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Pro-environmental Payments as an Instrument of the Biosphere Use Value Protection in Agriculture

Płatności prośrodowiskowe jako instrument ochrony użytkowej biosfery w rolnictwie

SUMMARY

The need to keep the expected level of production in agriculture generates a serious burden on the environment. The most important environmental factors exposed to the impact of agriculture include biodiversity and water, air, and soil quality. Assessments of all these environmental aspects related to agricultural production are negative. The condition of the agricultural environment has been subject to rapid deterioration. In such a situation, environmental instruments have drawn particular attention from the European legislature when developing new guidelines of the Common Agricultural Policy to be applicable after 2020.

Keywords: Common Agricultural Policy; pro-environmental instruments in agriculture; European Commission; European Court of Auditors

GREENING OF THE EU COMMON AGRICULTURAL POLICY

The Common Agricultural Policy (CAP) programming period applicable since 2014 ends in 2020. The work on the new CAP model are currently under way both at the European forum[1] and in EU member states[2]. Future structural solutions will

[1] A. Mathews, *The EU's Common Agricultural Policy Post 2020: Directions of Change and Potential Trade and Market Effects*, Geneva 2018.

[2] See M. Wigier, A. Kowalski, *The common Agricultural Policy of the European Union – the present and the future. Member States point of view*, Warsaw 2018 – containing the analysis of the CAP instruments and the EC's proposal with respect to this policy after 2021, as seen from the point

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determine the legal regulations as regards the amount of funding, support instruments, agricultural administration and the objectives to be pursued in the market/income and structural spheres. The analysis of the documents of the European Commission[3] and the European Court of Auditors[4] that have already been analysed allows an assessment of the effectiveness of the implementation of existing CAP instruments and the direction of the changes being programmed.

The considerations address financial instruments through which the specific goal of the CAP was pursued, i.e. the "greening" of the policy, and further prospects for pro-environmental actions implemented under the European Union's agricultural policy.

In normative terms, pursuant to the provisions of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy[5], the "greening" actually relates only to a financial instrument, namely the payments granted for agricultural practices undertaken in farming holdings aimed at protecting the environment, hindering the decline in biodiversity and preventing climate change, such as crop diversification, maintaining permanent grassland or ecological focus areas[6]. Despite the quite limited scope of the word "greening" so formulated, it was treated much more broadly in the public opinion and literature on the subject, as all the environmental instruments to be implemented under the Common Agricultural Policy. It is not necessary to present all of them here, because they have been addressed by numerous assessments and opinions in the literature. For the sake of clarity of further discussion herein, it should only be pointed out that the basic pro-environmental requirements and norms have been covered by the cross-compliance principle, which was binding

of view of Austria, Italy, Poland, Slovakia, Czech Republic, Hungary, Romania, and Bulgaria. See also M.A Król, *Skuteczność implementacji rolnośrodowiskowych instrumentów Wspólnej Polityki Rolnej w ocenie Europejskiego Trybunału Obrachunkowego*, „Studia Iuridica" 2018, t. 78, DOI: https://doi.org/10.5604/01.3001.0013.2163, pp. 233–252.

[3] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "The Future of Food and Farming", COM(2017) 713, 29.11.2017, and the Commission proposals.

[4] Opinion of the European Court of Auditors No. 7/2018 concerning Commission proposals for regulations relating to the common agricultural policy for the post-2020 period, COM(2018) 392, 393, 394, final (OJ EU C 41/01, 1.02.2019).

[5] Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No. 637/2008 and Council Regulation (EC) No. 73/2009 (OJ EU L 347, 20.12.2013, pp. 608–670), hereinafter: Regulation 1307/2013.

[6] For more detail, see M.A. Król, *Środowiskowy wymiar płatności w ramach systemów wsparcia bezpośredniego – zagadnienia prawne*, [in:] *Prawne instrumenty ochrony środowiska*, red. B. Jeżyńska, E. Kruk, Lublin 2016, p. 306.

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on the largest group of farmers and concerned the largest area of agricultural land, thereby forming the basic level of environmental impact. The further-reaching requirements and those addressed to selected groups of agricultural producers were provided for as pro-environmental commitments, either compulsory or voluntary, implemented in both the market and structural pillars. The Commission classified the "greening" as the central level in the so-called three-level pyramid of the CAP environmental instruments. In the assumptions of the European legislature, "greening" and the standards of good agricultural practices were supposed to form two mutually complementing mechanisms to improve the effects of pro-environmental activities within agriculture.

In this broad sense, "greening" has become the catchword related to the Common Agricultural Policy at the end of the programming period, an expression of the pursuit of harmonisation of the agricultural policy with the general EU policy objectives as set out in the programme document entitled "Europe 2020. A strategy for smart, sustainable and inclusive growth"[7] and, strongly stressed therein, new tasks for European agriculture in combating climate change, preserving biodiversity and promoting sustainable development. The effects to be achieved through "greening" were defined as the delivery of public goods that could not be achieved by other means, as a guarantee of governance and social well-being, and as the "EU added value" meant as the additional effect of EU action that would not be achieved through uncoordinated action at national, regional or local levels[8]. The effects so outlined were the main and most important argument for maintaining the European Common Agricultural Policy in its current form.

EVALUATION OF EFFECTIVENESS AND EFFICIENCY OF THE EXISTING ENVIRONMENTAL PAYMENTS

Keeping agricultural productivity at the expected level generates a serious burden on the environment. The most important environmental factors exposed to the impact of agriculture include biodiversity, quantity, and quality of water, air, and soil. Assessments of all these environmental aspects related to agricultural production raise serious concern.

[7] COM/2010/2020 final, Brussels, 3.03.2010.

[8] Despite being more and more frequently used as a kind of indicator of achievement of policy goals, the concept of EU added value does not have a uniform definition. The interpretation cited herein comes from the document opening the debate on the future of EU finance (COM (2017) 358, 28.06.2017), and is currently most often used in official documents of the Commission and the European Court of Auditors.

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As regards biodiversity, the conservation status of agricultural habitats is satisfactory only for 11%. Since 1990, the population of common birds in the agricultural landscape has decreased by 30% and the population of meadow butterflies by almost 50%. In terms of water quality and quantity, a permanent excess of nitrogen is observed on EU farmlands. The average concentration of this element is 50 kg/ha. Since 1993, nitrate levels in rivers have decreased, but this decrease does not concern groundwater. Furthermore, agriculture is responsible for more than 50% of freshwater consumption in Europe[9]. Ammonia is one of the main air pollutants and agriculture accounts for almost 95% of ammonia emissions in Europe. Greenhouse gas emissions from agriculture represented 11% of total EU emissions in 2015. These emissions decreased by 20% between 1990 and 2013, but started to increase again from 2014. Net removals of air pollution from land-use, land-use change, and forestry activities offset only about 7% of total EU greenhouse gas emissions[10]. Land degradation is also progressing. About 45% of mineral soils in the EU have low or very low organic carbon (0–2%) and 45% have average organic carbon (2–6%). The decrease in organic carbon results in reduced soil fertility and an increased risk of desertification[11].

In such a situation, the environmental protection instruments have received special attention of EU lawmakers and several years of implementation of the assumptions of the Common Agricultural Policy have been evaluated.

The ex-post verification by the European Court of Auditors (ECA) and the European Commission of the assumed goals, achieved pro-environmental effects in agriculture, the degree of implementation of appropriate legal and financial instruments, and efficiency of spending from funds financed from the EU budget turned out to be negative.

The following were assessed under the first pillar: cross-compliance requirements related to direct payments for agricultural land and payments for greening;

[9] EEA, *Climate change, impacts and vulnerability in Europe 2016*, 2017, www.eea.europa.eu/publications/climate-change-impacts-and-vulnerability-2016/at_download/file [access: 3.11.2019].

[10] Eurostat distinguished three types of regions: "predominantly rural", "intermediate", and "predominantly urban" and recommends that data be presented in breakdown into these three groups, which was followed by the Court in this document. The statement, contained in the Communication, that 55% of the EU population reside in rural areas results from the juxtaposition of "predominantly rural" area with "intermediate ones". "Intermediate" regions could well be juxtaposed also with "predominantly urban" regions which would result in a quite opposite finding that 80% of the EU population reside in urban regions.

[11] JRC, *The State of Soil in Europe*, 2012, https://esdac.jrc.ec.europa.eu/ESDB_Archive/eusoils_docs/other/EUR25186.pdf [access: 3.11.2019]; EEA, *State of the Nature in the EU*, 2015, www.eea.europa.eu/publications/state-of-nature-in-the-eu [access: 3.11.2019]; DG AGRI, *Facts and figures on EU agriculture and the CAP*, https://ec.europa.eu/agriculture/statistics/facts-and-figures_en [access: 3.11.2019.

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and under the second pillar: agri-environment-climate payments and environment-friendly farming.

In the assessment of pro-environment instruments, both the Commission and the European Court of Auditors have expressed serious reservations.

In the case of agri-environment programmes, according to the ECA:

- the objectives set by the Member States were too numerous and insufficiently defined to assess whether they were achieved,
- the national regulations also failed to focus on specific environmental problems,
- the Member States did not provide information on the environmental benefits achieved due to agri-environment payments[12],
- the cross-compliance requirements for agricultural producers were not formulated properly and their nature was purely formal,
- not all the Member States (e.g. France, Slovenia, Belgium, the Netherlands or Portugal)[13] have implemented all standards of cross-compliance, which significantly reduced the effectiveness of this instrument, and
- although the requirements to be met by farmers were numerous and complex, almost all of them were already applied previously under applicable regulations, so the introduction of this principle did not cause a significant change in agricultural practices[14].

In the field of organic farming, the ECA pointed out the need to increase the supervision of the relevant Member State authorities over certification bodies, since the current organic product verification system does not provide assurance that the key requirements for organic production have been met[15].

The additional analysis covered the relationship between agricultural practices under the new greening payment and previous standards of good agriculture. As a result, it was found that there are two sets of complementary agricultural practices with the same objectives: land maintenance and biodiversity conservation. Some practices do not follow the standards of good agriculture consistent with environment protection: crop rotation does not constitute a diversification of crops, the protection of permanent grassland is not the maintenance of permanent grassland

[12] Europejski Trybunał Obrachunkowy, *Czy system wsparcia rolnośrodowiskowego jest dobrze opracowany i czy zarządza się nim odpowiednio?*, Sprawozdanie specjalne nr 7, 2011, www.eca.europa.eu/Lists/News/NEWS1109_19/NEWS1109_19_PL.PDF [access: 3.11.2019], p. 8.

[13] Europejski Trybunał Obrachunkowy, *Czy zasada współzależności jest skuteczna?*, Sprawozdanie specjalne nr 8, 2008, www.eca.europa.eu/lists/ecadocuments/sr08_08/sr08_08_pl.pdf [access: 3.11.2019], pp. 13–14.

[14] Ibidem, p. 17 ff.

[15] Europejski Trybunał Obrachunkowy, *Ukierunkowanie pomocy na modernizację gospodarstw rolnych*, Sprawozdanie specjalne nr 8, 2012, www.eca.europa.eu/lists/ecadocuments/sr12_08/sr12_08_pl.pdf [access: 3.11.2019], p. 8, 47.

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as set out in the greening legislation and the preservation of landscape features on all agricultural land differs from having 5% of the ecological area on arable land. It was also found that overlapping greening obligations, agri-environmental-climate action and, to a lesser extent, the rules of cross-compliance had proved to be ineffective and even flawed. It was estimated that greening had led to changes in agricultural practices on only approx. 5% of all agricultural land in the EU, which clearly indicates the inefficiency of the measures implemented. The Court stressed that while the EU has decided to finance climate-related activities by including or considering them in various EU funding instruments, including the CAP, there was no significant shift in the focus on climate action and not all the possibilities for financing such actions have been fully explored.

The objections stated were a point of departure for the work undertaken on the new concept of the Common Agricultural Policy, in particular its environmental dimension. Results of the work were presented by the Commission in its 2017 Communication entitled "The Future of Food and Farming" and by the Court of Auditors in its opinion assessing the draft new CAP assumptions published in early 2019.

PROTECTION OF BIOSPHERE RESOURCES IN THE PRINCIPLES FOR THE COMMON AGRICULTURAL POLICY 2021–2027

The starting point is to accept that "a modernised Common Agricultural Policy must enhance its European added value by reflecting a higher level of environmental and climate ambition and addressing citizens' expectations for their health, the environment and the climate"[16]. The Commission has interpreted the objectives of the CAP set out in the Treaty on the Functioning of the European Union in such a way as to adapt them to the current context.

In general, the Common Agricultural Policy aims to promote smart and resilient agriculture, increase environmental concerns, intensify action concerning climate and contribute to the Union's environmental objectives and to strengthen the socio-economic structure of rural areas. The formulated specific objectives already concern environmental issues in their entirety. The Commission requires consistency with the commitments of the Paris Climate Agreement agreed by the Conference of the Parties to the United Nations Framework Convention on Climate Change and the sustainable development goals. Moreover, it assumes a contribution to the EU's climate and energy goals by 2030 of up to 40% of CAP funds aimed at these goals. Further, the Commission will assess and approve the strategic CAP plans and maximise the contribution of the CAP to the union's priorities and general objectives, as well as member states' specific climate and energy objectives.

[16] Explanatory Memorandum of the Commission, p. 1.

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It also assumes that the CAP should play a leading role in the transition to more sustainable agriculture.

The Commission has proposed some modifications to the CAP. Firstly, replacing rural development programmes[17] with CAP strategic plans covering all CAP measures (direct payments, market measures, rural development measures)[18]. The new implementation model assumes that EU regulations apply only to member states and not to beneficiaries, which is expected to result in more subsidiarity as well as responsibility and accountability of member states. The existing agricultural financing instruments (EAGF and EAFRD) will be maintained, but they will no longer be subject to separate programming processes in the member states. The joint programming of the EAGF and the EAFRD within a single overall strategic plan for the CAP is to improve coherence between various instruments of the CAP. In view of the European Union's quantified international commitment to climate change prevention, where the key objective is to reduce total EU greenhouse gas emissions by 40% by 2030[19], the Commission estimates that 40% of the total CAP financial allocation[20] will be used to achieve this objective.

In its assessment of the new principles of CAP, the Court of Auditors has accepted the declared environmental inclination of the CAP and the desire to improve consistency with overall EU objectives and other policies. It has, however, pointed to the need to set up mechanisms to allow for a quantitative and consequential assessment of actions being taken. It is recommended and already widely accepted to apply the so-called performance budgeting, which involves associating the amount of funding allocated according to measurable results that are achieved and monitored annually. Each increase in grants depends on increasing outputs or achieving other results.

The most recent arrangements were made at the meeting of the Agriculture and Fisheries Council of 15 July 2019, where ministers exchanged views on the environmental and climate aspects of the post-2020 CAP, based on the Presidency's opening document[21]. The Ministers were invited to present their views on the key elements of the Commission's proposal and to reflect on possible improvements necessary to achieve the desired higher level of environmental and climate ambition.

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[17] The current EAFRD programming documents are subject to Regulation (EU) No. 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005 (OJ L 347, 20.12.2013, p. 487).

[18] For EAFRD, strategic planning has already been carried out under the rural development programmes.

[19] *Człowiek a zmiana klimatu*, https://ec.europa.eu/clima/citizens/eu_pl [access: 10.03.2020].

[20] The tracking of climate expenditure (recital 52 and Article 87 of the CAP strategic plans regulation).

[21] Document of 2 July 2019, 10622/19, 2018/0216(COD).

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Most of the delegations supported, in principle, the Commission's proposed higher level of environmental and climate ambition for the future CAP, but subject to the provision of adequate financial resources for the CAP to respond to the increased level of ambition. In accordance with the statement adopted, further arrangements on the environmental and climate aspects of the CAP will be made at the meetings of the Special Committee on Agriculture scheduled for November 2019. The Working Party on Horizontal Agricultural Questions also discussed eco-programmes, conditionality and related inspections and penalties, the 30% EAFRD envelope and covering small farmers by the principle of conditionality. This topic will also be addressed at the Agriculture and Fisheries Council of 18 November 2019[22].

CONCLUSIONS

The existing arrangements on the new principles of the Common Agricultural Policy in the area of pro-environmental measures, allow us to formulate certain final conclusions.

Firstly, environmental and climate objectives are still a high priority, and the CAP is expected to increase its "ambition" in this respect[23]. The level of ambition is to be defined in the CAP strategic plans. Member states would set quantitative target objectives for result indicators in their CAP strategic plans. They would also have to justify the chosen objectives[24] and even provide evidence to support the baseline situation to allow the assessment of the level of ambition. The Commission would assess the objectives and the grounds for them when approving the CAP strategic plans[25].

Secondly, the post-2020 CAP is intended to be a performance-based policy. Thus, it is assumed that there will be a clear link between the results achieved and the financial support granted. The emphasis is on achieving specific objectives and documenting them. This entails the need to develop clear and unambiguous monitoring and evaluation criteria.

Thirdly, a fundamental change to undoubtedly determine the functioning of the CAP's financial mechanisms is the adoption of the so-called strategic plans as a basis for establishing specific solutions in individual member states, also with regard to environmental instruments. Such a solution, on the one hand, allows for individualisation of objectives and priorities, but may also pose a threat to the amounts

[22] Report of the Council of the European Union of 2 October 2019, 12693/19, 2018/0216(COD), 2018/0217(COD), 2018/0218(COD).

[23] For example, in the impact assessment and recital 16 of the CAP strategic plans regulation.

[24] Articles 96–97 and 115–116 of the CAP strategic plans regulation.

[25] Article 106 (2) of the CAP strategic plans regulation.

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of funds obtained due to the varied level of pro-environmental "ambition". This limitation of "ambition" is already visible in the position presented by the Polish Government, which perceives pro-environmental activities in a rather limited way. According to the official position, contained in the document of November 2018[26], it was adopted that the Government of the Republic of Poland sees the necessity of linking the strategic plan with national documents implementing EU environmental directives. However, it points out that such a solution will force Member States to additionally strengthen the financial orientation of CAP support towards environmental objectives. This proposal may, therefore, constitute an element distorting the conditions of competition on the EU single market to the disadvantage of less well-off Member States having fewer capabilities of alternative financing of adaptation processes from national funds. Therefore, linking the strategic plan to the national documents implementing EU environmental directives must be associated with an appropriate level of their financing and these measures must not compete with other directions of intervention in the area of CAP.

The Polish Government welcomes with interest the proposal to include climate and environmental systems (so-called eco-programmes) in the first pillar of the CAP. However, it is of the opinion that this should be an instrument for voluntary use by a member state. It is also critical about the EC's proposal to implement very similar types of interventions in both pillars of the CAP: "eco-programmes" (the first pillar) and "environmental, climate commitments" (the second pillar), which can make it more difficult for farmers and the complementarity between the different environmental measures under the CAP. Therefore, a proposal has been put forward to seek to mitigate or give up certain obligations proposed under conditionality or possibly to establish them as voluntary for a member state. This mainly applies to those requirements, the implementation of which will generate a heavy burden for both the administration and farmers, assessed as disproportionate to the expenditure incurred and the expected effects. It was also critical about member states' compliance with the implementation of a complex solution, which is sustainable nutrient management. In the context of increased environmental requirements, the Polish Government also postulates flexible solutions for member states to exempt certain groups of holdings, which, due to their structure, type production (i.a. heterogeneous structure, traditional agritechnical methods), already pursue the assumed purpose of the conditionality element, or where this element is of little importance under the agri-environmental conditions of a given location.

The presented position is based on the assumption expressed in previous positions of the Polish Government[27] that increasing the environmental and climate

[26] Position of the Council of Ministers, COM(2018) 392, COM(2018) 393, COM(2018) 394.

[27] Position of the Government of the Republic of Poland of 22 December 2017 to the Communication of the Commission to the European Parliament, the Council, the European Economic and

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ambitions of the CAP should go hand in hand with ensuring an adequate (increased) budget for this purpose and the freedom choice of purpose and methods of implementation.

National post-2020 CAP priorities of the CAP[28] in the field of pro-environmental activities focus on recognizing that: 1) an important task of the CAP is to support the conservation of naturally valuable areas, not only agricultural but rural areas, and the origination of simple and result-oriented actions addressed to farmers and other beneficiaries managing these areas; 2) activities aimed at the management of water management and waste of agricultural origin should continue, as well as education and training tools for rural residents, which increase their environmental awareness and knowledge of the links between agriculture and climate change, should also be strengthened; 3) the contribution of agriculture to climate protection and resilience to its changes should focus on protecting existing and building new organic carbon resources in soil and biomass of agricultural origin and the development of renewable energy sources. This approach, implemented through actions in both pillars of the CAP, will ensure a synergy between the mitigation and adaptation objectives. It is also the least burdensome for the competitiveness of EU agriculture and takes into account the specific characteristics of its production structures and systems.

The very limited perception of pro-environmental needs and the resulting virtually unchanged approach to the tasks and functions of national agriculture can consequently limit the availability of the financial resources of the Common Agricultural Policy. These limitations will ultimately affect national agricultural producers – the beneficiaries of all forms of financial support. The lack of consistency with the EU's overall objectives and actions related to an increasingly rigorously perceived sustainable economy will prevent full participation in the financed mechanisms of the Common Agricultural Policy. In this situation, it seems reasonable to call for a review of the existing position and to increase the pro-environmental "ambition" before the national strategic plan is agreed in a binding manner[29].

Social Committee and the Committee of the Regions: The future of agriculture and food production, COM(2017) 713.

[28] Ministerstwo Rolnictwa i Rozwoju Wsi, *Wspólna Polityka Rolna po 2020 roku – polskie priorytety*, Dokument przyjęty przez Radę Ministrów w dniu 16 maja 2017 r., www.gov.pl/attachment/094cb9b4-6be5-4389-a2c7-70cf7d922888 [access: 3.11.2019].

[29] Pertinent suggestions with regard to the tasks and functions in the area of environment and climate protection may be found in positions presented by environmental organizations – see *Stanowisko polskich organizacji ekologicznych i społecznych na temat przyszłości Wspólnej Polityki Rolnej po 2020 roku*, www.wwf.pl/sites/default/files/2017-11/stanowisko.pdf [access: 7.11.2019].

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STRESZCZENIE

Utrzymanie oczekiwanego poziomu produkcyjności w rolnictwie generuje poważne obciążenie dla środowiska naturalnego. Do najważniejszych czynników środowiskowych narażonych na oddziaływanie rolnictwa zalicza się różnorodność biologiczną, ilość i jakość wody, powietrza oraz gleby. Oceny wszystkich wskazanych aspektów środowiskowych towarzyszących produkcji rolnej wypadają negatywnie. Stan środowiska rolniczego ulega szybkiej degradacji. W takiej sytuacji instrumenty ochrony środowiska doczekały się szczególnej uwagi prawodawcy europejskiego tworzącego nowe programowe założenia Wspólnej Polityki Rolnej obowiązującej po roku 2020.

Słowa kluczowe: Wspólna Polityka Rolna; instrumenty prośrodowiskowe w rolnictwie; Komisja Europejska; Europejski Trybunał Obrachunkowy