors of the chain and the hygiene of the product.

The exposure to the virus is different at the different stages of supply chain, therefore the sanitary protocols are so important in this chain – it is the vital support of all society.

Supply chains are being challenged and underlying weaknesses in the agro-investment infrastructure are now coming to the fore. It is important to avoid accumulation, minimize the food loss and waste and to increase food resilience, by stimulating local production and informed consumption.¹³

need of improving trade-related infrastructure as well as integrating transport and logistic systems, seasonal workers movement, and rules of investments.

¹² V: ECLAC, *Sistemas alimentarios y Covid-19 en América Latina y el Caribe*, 2020.

¹³ Argentinian Food Guide http://www.msal.gob.ar/images/stories/bes/graficos/0000000817cnt-2016-04_Guia_Alimentaria_completa_web.pdf Jamaica: https://jis.gov.jm/radio_programs/over-700-thousand-pounds-of-produce-sold-under-say-yes-to-fresh-campaign/.

There is no doubt that pandemic teaches some concepts that have been defended for a long time. Agriculture is an essential activity that has its own natural calendar, even with a small financial contribution to the gross internal product it is at the basis of all economy and human society. Agriculture is the basis of every food system but it is also an invisible network in the social foundations.

La protección de las zonas rurales a través de la política de rehabilitación urbana

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Abstract

Since the economic crisis of 2007, which particularly affected the real estate market, numerous laws have followed in various countries that tried to regain the dynamism of this market, especially in Spain that it had always made this sector the engine of its economy. Although such laws in one way or another only dealt with the urban area, they hardly took into consideration the protection of the rural environment. The only positive thing during this period, whose economic consequences we are still dragging on and the phenomenon of the pandemic will deepen it, was, at least, the defense of an urban rehabilitation policy, restricting the phenomenon of urban planning expansion, which indirectly has favored the preservation of rural areas. The preference for the urban rehabilitation policy has been an excellent contribution to maintaining and respecting rural areas. The aim has been to offer a new regulatory framework for the reconversion and reactivation of the construction sector, finding new areas and new actions for sustainability towards the smart cities model. But there is still a pending policy that takes into account the territory in an integral way and offers new relationships between the urban and the rural in order to dynamize rural areas.

1. Introducción

Desde la crisis económica de 2007, que afectó especialmente al mercado inmobiliario, se sucedieron en diversos países numerosas leyes que trataron de recuperar el dinamismo de este mercado, especialmente en España en cuanto que siempre había hecho de este sector el motor de su economía.¹ Si bien, tales leyes de un modo o de otro sólo se centraban en el fomento del acceso a la vivienda, o sobre la normativa hipotecaria o en el ámbito urbanístico que apenas tomaba en consideración en su normativa la protección del medio rural.² Esta circunstancia era especialmente relevante en cuanto es bien conocido el fenómeno de la presión del medio urbano sobre las áreas rurales como efecto del desarrollo del mismo urbanismo, por obras de infraestructura, por la expansión de las energías renovables, por necesidades de la industrialización o por equipamientos colectivos.

Podría pensarse que un periodo de crisis en el sector inmobiliario urbano es el momento de menos repercusión sobre el medio rural, pero precisamente es todo lo contrario. La situación de crisis que se ha atravesado y, por tanto, la falta de crédito para obras de construcción no puede hacer pensar que

¹ Este trabajo se enmarca en el proyecto de investigación Los consumidores en la vivienda colaborativa, Proyecto I+D del Programa Estatal de Fomento de la Investigación científica y técnica de excelencia, Subprograma Estatal de generación de conocimiento, DER -84726-C3-2-P, 2018-2020, IP: Esther Muñiz Espada

² Y ello a pesar de leyes como la 45/2007, de 13 de diciembre, para el desarrollo sostenible del medio rural.

en estos momentos se produjera menos presión sobre el medio rural, pues, de un lado, en los momentos de crisis sólo se puede acceder a la vivienda o a obras de urbanismo en las zonas más económicas, es decir, en las zonas periurbanas, que tienen la capacidad de afectar más negativamente sobre las zonas rurales, y, por otro lado, al menos en España, numerosas resoluciones judiciales sobre proyectos de interés regional donde los terrenos de zona delimitada constituían, a través del Plan general, suelo no urbanizable de especial interés paisajístico, no fue impedimento para que la Administración considerara su posterior transformación del suelo y declararla Zona de Interés Regional para el desarrollo de una ecociudad, perjudicando de nuevo la protección de las zonas rurales.

Lo único positivo durante este periodo, cuyas consecuencias económicamente arrastramos, fue al menos la defensa de una política no de nueva construcción ni de expansión sino simplemente de rehabilitación urbana, lo que indirectamente ha favorecido la preservación de las zonas rurales. La preferencia por la política de rehabilitación urbana ha sido una excelente aportación al mantenimiento y el respeto de las zonas rurales.

En España, como consecuencia de la crisis, desde la Ley 8/2013, de 26 de junio, de rehabilitación, regeneración y renovación urbanas, al Real Decreto Legislativo 7/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley de Suelo y Rehabilitación Urbana, se ha promocionado especialmente la rehabilitación y conservación como expresión de nuevos parámetros de modernidad, promocionando mecanismos específicos que hacen viable y posible la renovación urbana no a través de obra nueva sino de conservación y rehabilitación de la existente.

Se ha pretendido, así, ofrecer un nuevo marco normativo para la reconversión y reactivación del sector de la construcción, encontrando nuevos ámbitos de actuación para una sostenibilidad tanto en la edificación como en el suelo para una verdadera competitividad, que en la actualidad pretende enlazar con las recomendaciones sobre una nueva gobernanza para la sostenibilidad hacia el modelo de las smart cities.³ Un proyecto que no está desvinculado del nuevo fenómeno de la economía colaborativa⁴, nuevo no en cuanto a idea pero sí en cuanto a método a través del cual se expande y se vincula⁵;

³ VILLAREJO GALENDE, H., "Smart cities: una apuesta de la unión europea para mejorar los servicios públicos", Revista de Estudios Europeos, n. 66, enero-junio, 2015, ps. 25 y ss., sobre los desafíos de la creciente urbanización para las ciudades contemporáneas, principalmente, para la eficiencia económica y la sostenibilidad medioambiental. Puede verse también "Europe Digital Landscape 2014". Social, Digital & Mobile in Europe. <http://weare-social.sg/blog/2014/02/social-digital-mobile-europe-2014/>
Europa 2020: Una estrategia para un crecimiento inteligente, sostenible e integrador, COM(2010) 2020 final, Bruselas, 3.3.2010. <http://eurlex.europa.eu/legal-content/en/ALL/?uri=CELEX:52010DC2020>

⁴ Conociéndose bajo diversas acepciones, que, en todo caso, no representan términos equiparables, como peer economy, collaborative consumption, access economy, gig economy, on demand economy, commoning economy, o hybrid economy, vid. BULCHAND, J.-MELIAN, S., La revolución de la economía colaborativa, LID ed., 2018; LESSING, L., Remix. Making Art and Commerce Thrive in the Hybrid Economy, Bloomsbury Academic, 2008; FELSON, M-SPAETH, J.L., «Community Structure in Collaborative Consumption. A Routine Activity Approach», The American Behavioral Scientist, vol. 21, n.º 4, 1978, 614 y ss.

⁵ Sobre ello puede verse DE GREGORIO HURTADO, S., "Políticas urbanas de la Unión Europea desde la perspectiva de la planificación colaborativa. Las iniciativas comunitarias URBAN y URBAN II en España", Cuadernos de investigación urbanística, 2015, ps. 6 y ss.; SOCIAS CAMACHO, J., "Estado regulador y alojamiento colaborativo. El

una tendencia que se relaciona con el compromiso hacia una mayor responsabilidad social, un menor derroche de los recursos y un consumo más responsable, motivando cambios en los comportamientos sociales, que ha terminado por afectar a todos los sectores de la economía superando en algunos de ellos a la propia economía tradicional, y todo ello a pesar de que en la economía colaborativa estén aún pendientes cuestiones de regulación como las fiscales, las laborales, de Derecho administrativo o, incluso, de Derecho privado.⁶ Una idea de cooperación que está ínsita en la Iniciativa urbana europea, y explícita en la reforma de la futura PAC que se destaca sobre manera desde diversas perspectivas profundizando sobre las mismas finalidades que constituyen ahora o se encuadra en los Objetivos del Desarrollo Sostenible de las Naciones Unidas para el 2030.

La idea, pues, es simple y evidencia la necesidad de unas nuevas relaciones entre lo urbano y lo rural y exige la necesidad de una política integral sobre el territorio⁷, de modo que la racionalidad en torno al mercado inmobiliario no será una realidad hasta que se haga una revisión y reformulación de todo el proceso que forma parte de la construcción, y nos planteemos si la legislación vigente da cumplida respuesta a este proceso, lo que es de importancia para cualquier país, pero especialmente para España, por la importancia que tiene en su economía el mercado inmobiliario y por el grave problema de la despoblación que afecta a las zonas rurales.

2. Por una política integral del territorio

Ciertamente, las políticas territoriales resultan sumamente complejas porque exigen una actuación integral y una coordinación con todas las actuaciones que convergen sobre ella: así, del sistema financiero, de los aspectos fiscales y tributarios y del mercado hipotecario⁸, como de igual modo habría que

régimen de la intervención pública limitadora de la prestación del servicio”, Revista de administración pública, 2018, ps. 131 y ss..

⁶ Sobre sus distintos aspectos, vid. SMORTO, G., «Verso la disciplina giuridica della sharing economy», Merc. Conc. Reg., 2015, ps. 245 y ss. Vid, así mismo, MALAURIE VIGNAL, M., «L'économie collaborative ou les métamorphoses du capitalisme?», Contrats Concurrence Consommation, mayo, 2016, repère 5; BERNHEIM-DESVAUX, S., «La consommation collaborative ou participative», Contrats Concurrence Consommation, 2015, étude 2; CLÉMENT-FONTAINE, M., «La genèse de l'économie collaborative: le concept de communauté», Dalloz IP/ IT, 2017, ps. 140 y ss.

Si bien, la denominada economic rationale ya fue contemplada en el programa de 1975, Official Journal C 092, 25.04.1975 General Considerations, vid. Resolución de 14 de abril de 1975 sobre Preliminary Programme of the European Economic Community for a consumer protection and information policy, 1975.

Sobre su trascendencia económica vid. The Cost of Non-Europe in the Sharing Economy, Economic, Social and Legal Challenges and Opportunities, European Parliamentary Research Service, January 2016.

⁷ En el informe de 2013 de los Objetivos de Desarrollo del Milenio (ODM), se advierte de las profundas diferencias entre rural-urbana y su carácter persistente.

⁸ A este propósito en España se puede dar cuenta de la reciente Ley 5/2019, de 15 de marzo, reguladora de los contratos de crédito inmobiliario, en su intento de mejorar en este ámbito la protección del consumidor y fomentar el acceso a los bienes inmuebles, a pesar de sus intentos de mejorar el acceso a este mercado es, no obstante, susceptible de ciertas críticas: lo más interesante es observar cómo se ha pasado en este texto de un derecho a la información a una “superinformación” que no implica una mejor protección para el consumidor o el prestatario. Es más, se regresa desde el 2013, con la jurisprudencia y algunos textos, y ahora en el 2019, a la solución italiana del Codice civile de 1942, que es una mala solución, cuando lo correcto sería la solución alemana

plantearse también una innovación de los distintos títulos jurídicos que permiten el acceso a la vivienda, de modo que en la actualidad cabe plantearse más en concreto si los diversos modelos de vivienda colaborativa son verdaderamente un instrumento para el acceso a la vivienda en condiciones más rentables y eficientes y en condiciones de dignidad⁹; y de otro lado, estaría el reto de la búsqueda del reequilibrio entre los distintos usos del espacio: qué nuevas relaciones se necesitan entre el medio urbano y rural, lo que alude a la política de la cohesión territorial.

De todos estos enfoques en el que menos se ha avanzado y necesita de un mayor impulso, aunque resulte el más conflictivo, es el de la cohesión territorial.¹⁰ Y a su desarrollo coadyuvan precisamente las políticas de rehabilitación, que son un buen medio para su protección e impulso, puesto que a medida que las ciudades se expanden van destruyendo y deteriorando la calidad de los recursos, la calidad de los suelos y del agua, de modo que los programas de regeneración y rehabilitación urbana tienen, por tanto, la mejor capacidad para detener este proceso.

Pero no podemos conformarnos con una mera protección indirecta de las zonas rurales, o con leyes de carácter urbanístico con apenas normativa relativa al medio rural como ocurre en el ordenamiento español, es necesario reclamar una verdadera política de cohesión territorial, ya exigida desde el Tratado de Lisboa, junto a una cohesión económica y social, pero aún sin articular.

La importancia de una verdadera cohesión territorial, en concreto para el medio agrario y rural, se basa en la dependencia de la rentabilidad de sector agrario y del desarrollo de las zonas Rurales.¹¹ Sin una adecuada protección de las zonas rurales y sobre todo de las zonas agrícolas no cabe hablar de

de 1976, es decir, no basta con “poner en conocimiento”, el control de inclusión no es suficiente protección para el consumidor, lo que importa es el control de contenido; en parte, la regulación actual es volver al sistema italiano, que es imperfecto, no se trata sólo de que el prestatario esté informado, sino de evitarle el desequilibrio y los perjuicios aunque él los conozca, hay que protegerle después de informarle. Utilizar básicamente el control de inclusión desprotege al adherente, que es la fórmula italiana de 1942; no sirve informarle hasta el máximo cuando lo lesivo viene después. Vid. MUÑIZ ESPADA, E., *La nueva regulación de los contratos de crédito inmobiliario*, Navarra, 2018; *El deterioro del mercado hipotecario y la necesidad de su reconstrucción. Aportaciones desde el Derecho europeo*, Navarra, 2016.

⁹ Sobre ello *La protección de los consumidores en la vivienda colaborativa*, vol. col., Madrid, 2019, (en prensa).

¹⁰ Sobre sus dificultades vid. MUÑIZ ESPADA, E., “La urgencia de legislar sobre la cohesión territorial. Urbanismo y espacio rural”, *Rev. de Derecho agrario y alimentario*, nº 63, jul-dic. 2013, ps. 93 y ss.; « Desarrollo rural y cohesión territorial a través de las nuevas funciones de la agricultura », en *Derecho agrario, agroalimentario y del desarrollo rural*, Tirant lo blanch, Valencia, 2011, ps. 179 y ss. ; “Diversos métodos jurídicos en la consecución del desarrollo rural”, en *El desarrollo rural sostenible*, dir. Vattier Fuenzalida, Aranzadi, Navarra, 2012, ps. 93 y ss..

BOURGES, L.-MUÑIZ, E., “Ruralizando las ciudades y urbanizando el medio rural”, *Encuentro de Institutos de Derecho agrario*, Nova Tesis, Argentina, 2014.

¹¹ Para cuestiones complementarias vid. SÁNCHEZ HERNÁNDEZ, A., “El Desarrollo Rural en la normativa de la Unión Europea”, *¿Hacia una nueva gobernanza económica de la Unión Europea?*, Carrera Hernández, F.J., Dir., Thomson Reuters -Aranzadi, Navarra, 2018, pp. 281a 315.

una agricultura productiva¹², ésta depende, para empezar, de la ordenación del territorio, así la multifuncionalidad de la agricultura¹³ llega hasta la vertebración de los territorios, aunque hasta el momento la voluntad de los Estados y de la misma comunidad europea lo lleven a cabo de una manera muy moderada. Por todo ello, tema clave es el de la cohesión territorial, previo a casi cualquier otra consideración, pues si la realidad es la fuerte desigualdad a todos los niveles entre las zonas urbanas y las áreas rurales, cuyas repercusiones alcanzan especialmente al potencial fundiario agrario, con importantes consecuencias económicas y jurídicas, incluso de defensa nacional en cuanto a la despoblación rural, se han de incentivar previamente los instrumentos jurídicos eficientes para la protección de las áreas rurales y agrícolas. Tanto el medio rural como urbano necesitan un refuerzo recíproco de sus vínculos, reduciendo las diferencias para lograr el objetivo de la cohesión territorial, y eso sólo depende de un orden legislativo preciso, racional y coherente, con el que aún no se cuenta. Problema, por otra parte, común a casi todos los países.

3. La insuficiencia de la PAC

La política de cohesión territorial implica buscar, como ya se ha argumentado, el equilibrio entre las zonas urbanas y las áreas rurales, un nuevo acondicionamiento del territorio que mantenga un tejido rural activo y transformador y un modelo de aprovechamiento más racional del espacio.

Sin embargo, la denuncia que se hace en la mayoría de los países es la misma. Las estadísticas confirman, según se ha manifestado ya, que una hectárea de tierra agrícola desaparece en el mundo cada siete segundos y medio y su ritmo anual de pérdida se acelera; por lo que se hace urgente una ordenación jurídica eficaz para la protección del fondo agrario. En efecto, una denuncia constante es la pérdida acelerada de hectáreas de tierras agrícolas o el consumo de grandes zonas agrarias, bien por el desarrollo del urbanismo, por obras de infraestructura, por la expansión de las energías renovables, por necesidades de la industrialización o equipamientos colectivos.

Para mayor profundidad del problema recordemos que en el año 2050 habrá que alimentar a más de 9 mil millones de personas y la producción habrá de aumentar el 70% -según la FAO-, lo que quiere decir, como ya se ha apuntado, que se necesitan 120 millones de has. suplementarias de terreno agrícola de aquí al 2030. El abastecimiento se ha convertido, así, en un factor estratégico, lo que ha llevado a algunos países a la compra de tierras en otros continentes, con las consecuencias que esto puede acarrear, pudiendo desembocar en el surgimiento de nuevos modelos políticos.

A ello se le añade la obligatoriedad del cumplimiento de los objetivos de la PAC del art. 39 TFUE. Lo que no implica que siempre se haya seguido una política agroalimentaria racional, pues, como ha señalado Costato, nos encontramos en un “mercado mundial incontrolado e incontrolable”, consecuencia de las reglas del Tratado de Marrakech y las subsiguientes políticas comunitarias y estatales,

¹² Sobre las consecuencias de la inseguridad alimentaria vid. Informes de la FAO de 2013 “Pérdidas y desperdicio de alimentos en el mundo” y “La huella del desperdicio de alimentos: impactos en los recursos naturales” (<http://www.un.org/es/publications/publipl39.shtml>),

¹³ Sobre sus efectos vid. AMAT LLOMBART, P. y MONFORT PERIS, R. El contrato territorial para el desarrollo sostenible del medio rural, Aranzadi, Cizur menor, 2016.

obteniéndose, como resultado de la reglamentación a partir del 2003, “una food insecurity y una volatilidad de los precios de los alimentos”.¹⁴

El cumplimiento de esta normativa depende, claro está, del desenvolvimiento de la propia política agrícola común¹⁵, pero parte del problema se encuentra en ella misma, en políticas erróneas adoptadas en el seno de la PAC, porque las reglas del Tratado de Marrakech y las políticas estatales y europeas consecuencia de ellas han dirigido al desincentivo frente a la racionalidad del cultivo y de la protección del medio ambiente, impulsando a los agricultores en dirección opuesta y contradictoria.¹⁶ Las dificultades también están en la variedad del sector agrícola; como en las deficiencias estructurales de cada Estado miembro; para España habría que sumar un problema añadido: el reparto de competencias en materia de agricultura entre el Estado y las comunidades autónomas, a quienes les corresponde además la gestión y la aplicación efectiva de la política agraria, generando diversos regímenes entre Comunidades, fragmentando la legislación y rompiendo la uniformidad con su competencia legislativa; a lo que se superpone las consecuencias inciertas de los acuerdos internacionales. Pero lo dispuesto en el art. 39 TFUE es de obligado cumplimiento y exige los correspondientes resultados, lo que parece olvidarse en ciertas ocasiones.

Desde el Tratado de Lisboa la promoción de la cohesión territorial se impone, pues, como un nuevo objetivo, a través de la competencia compartida entre la UE y los Estados miembros. Así mismo, el art. 174 TFUE prescribe que “a fin de promover un desarrollo armonioso del conjunto de la Unión, ésta desarrollará y proseguirá su acción encaminada a reforzar su cohesión económica, social y territorial. La Unión se propondrá, en particular, reducir las diferencias entre los niveles de desarrollo de las diversas regiones y el retraso de las regiones menos favorecidas. Entre las regiones afectadas se prestará especial atención a las zonas rurales, a las zonas afectadas por una transición industrial y a las regiones que padecen desventajas naturales o demográficas graves y permanentes como, por ejemplo, las regiones más septentrionales con una escasa densidad de población y las regiones insulares, transfronterizas y de montaña”.

Pero a pesar de sus importantísimas implicaciones, aún no se ha abordado su principal enfoque: cómo ordenar la interdependencia y las nuevas relaciones entre el urbanismo y las áreas rurales y asegurar el control y los límites para la protección del suelo rural y el fondo agrario. Una revisión de los documentos legislativos y de los instrumentos jurídicos implicados evidencia un tratamiento muy limitado e ineficaz.

¹⁴ Pudiéndose afirmar –continúa el autor– que “la actual política comunitaria considera a la agricultura como el último de sus problemas, olvidando que es el mismo fundamento de la vida”, COSTATO, L., “L’agricoltura, cenerentola d’Europa”, *International Journal of Land Law and Agricultural Sciences*, 2013; y sobre la gravedad del problema puede verse *The WTO and the post-global food crisis agenda, Putting Food Security First in the International Trade System* de O. de Schutter, nov. 2011; JANNARELLI, A., “La nuova food insecurity: una prima lettura sistemica”, *Riv. di Diritto agrario*, 2010, ps. 565 y ss..

¹⁵ Así, COSTATO, L., “Le conseguenze della trasformazione della PAC”, *Riv. di Diritto agrario*, 2017, p. 526 y ss..

¹⁶ Como ha señalado nuevamente COSTATO, L., Conferencia pronunciada en el IV Foro Internacional del Observatorio de Legislación Agraria M.A.R.M. *Nuevos desafíos de las políticas agrícolas entre lo urbano y lo rústico y su implicación en el desarrollo económico*, Tarragona, 25 de noviembre de 2010, vid. también de este autor, “Dalla food security alla food insecurity”, *Riv. di Diritto agrario*, 2011, ps. 3 y ss..

A este respecto, todos los ordenamientos cuentan con diferentes medidas legislativas para la protección de las áreas rurales y zonas agrícolas, pero las cifras evidencian su ineficacia para controlar la invasión del urbanismo sobre el espacio agrario y rural. La presión es aún mayor sobre las zonas periurbanas, que por su particularidad requerirían de una normativa de protección específica. Así, no es difícil apreciar que las mayores instalaciones de energía fotovoltaica ocupan tierras de calidad e incluso puestas en regadío con dinero público, y como caso paradigmático en el Levante español la zona recalificada corresponde a un retroceso de dos tercios de las tierras agrícolas.

Los datos que ofrece cualquier estadística evidencian una fuerte desigualdad a todos los niveles entre las zonas urbanas y las áreas rurales, destacando sobre todo la fuerte despoblación en las zonas y municipios rurales, lo cual afecta muy negativamente a la cohesión social y medioambiental, a la seguridad nacional, y a la economía del país, muy especialmente en España, que no encuentra un sector con el que compensar las pérdidas del que había sido uno de los sectores más activos en el pasado, a pesar de las enormes potencialidades que tiene el sector empresarial agrario, siendo además que España es el país con mayor biodiversidad de Europa.

Ciertamente, en esa clara definición a la que se tiene que llegar de las relaciones entre el territorio urbano y las zonas rurales aparecen intereses que aparentan ser contrapuestos, debiendo implementarse diferentes objetivos. Pero se hace urgente la necesidad de avanzar hacia respuestas coherentes para el acondicionamiento del territorio y el mantenimiento de un tejido rural activo y transformador y un modelo de aprovechamiento más racional del espacio, bajo las premisas de simplificación y de coordinación.¹⁷

Si la realidad es la fuerte desigualdad a todos los niveles entre el territorio urbano y las áreas rurales, con importantes consecuencias económicas y jurídicas, así mismo, también, por lo que hace al problema de despoblación en las zonas rurales, han de incentivarse los instrumentos jurídicos eficientes para ello en cuanto que es más rentable para ambos desarrollarse al mismo tiempo aprovechándose cada uno de ellos de las oportunidades que le ofrece el otro. Tanto el medio rural como urbano necesitan un refuerzo recíproco de sus vínculos, reduciendo las diferencias para lograr el objetivo de la cohesión territorial, y eso sólo depende de un orden legislativo determinado, racional y coherente.

4. Propuestas europeas de cohesión territorial

Desde Europa se han tratado de dar algunas coordenadas para el impulso de la política de cohesión territorial, si bien para empezar habría que ponerse de acuerdo en la definición del término y proceder a una depuración del lenguaje. En todo caso, entre estas intervenciones estaría el Dictamen del Comité Económico y Social Europeo sobre la Comunicación de la Comisión al Consejo, al Parlamento Europeo, al Comité de las Regiones y al Comité Económico y Social Europeo DO C 228, de 22.9.2009; el Dictamen del Comité Económico y Social Europeo sobre Transformaciones industriales, desarrollo territorial y responsabilidad de las empresas (DO C 175 de 28.7.2009); el Dictamen del Comité de las Regiones “Libro verde sobre la cohesión territorial” (DO C 120 de 28.5.2009); asimismo, cabe referir como do-

¹⁷ En cuanto a las relaciones entre otras políticas públicas y el desarrollo rural vid. Informe *El medio rural y su vertebración social y territorial*, Consejo Económico y Social, España, 2/2018, ps. 115 y ss..

cumento de interés la Resolución del Parlamento Europeo, de 21 de febrero de 2008, sobre el seguimiento de la Agenda Territorial de la UE y la Carta de Leipzig: Hacia un programa de acción europea para el desarrollo espacial y la cohesión territorial (2007/2190(INI) - DO C 184E de 6.8.2009).

Con anterioridad en el tiempo a las citadas resoluciones y documentos pueden referirse: las Directrices Estratégicas Comunitarias sobre Cohesión adoptadas por el Consejo en 2006, en las que se afirma que «la promoción de la cohesión territorial debe formar parte del esfuerzo necesario para que todo el territorio europeo tenga la oportunidad de contribuir al programa de crecimiento y empleo».

Como recuerda el propio Libro verde de la Cohesión territorial ésta se lleva debatiendo en la UE en el marco de un diálogo intergubernamental desde mediados de los años noventa, principalmente entre los ministros responsables de ordenación del territorio. Este debate dio lugar en 1999 a la adopción de la Estrategia Territorial Europea –ETE-, la cual, a su vez, dio pie a la implementación de una serie de iniciativas importantes, como la primera generación de programas de cooperación transfronteriza con arreglo a INTERREG, y la creación del Observatorio en Red de la Ordenación del Territorio Europeo –ORATE-. Antes, en 1983, la Carta Europea de Ordenación Territorial adoptada por el Consejo, ya había definido la ordenación territorial, y a partir de aquí varios programas de acción se suceden y se crean institutos de cooperación transfronteriza.

Así, el objetivo de la cohesión territorial se convierte en complementario al de la cohesión económica y social, lo que exigía un cambio en las orientaciones estratégicas para el periodo 2014-2020, y ahora en la futura PAC post 2020.

Las nuevas orientaciones marcan como objetivos: la reducción de las disparidades existentes, la mejora de la coherencia de las políticas sectoriales que tienen una repercusión territorial y el refuerzo de la integración territorial mediante el fomento de la cooperación, pero sin especificar metodología ni principios ni obligaciones concretas.

En la Propuesta de Reglamento del Consejo que fija el marco financiero plurianual para el periodo 2021-2027 pretende apoyar de un modo particular a la dimensión local, apoya « el desarrollo de estrategias de crecimiento local por parte de las autoridades urbanas, locales u otras de carácter territorial, que ahora deben encargarse de la selección de los proyectos financiados por la UE o participar en esa selección.El nuevo marco también respalda la continuación del «desarrollo local participativo», es decir, el diseño de estrategias de crecimiento local por parte de grupos de acción con la participación de las autoridades locales, la sociedad civil y los socios comerciales »^{18 19}.

Todo ello justifica las numerosas interacciones que exige una política de cohesión territorial, y ello explica que la dimensión de la política de cohesión represente hasta el 4% del producto interior bruto, pues el equilibrio territorial engloba un marco legislativo sobre los múltiples factores y componentes que confluyen en el medio rural, tales como el paisaje, la calidad de vida y la calidad ambiental, la conservación de la biodiversidad y la tutela de los recursos naturales, la agricultura y la diversificación económica.

¹⁸ Un presupuesto de la UE para el futuro Desarrollo Regional y Cohesión, Comisión europea, 2018.

¹⁹ Vid. asimismo COM(2018) 375 final.

Las profundas implicaciones apuntadas demuestran que la política de equilibrio territorial necesita, además de una férrea voluntad política para su implementación y de una fuerte implicación de las personas, agentes e instituciones involucrados, unas importantes fuentes de financiación. Actualmente esto no se adecua bien con la concreta situación económica europea, además de que se precisa de una buena coordinación entre los ministerios implicados y las comunidades y, con carácter previo, se hace necesario que la aplicación de la cohesión territorial se defina con mayor precisión.

Pero el esfuerzo se exige en cuanto que la cohesión territorial es además un medio de evolución en el proceso de convergencia europea. Se entiende, en efecto, que la falta de cohesión territorial entorpece el funcionamiento del mercado único europeo, reduciendo el acceso de algunos territorios a las libertades inscritas en los Tratados.

5. Las actuales exigencias de la cohesión territorial

Pero hasta que esta política sea una realidad con un sólida articulación, en todo caso, y por el momento, a la política de rehabilitación urbana le debemos la mejor contribución o puede ser vista como una buena defensa de la cohesión territorial.

Teniendo en cuenta como exigencias de la política de cohesión territorial que las zonas urbanas no son elementos aislados dentro de sus respectivas regiones, que su desarrollo debe estar estrechamente vinculado a las áreas funcionales suburbanas y rurales próximas, como ya se ha advertido, asegurando un resultado equilibrado en los procesos de ocupación y transformación del suelo. Y en este sentido conviene dar la trascendencia adecuada a los valores constitucionales sobre ordenación del territorio, urbanismo y vivienda, basado en la regulación de las condiciones básicas que garanticen la igualdad en el ejercicio de los derechos y en el cumplimiento de los deberes constitucionales, y en el deber de los poderes públicos de garantizar y proteger la defensa de la productividad, de acuerdo con las exigencias de la economía general y, en su caso, de la planificación, que en el ordenamiento español se contempla en los arts. 148.1.3. y 149.1 de la Constitución para evitar la fragmentación características de la división por autonomías.

Además de ello se necesita una política de cohesión territorial ahora basada también, asimismo, en los nuevos principios de la gobernanza, en los compromisos de los Objetivos del desarrollo sostenible para el 2030 definidos por las UN y en la nueva iniciativa urbana europea, donde las oportunidades pasan por el uso y el desarrollo de las tecnologías de nueva generación, y a este respecto no puede dejarse de advertir que estas técnicas favorecen la permanencia en el medio rural, que tienen, pues, su respectivo impacto económico en el medio rural, pues tal proceso de digitalización o la aplicación de lo telemático es un medio más para aproximar en desarrollo a las zonas rurales respecto de las urbanas en el ámbito del objetivo de la cohesión territorial.²⁰

²⁰ La presente publicación se realiza en el marco del trabajo de investigación *Los consumidores en la vivienda colaborativa*, Proyecto I+D del Programa Estatal de Fomento de la Investigación científica y técnica de excelencia, Subprograma Estatal de generación de conocimiento, DER -84726-C3-2-P, 2018-2020, IP: Esther Muñiz Espada.

Legal Aspects of the Inclusion of Greenhouse Gas Emissions and Removals from Land Use, Land Use Change and Forestry in the Scope of the Climate and Energy Framework*

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Abstract

The aim of the paper is an attempt to assess whether the current legal regulations can be perceived as conducive to achievement of the Energy Union targets in terms of forest management? In particular, can the solutions that Poland adopted in the National Forestry Accounting Plan be assessed as conducive to achievement of the LULUCF Regulation's assumptions. The mechanisms of CO₂ emission and removal accounting are based on historical data in assumption and they are to aim at the effects anticipated for the future. While examining regulations, it is impossible to decide a priori whether the regulation in question will bring anticipated effects or losses from the economic perspective in terms of wood harvesting from state forests. It will depend on the result of emission and removal accounting.

Ziel des Aufsatzes ist es zu beurteilen, ob die derzeitigen gesetzlichen Regelungen für die Erreichung der Ziele der Energieunion in Bezug auf die Waldbewirtschaftung förderlich sind. Insbesondere, ob die Lösungsansätze, die Polen mit dem "National Forestry Accounting Plan" verabschiedet hat, als geeignet für das Erreichen der Voraussetzungen der LULUCF-Verordnung bewertet werden können. Die Mechanismen der Bilanzierung von CO₂-Emissionen und -abbau basieren auf historischen Daten und sollen für die Zukunft erwartete Effekte erzielen. Es ist unmöglich im Voraus zu beurteilen, ob die fragliche Verordnung aus wirtschaftlicher Sicht im Hinblick auf die Holzernte aus Staatswäldern erwartete Auswirkungen oder Verluste bringen wird. Dies wird vom Ergebnis der Bilanzierung von Emissionen und Abbau abhängen.

1. Introduction

This paper considers legal aspects of the inclusion of greenhouse gas emissions and removals resulting from land use, land use change and forestry in the scope of the climate and energy framework.¹ The issue presented in the title of this paper regards, in general, the problem of climate protection which is included in the regulation regarding 'the governance of the Energy Union'. According to Regulation (EU) 2018/1999, the Energy Union should cover five dimensions: energy security, the internal

* Polish version of this paper is published in Agricultural Law Review 2019 N. 2.

¹ Cf. Forest governance and climate-change mitigation, Published by FAO and ITTO 2009, <http://www.fao.org/forestry/19488-0a2b1be34bcc2f24f780036ed0c5f9d69.pdf>, [access: 21 Sept 2018].

energy market, energy efficiency, decarbonization and research, innovation and competitiveness.² The goal of the Energy Union in terms of climate is to give Union consumers, including households and businesses, secure, sustainable, competitive and affordable energy, and to foster research and innovation, which requires preservation, protection and improvement of the quality of the environment as well as support for rational natural resources' use. The priority of the governance of the Energy Union, in turn, should be to enable achievement of the Union's goals, especially 2030 climate and energy framework in terms of reduction of greenhouse gas emissions, renewable energy and energy efficiency.³ Thus, the above-mentioned regulation is related to climate change mitigation on a global scale.

The climate and energy framework includes the issues of greenhouse gas emissions and removals related to lands that have been sorted out by Regulation (EU) 2018/841 which is referred to as LULUCF⁴ as well as the Effort Sharing Regulation⁵ (referred to as ESR) which establishes binding annual greenhouse gas emission targets for Member States in 2021 – 2030. The LULUCF Regulation includes the European Union's commitment to achieve net-zero emissions in the sector under this regulation in 2012 – 2030. This law regards all developed lands, including forests, agricultural land, grassland and (by 2026) wetland and it establishes a new EU management process for the purpose of monitoring of Member States' calculations of removals and emissions from forestry.

² Art. 1 sec. 2 of Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) 663/2009 and (EC) 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJL328/1, p. 1 of 21 December 2018), hereinafter referred to as Regulation 2018/1999.

³ Points 2, 3 and 18 of the preamble to Regulation 2018/1999.

⁴ Regulation (EU) 2018/841 of the European Parliament and of the Council on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) 525/2013 and Decision 529/2013/EU (OJ L 156 of 19 June 2018, p. 1), hereinafter referred to as Regulation 2018/841 or LULUCF Regulation (from 'land use, land use change and forestry'); cf. N. Forsell, A. Korosuo, S. Federici, M. Gusti, J-J Rincón-Cristóbal, S. Rüter, B. Sánchez-Jiménez, C. Dore, O. Brajterman, J. Gardiner, *Guidance on developing and reporting the Forest Reference Levels in accordance with Regulation (EU) 2018/841*. Available online at: https://ec.europa.eu/clima/policies/forests/lulucf_en, [dostęp: 15.9.2019]; H. Böttcher, C. Zell-Ziegler, A. Herold, A. Siemons, *EU LULUCF Regulation explained Summary of core provisions and expected effects*, Berlin, 21.06.2019, <https://www.oeko.de/fileadmin/oekodoc/Analysis-of-LULUCF-Regulation.pdf>, [access: 20 Sept 2019].

⁵ Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement, and amending Regulation (EU) 525/2013 (OJ L 156 of 19 June 2018, p. 26), hereinafter referred to as Regulation 2018/842.

The topic of this paper has not been discussed in legal literature so far. Some issues related to climate protection have been raised in textbooks, foreign publications⁶ and literature on forestry⁷.

The insufficient level of research provokes cognitive needs which justify consideration of the topic in question. Another factor that supports this research are social and economic issues resulting from the need to protect the climate. The urgency to consider this topic is confirmed by most recent results of analyses of the environment's condition presented e.g. in the sixth *Global Environment Outlook*⁸ report which was published in March 2019. It includes detailed information on the condition of the environment. The motto of the report is 'Healthy planet, healthy people' and it points to climate change, air pollution, urbanization, food waste and natural resource waste, soil degradation and biodiversity deficiency as the main threats.

According to the UNEP Emissions Gap Report of 2017⁹, G-20 countries (which generate around three fourth of global greenhouse gas emissions) can undertake commitments together. It is estimated that the European Union should be able to fulfill its commitments without any international compensation, like China, India and Japan. Australia, Brazil and Russia should also be able to fulfill their commitments.¹⁰ The intensity of greenhouse gas emissions in the EU, reflected in GDP, will probably remain the lowest in the G-20 by 2030.¹¹ However, maintaining of the global warming level much below 2°C

⁶ Cf. M. Górski (ed.), *Prawo ochrony środowiska*, Warszawa 2018, pp. 290 – 293. A. Bolte, *Adaptive forest management in central Europe: Climate change impacts, strategies and integrative concept*, Scandinavian Journal of Forest Research 2009, Vol. 24, Issue 6, <http://dx.doi.org/10.1080/02827580903418224>, access: 1 Oct 2017; M. Lindner, T. Suominen, *Towards a sustainable bioeconomy*, Scandinavian Journal of Forest Research 2017, vol. 32(7), pp. 549-550, <http://dx.doi.org/10.1080/02827581.2017.1288826>, access: 1 Oct 2017; L. Palloni, *Il ruolo delle foreste nella lotta al global warming e la sostenibilità ambientale: il caso del Canada*, w: Studi in onore di Luigi Costato volume primo. Diritto Agrario e Agroambientale, Napoli 2014, pp. 463-574; National Forest Program. Synthesis, programs, introductions, overviews and recommendations of eight expert panels: climate, value, heritage, protection, development, organization, cooperation, science, Sękocin Stary, 18 June 2013 – 8 December 2015, ed. K. Rykowski, Instytut Badawczy Leśnictwa 2016, p. 170, <http://www.npl.ibles.pl/sites/default/files/synteza.pdf>, [access: 14 Jul 2017].

⁷ Cf. A. Kaliszewski, *Cele polityki leśnej w Polsce w świetle aktualnych priorytetów leśnictwa w Europie Część 1. Procesy kształtujące politykę leśną w Europie*, Leśne Prace Badawcze, Marzec / March 2018, Vol. 79 (1): 77–87, PDF version: www.lesne-prace-badawcze.pl; DOI: 10.2478/frp-2018-0009.

⁸ Report prepared at the initiative of the *United Nations Environment Programme (UNEP)* and published during UN Environment Assembly in Nairobi (Kenya), <https://www.unenvironment.org/resources/global-environment-outlook-6>, access: 30 August 2019.

⁹ <https://wedocs.unep.org/handle/20.500.11822/22070>, [access: 10 Jun 2019].

¹⁰ *Report from the Commission to the European Parliament and the EU Council and the Paris Climate Agreement: Taking stock of progress at Katowice COP (required under Article 21 of Regulation (EU) 525/2013 of the European Parliament and of the Council of 21 May 2013 on the mechanisms for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC)*, {SWD (2018) 453 final}, Brussels, 26 October 2018, COM(2018)716 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018DC0716>, [access: 10 Jun 2019].

¹¹ *The Emissions Gap Report 2016: A UNEP Synthesis Report*: <https://europa.eu/capacity4dev/unep/document/emissions-gap-report-2016-unep-synthesis-report>, [access: 10 June 2019].

(or 1.5°C) requires faster decarbonization in countries which have big, strong economies with constantly growing level of greenhouse gas emissions.

The EU has established 2050 emission reduction targets and they are included in the 2020 climate and energy package and the 2030 climate and energy framework. They assume a shift to zero emissions economy by 2050. The 2020 package is a collection of binding regulations which are to guarantee that the EU will achieve its targets in terms of climate and energy by 2020. Among these targets there are: reduction of greenhouse gas emissions by 20 percent (in comparison with 1990), 20-percent share of renewable energy in total energy consumption in the EU and increase of energy efficiency by 20 percent. Achievement of these targets will proceed in a few areas.

When it comes to achievement of targets so far, in 2017 the level of emissions in the majority of Member States was lower than their annual emissions limits. Nine countries (Greece, Slovakia, Croatia, Romania, Hungary, Portugal, Sweden, the Netherlands and Slovenia) had emissions at least 10 p.p. lower than the limit.¹² Malta, Germany, Ireland, Austria, Cyprus, Poland and Finland, on the other hand, exceeded their annual limits – according to estimates – just as Bulgaria, Estonia and Lithuania did, but by less than 1p.p.¹³

In terms of forecasts for the future, it is indicated that countries such as Estonia, Latvia, Finland, Germany, Lithuania, Austria, Romania, Poland and Spain, assuming that they will continue the current strategies, will be over 10 p.p. short of achieving 2030 targets. All Member States that anticipate they may not be able to achieve 2030 targets should specify in their national climate and energy plans (on the basis of the Energy Union governance regulation) how they would try to fulfill their commitments. So it is important how Member States, including Poland, will aim at fulfilling their ‘climate’ commitments.

Keeping the above-mentioned commitments of Member States in mind, it is justified to define the goal of the considerations which sounds as follows: the goal of this paper is an attempt to assess whether the current legal regulations can be perceived as conducive to achievement of the Energy Union targets in terms of forest management? In particular, can the solutions that Poland adopted in the National Forestry Accounting Plan¹⁴ be assessed as conducive to achievement of the LULUCF Regulation’s assumptions. Achievement of the target requires a closer look at the LULUCF as well as the national climate and energy plan and the national forestry accounting plan. Due to the size of the

¹² Percentage points represent the difference between the volume of emissions and annual emission limit expressed as the percentage change in comparison with emissions in the base year 2005.

¹³ Report from the Commission to the European Parliament and the EU Council and the Paris Climate Agreement: Taking stock of progress at Katowice COP (required under Article 21 of Regulation (EU) 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC), {SWD (2018) 453 final}, Brussels, 26 October 2018, COM(2018)716 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018DC0716>, [access: 10 Jun 2019].

¹⁴ National Forestry Accounting Plan developed by the Team for the elaboration of national plans related to accounting for greenhouse gas emissions and removals resulting from forestry activities, Warsaw 2018 https://bip.mos.gov.pl/fileadmin/user_upload/bip/strategie_plany_programy/Krajowy_Plan_Rozliczen_dla_Le-snictwa/NFAP_2018_POLAND_ENG_FINAL.pdf, p. 13, hereinafter referred to as NFAP.

article, it is possible to only signal some issues and that is why the considerations do not exhaust the topic.

2. The EU legal framework

At the EU level, the protection and improvement of the environment falls under art. 11 or art. 191 of the TFEU.¹⁵ Achievement of the adopted targets is related to Member States' commitment to develop integrated national energy and climate plans that should be consistent with the UN's sustainable development goals. The point is to achieve the goal in the form of maintaining world's average temperature growth much below 2°C in comparison with the level from before the industrial era and to try to limit this growth to 1.5°C above the level from before the industrial era as well as achieve long-term greenhouse gas emission reduction and larger removal by sinks in all sectors, in line with the EU target.¹⁶ As it is commonly known, the main anthropogenic factor behind global warming is the accumulation of greenhouse gases in the atmosphere.

Processes of greenhouse gas removal are referred to as 'sinks' and processes of greenhouse gas emission, such as fuel combustion – as 'sources'. According to the LULUCF Regulation (art. 3 sec. 1 points 1, 2, 3), a 'sink' is any process, activity or mechanism that removes a greenhouse gas, an aerosol or a precursor to a greenhouse gas from the atmosphere. A 'source' is any process, activity or mechanism that releases a greenhouse gas, an aerosol or a precursor to a greenhouse gas into the atmosphere. A 'carbon pool' is the whole or part of a biogeochemical feature or system within the territory of a Member State and within which carbon, any precursor to a greenhouse gas containing carbon or any greenhouse gas containing carbon is stored. The most important sinks are oceans and land biomass. The sum of sources and sinks gives the net emission result. The main anthropogenic greenhouse gases include: carbon dioxide (CO₂), methane (CH₄) and nitrous oxide (N₂O). The LULUCF Regulation lists all greenhouse gases as the CO₂ equivalent (influence of the CO₂ equivalent mass in the atmosphere on radiative forcing).¹⁷ In the LULUCF sector, the biggest sink are forests and the estimated CO₂ removal volume is generated primarily by live biomass growth.¹⁸ That is why it is justified to say that legal regulations regarding forest share in climate protection may be significant for the achievement of EU targets.

As it has been mentioned, the climate and energy framework includes the sector of land use, land use change and forestry. On the one hand, it is exposed to the effects of climate change and on the other, it may contribute to mitigation of this change. In the case of EU lands, removals are bigger than emissions and the LULUCF Regulation focuses on development of incentives to at least maintain this situation. In the light of this regulation, every Member State has to make sure that greenhouse gas emissions from land use are completely balanced with CO₂ removal from the atmosphere through activity in this sector. This process is subject to the 'zero balance' principle, according to which it is

¹⁵ The Treaty on the Functioning of the European Union, OJ C 326, no 90, item 864/2.

¹⁶ Points 36 and 37 of the preamble to Regulation (EU) 2018/2019.

¹⁷ National Forestry Accounting Plan developed by the Team for the elaboration of national plans related to accounting for greenhouse gas emissions and removals resulting from forestry activities, Warsaw 2018, p. https://bip.mos.gov.pl/fileadmin/user_upload/bip/strategie_plany_programy/Krajowy_Plan_Rozliczen_dla_Le-snictwa/NFAP_2018_POLAND_ENG_FINAL.pdf, p. 13, hereinafter referred to as NFAP.

¹⁸ Ibidem, p. 14.

necessary to compensate for emissions generated by deforestation with e.g. provision of equivalent CO₂ sinks from afforestation or improvement of sustainable management of existing forests.

The most important commitment of Member States under the LULUCF Regulation (art. 4) is for each of them to ensure that for the periods from 2021 to 2025 and from 2026 to 2030, taking into account the flexibilities provided for in art. 12 and 13, emissions do not exceed removals (calculated as the sum of total emissions and total removals on its territory in all of the land accounting categories, as accounted in accordance with this regulation). In these accounts emissions should be denoted by a positive sign (+) and removals – by a negative sign (–). Besides, every Member State is obliged to maintain accounts that accurately reflect the emissions and removals resulting from the land accounting categories included in the above-mentioned regulations. In his respect they also have to ensure accuracy, completeness, consistency, comparativeness and transparency of their accounts and other data provided under the regulations (art. 5 of the LULUCF Regulation). An important rule regarding the accounts is the requirement to avoid double counting of emissions or removals, in particular by ensuring that emissions and removals are not accounted for under more than one land accounting category (art. 5 sec. 2 of the LULUCF Regulation).

When it comes to afforested and deforested land, emissions and removals should be accounted as the total emissions and total removals for each year in the periods from 2021 to 2025 and from 2026 to 2030 (art. 6 sec. 1 of the LULUCF Regulation). Every Member State should also account for emissions and removals resulting from managed forest land, calculated as emissions and removals in the periods from 2021 to 2025 and from 2026 to 2030 minus the value obtained by multiplying by five the forest reference level of the Member State concerned (art. 8 sec. 1 of the LULUCF Regulation). However, if the result is negative with reference to the forest reference level¹⁹ of a given Member State, the Member State concerned shall include in its managed forest land accounts ‘total net removals of no more than the equivalent of 3.5 percent of the emissions of that Member State in its base year or period, as specified in Annex III, multiplied by five’. There is an exception specified in the LULUCF Regulation (net removals from the carbon pools of dead wood and harvested wood products, except the category of paper as referred to in art. 9 sec. 1 point a), in the land accounting category of managed forest land.

The reference level for lands must be based on the continuation of sustainable forest management practice documented from 2000 to 2009 with reference to dynamic age-related forest characteristics in national forests with the use of the best available data. This level shall also take into consideration ‘the future impact of dynamic age-related forest characteristics in order not to unduly constrain forest management intensity as a core element of sustainable forest management practice, with the aim of maintaining or strengthening long-term carbon sinks’ (art.8 sec. 5 of the LULUCF Regulation).

However, there is a possibility to apply ‘flexibilities’ (art. 12 and 13 of the LULUCF Regulation). In particular, if a Member State exhibits net removals from land use and forestry, it can hand over these

¹⁹ ‘Forest reference level’ is, according to art. 3 sec. 1 point 7 of the LULUCF Regulation, the estimated forest reference level expressed in tons of CO₂ equivalent per year, of the average annual net emissions or removals resulting from forest land management in a given Member State in the periods from 2021 to 2025 and from 2026 to 2030, based on the criteria established in this Regulation.

amounts to other Member States. Similarly, Member States can compensate for shortages in the LU-LUCF sector, using annual emission limits granted under Regulation (EU) 2018/842. Varying ability to undertake action by Member States has been taken into consideration.

The LULUCF Regulation also assumes that the proportion of acquired wood used for harvested wood products and bioenergy from 2000 – 2009 shall be maintained. There is a mechanism of compensation for possible emission from managed forest land in case a given country does not achieve the removal volume equal to the reference level and its operation is based exclusively on the Member State's forest coverage (average forest coverage in the reference period from 2000 to 2009). Poland has been granted a compensation limit for 10 years (2021 – 2030) in the amount of -22.5 million tons of CO₂ equivalent as total maximum limit for this period. However, accounting of balances for afforestation or deforestation and harvested wood products (excluding paper) shall not be restricted with either a limit or a reference level.

3. National regulations

The sustainable development principle has been expressed in art. 5 of the Constitution of Poland²⁰. Under art. 74 of the Constitution of Poland, public authorities are obliged to run policy that guarantees ecological security to the contemporary and future generations and environmental protection is the obligation of public authorities. According to the art. 1 of the Forest Act, this law regulates 'the rules of behavior, protection and expansion of forest resources and the rules of forest management in relation to other elements of the environment and the national economy'.²¹ In the light of provisions of the above-mentioned Act, forest management should be consistent with the rules of common forest protection, durability of their maintenance, continuity and sustainable use of all forest functions as well as increase of forest resources and rules specified in the Act on maintaining the national character of natural resources which imposes the obligation to manage resources 'according to the rule of sustainable development in the public interest'.

Legal definition of 'permanently sustainable forestry'²² also refers to the above-mentioned rule. It is defined as 'activity that aims at developing forest structure and use in such a manner and rate that will guarantee permanent preservation of their biological richness, high productivity and regeneration potential, life and ability to fulfil, now and in the future, of all important protective, economic and social functions at the local, national and global level, without damage to other ecosystems'. It seems that the legislator's intention was to prioritize the protective functions of forests.²³ The literature states that protective functions of forests are expressed in, among other things, 'positive influence of forests

²⁰ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws, item 483, as amended, hereinafter referred to as the Constitution of Poland.

²¹ Art. 1 point 1 of the Forest Act of 28 September 1991, Journal of Laws of 2018, item 2129, as amended, hereinafter referred to as the Forest Act.

²² Art. 6 sec. 1 point 1a of the Forest Act; cf. United Nations Framework Convention on Climate Change produced in New York on 9 May 1992, ratified by Poland through an act of 16 June 1994, Journal of Laws of 1994, no 53, item 1238.

²³ Cf. K. Leśkiewicz, *Prawne aspekty zarządzania lasami Skarbu Państwa*, Lublin 2019, p. 86 and 92.

on development of global and local climate, composition of the atmosphere, regulation of water circulation, prevention of floods, avalanches and landslide, protection of soil from erosion and protection of landscape from steppe-formation, preservation of biological potential of a big number of species and ecosystems as well as landscape diversity and better conditions for agricultural production'.²⁴

It means that in the light of the Forest Act, climate protection can and should be pursued within protective functions. However, the Act misses more specific requirements regarding implementation of protective functions in terms of climate protection. Such solutions have been developed within documents required under Regulation (EU) 2018/841 as well as in practice. According to the LULUCF Regulation, Member States are obliged to submit the national forestry accounting plan to the European Commission, including proposed forest reference level, by 31 December 2018 for the period from 2021 to 2025 and by 30 June 2023 for the period from 2026 to 2030 (art. 8 sec. 3 of the LULUCF Regulation). After Member States submit these plans, the Commission, in consultation with experts appointed by the Member States, will conduct a 'technical assessment', including verification, of the extent to which the proposed forest reference levels have been established in accordance with the requirements of the LULUCF Regulation (art.8 sec. 6 of the LULUCF Regulation).

Poland has adopted the draft of National Energy and Climate Plan for 2021-2030²⁵, in which it declares to use the flexibilities of the Effort Sharing Regulation²⁶, especially the mechanism specified in art. 7 of the LULUCF Regulation as well as an additional pool of units that expand the annual limit (art. 10 sec. 2) and the mechanism of shifting, borrowing and transferring of AEA units (art. 5). The document states that Member States can shift the unused portion of their limits to subsequent years of the accounting period, borrow a portion of their limits from future years or acquire units from other Member States. Poland also assumes that it will use the security reserve (art. 11) in case other flexibilities turned out to be insufficient to cover AEA shortage in 2026 – 2030. The maximum total pool for all Member States that will fulfill the specific conditions amounts to 105 million tons of CO₂ equivalent. The National Energy and Climate Plan assumes using of all available additional mechanisms that allow to mitigate the effects of the ambitious EU targets, but it does not cover the most important issues. The European Commission believes that the plan does not include means to solve the problem of anticipated significant difference in relation to the 2030 target that assumes greenhouse gas emissions of -7 percent in Poland in comparison with 2005 in sectors that are not included in the EU system of emission trading.²⁷

²⁴ P. Paschalis-Jakubowicz, *Polskie leśnictwo w Unii Europejskiej*, Warszawa 2004, p. 147.

²⁵ Draft of National Energy and Climate Plan for 2021-2030. Objectives and targets, and policies and measures. Version 3.1 of 4 January 2019 <https://www.gov.pl/attachment/33dfff1-fd75-4070-85e9-98b254420058>, access: 9 Sept 2019; cf. Energy Policy of Poland, and Strategy for Responsible Development by 2020 – with the perspective by 2030 of 2017.

²⁶ *Ibidem*, p. 53.

²⁷ Cf. Commission Recommendation of 18 June 2019 on the draft integrated National Energy and Climate Plan of Poland covering the period from 2021 to 2030 (2019/C 297/21), OJ C of 3 September 2019. Point 1 of the above-mentioned recommendation orders submission of additional information on the planned policies and measures whose goal is to solve the problem in question. It refers to e.g. specification of information on additional measures, especially in construction sector, agriculture and land use, land use change and forestry as well as application of accounting rules established in Regulation 2018/841.

Moreover, the most important challenge for forestry is implementation of such actions that will enable increase of carbon retention capacity in the elements of forest ecosystem. In particular, it is assumed that the use of wood regulated by forest use management is the effect of needs resulting from forest growing and protective functions and is supposed to guarantee continuity of production of as much top quality wood as possible. The volume of wood harvesting from mature forests should take into account the limitations resulting from implementation of protective and social functions, the condition of current and future structure of forest age and species and the degree of its compatibility with the habitat characteristics.²⁸

In this respect, it is necessary to reach to Poland's National Forestry Accounting Plan²⁹, which – for the purpose of achievement of national targets specified in the LULUCF Regulation – divides forests on the basis of the structure of use, intensity of main use as well as availability and credibility of data regarding condition of forests and forestry, into two stratification layers: state-owned forests managed by the State Forests National Forest Holding (hereinafter referred to as SF NFH) – around 77 percent of forests – and forests outside of the SF NFH authority (so-called 'other forests' that include forests of the remaining ownership forms, primarily privately-owned forests, forests managed by national parks and owned by the Agricultural Property Stock of the State Treasury, other forests of the Treasury and communal forests). In other forests the NFAP observes a different forestry method with lower primary use levels than in forests managed by SF NFH.³⁰

When it comes to wood harvesting in relation to the forest reference level, in the beginning of 2010 the share of harvesting in the logging use in forests managed by SF NFH amounted to ca 48 percent and in other forests – to ca 26 percent. According to available forecasts, this share may go up in subsequent periods – to ca 58 percent in state forests and 41 percent in other forests in the period from 2026 to 2030.³¹ Considering the current level that began in 2017, the share in logging use in forests managed by SF NFH amounted to ca 54 percent and in other forests – to ca 23 percent. According to available forecasts, this share may go up in subsequent periods – to ca 59 percent in state forests and ca 30 percent in other forests in 2026 – 2030.³²

Average estimated values of the annual balance of forest emissions and removals in the period from 2021 to 2025 for CRF 4.A.1 category 'Forest land remaining forest land', will amount to, considering a scenario based on the forest reference level, -33296 in 2021, -31229 in 2022, -29329 in 2023, -27595 in 2024 and -25717 in 2025. According to the base level, it gives -29433 tons of CO₂ equivalent per year (calculated according to the method adopted in section A of annex IV of Regulation (EU)

²⁸ Ibidem, pp. 17-18.

²⁹ National Forestry Accounting Plan developed by the Team for the elaboration of national plans related to accounting for greenhouse gas emissions and removals resulting from forestry activities, Warsaw 2018, p. 16-17, https://bip.mos.gov.pl/fileadmin/user_upload/bip/strategie_plany_programy/Krajowy_Plan_Rozliczen_dla_Le-snictwa/NFAP_2018_POLAND_ENG_FINAL.pdf, [access: 9 September 2019].

³⁰ NFAP, p. 6.

³¹ NFAP, p. 21.

³² NFAP, p. 23.

2018/841.³³ The National Forestry Accounting Plan also indicates that the area of forests according to the forest reference level in the entire period under analysis (2010 – 2030) will not change.

Another thing worth mentioning are actions undertaken by SF NFH regarding verification of the possibility to increase carbon retention capacity in state forests and other forests. It is an element of a long-term project entitled 'The Forest Carbon Farms' whose aim is to verify the possibilities of increased CO₂ removals by forests through additional economic and forestry actions.³⁴

Besides, we must keep in mind the role of forest biomass whose sources for energy purposes are: roundwood from forests and afforestation and byproducts from wood processing. Forest biomass accounts for around 20 percent of biomass used for energy purposes. In terms of accounting and reporting of greenhouse gas emissions from forest biomass used for energy purposes, the national plan of adaptation to climate change indicates that they are not included in accounting and reporting of the balance of emissions and removals within the forest land category. Emissions related to forest biomass used for energy purposes are reported and accounted as the effect of losses of forest biomass from forest land. It is also anticipated that bigger use of forest biomass by 2030 will have an influence on accounting and reporting of removals and emissions from forest land category, but currently this influence is yet to be determined.³⁵

At the same time, in the reference period (2000-2009), the forest management plan was governed by the rule that the sum of tasks within logging use and pre-logging use specified in the forest management plan is the maximum value. It meant that in case pre-logging use was increased, logging use had to be limited. Average logging age/rotation periods (in years) for the most important tree species in forests managed by SF NFH were as follows: pine – 106, spruce – 95, beech – 115, oak – 140, birch – 80, alder – 75. The NFAP emphasizes the difference between forests managed by SF NFH and forests under other ownership forms when it comes to planning and implementation of forest management plans.

In forests managed by SF NFH the volume of total primary use was in principle almost the same as the volume of planned primary use and in other forests, especially private ones, implementation of planned tasks was (like these days) much smaller. The methods of forest management were also different – in private forests management tends to be simplified and adjusted to their owners' needs 'within pre-logging use'. That is why in practice the majority of wood in private forests (around 80 percent) is harvested in 'pre-logging use' and around 20 percent – in 'logging use'.³⁶ It means that there is a need to improve legal regulations and practices regarding forest management in private forests.

³³ NFAP, p. 45.

³⁴ *Draft of National Energy and Climate Plan for 2021-2030. Objectives and targets, and policies and measures. Version 3.1 of 4 January 2019* <https://www.gov.pl/attachment/33ddfff1-fd75-4070-85e9-98b254420058>, [access: 9 September 2019], p. 55.

³⁵ *Ibidem*, p. 19.

³⁶ NFAP, p. 39.

4. Overview

Apparently, the mechanisms of accounting greenhouse gas emissions from land use in such a way that emissions are completely balanced with CO₂ removals from the atmosphere through forestry activity are very complex and have interdisciplinary character. They regard various areas, including forestry, economy or law. Thus, good knowledge and understanding of the rules they are subject to, requires confrontation of various viewpoints, which is impossible in such a short paper. The study shows that in order to examine possible effects of new legal solutions, their dogmatic analysis only is not sufficient. Meanwhile, this is the only possible thing within the limited scope of this publication. It must be also noted that the assessment of economic effects of the LULUCF Regulation or the effects for forestry at the current stage of its implementation would be no more than a regular forecast.

However, from the legal viewpoint it is possible to conclude that LULUCF solutions have a significant influence on Member States' authority in terms of forestry, even though it is their responsibility under the decision of the European Court of Justice. They even develop common forestry policy in terms of climate, while the only thing Member States have left is the execution of assumed normative targets. In terms of analyzed emission and removal accounting mechanisms in forests, the LULUCF Regulation can be considered an act that rations forest use activity.

The mechanisms of CO₂ emission and removal accounting are based on historical data in assumption and they are to aim at the effects anticipated for the future. While examining regulations, it is impossible to decide a priori whether the regulation in question will bring anticipated effects or losses from the economic perspective in terms of wood harvesting from state forests. It will depend on the result of emission and removal accounting. If the level of permitted emissions of gases under the regulations is not exceeded, it does not have to mean that the volume of wood harvesting goes down and thus negative economic effects take place. The point is the amount of CO₂ emission in the process and whether it exceeds the established forest reference level. If emissions are higher than assumed, there is a possibility of compensation. After emission levels are exceeded despite using additional balance mechanisms, wood harvesting limits may be introduced. In the light of the LULUCF Regulation, the 'forest carbon farms' project can be assessed positively as so can be the planned afforestation of the country. The solutions and data adopted in the NFAP may indicate that the LULUCF Regulation does not have to be negative for Poland, although it is, indeed, very ambitious when it comes to the level of targets.

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