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Mediterranean Forum

The challenge of the fight against food waste and agrifood chain: costs and results of the new sustainability policies

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Preface

Dear Readers

This issue brings together contributions from the fifth CEDR Regional Forum Mediterranian Europe, which took place in October this year. The forum was held digitally and was devoted to three sessions on various Mediterranean countries, other European countries and Spain in particular. Many thanks for the organisation to the University of Valladolid and especially to Esther Muñiz Espada. Some of the contributions are collected in this issue, along with other interesting topics.

Roland Norer

Editorial director

Chères lectrices, chers lecteurs

Le présent numéro réunit les contributions du cinquième Forum régional CEDR Europe méditerranéenne, qui s'est tenu en octobre dernier, sous forme numérique, et dont les trois sessions ont été consacrées à différents pays méditerranéens, à d'autres pays européens et à l'Espagne en particulier. Un grand merci à l'Université de Valladolid et en particulier à Esther Muñiz Espada pour l'organisation. Quelques-unes des contributions sont réunies dans ce numéro, ainsi que d'autres thèmes intéressants.

Roland Norer

Directeur éditorial

Sehr geehrte Leserinnen und Leser

Das vorliegende Heft vereint Beiträge des mittlerweile bereits V CEDR Regional Forum Mediterranian Europe vom Oktober dieses Jahres, das digital durchgeführt wurde und in drei Sessions verschiedenen mediterranen Ländern, anderen europäischen Ländern sowie speziell Spanien gewidmet war. Ein herzliches Dankeschön für die Organisation an die Universität Valladolid und insbesondere Esther Muñiz Espada. Einige der Beiträge sind in diesem Heft versammelt, nebst weiteren interessanten Themen.

Roland Norer

Redaktionsleiter

President's Corner

Views of the President Geoff Whittaker

Welcome to the latest edition of the CEDR Journal.

In this issue is a selection of articles dealing with the subject discussed at the recent CEDR V Mediterranean Forum held online and organised by our First Vice-President, Prof.Dr. Esther Muñiz Espada of the University of Valladolid in Spain. The Forum focused on the very important area of food waste, the management of the agri-food chain and the challenges that they present.

Although it is impossible to be certain of any aspect of the future of the Covid-19 pandemic, the signs appear to indicate that restrictions imposed to manage it are being relaxed, in some countries more quickly than in others. While it remains a problem as regards travelling internationally, the obstacles to doing so are becoming smaller.

However, the Board of Management of CEDR at its meeting in November 2021 regrettably had to take the decision, in the interests of protecting ourselves from financial risks as well as those of health, to postpone again the XXXI Congress of CEDR from 2022 to 2023. If there is a positive side to this decision, it will return the Congresses to the cycle of odd-numbered years to which we have been accustomed in the past.

It is pleasing to see, also on the positive side, that the momentum of online forums continues to grow. The geographical range of contributors online is, of course, not limited by physical boundaries, and it has been notable that speakers have been called from as wide a range as Canada, Brazil, Japan, Australia and places equally far away from Europe.

I risk repeating a sentiment that I have expressed many times, but which remains appropriate: that the similarities between issues being experienced around the world are much deeper than relevant differences – there is more that members of the human race have in common with each other than there are differences between us. This is underlined even more strongly in virtual meetings than when we gather in person.

That is not to say that personal meetings do not have some very agreeable features which are being sadly missed and we look forward to resuming them as soon as possible. Meanwhile, I draw your attention to two particular events which are in course of organisation, both of which will be held in person for those who are able and willing to attend, but also online:

- Adam Mickiewicz University is holding a scientific and training conference entitled "De minimis aid, programs approved or notified by the European Commission in agriculture in Poland and other European Union Member States", which will be held on Thursday 17 March 2022; and

- The University of Miskolc, Hungary, is organising the CEDR III Central European Forum on Friday 25 March 2022 on the subject of the transfer of holdings between generations and the succession of agricultural holdings and land; and land acquisition by legal persons. The programme has yet to be determined, but details will be posted to the CEDR website – *www.cedr.org* – as soon as they are available.

We increasingly anticipate the next occasion when we can all meet together and enjoy our mutually interests and company. Meanwhile, stay safe and well.

News

Scientific and training conference

De minimis aid, programs approved or notified by the European Commission in agriculture in Poland and other European Union Member States

March 17, 2022, Adam Mickiewicz University and online, Poznań (Poland)

(Language of conference: Polish, English)

10:00–10:15 Opening of the conference

Professor Tomasz Nieborak, the Dean of the Faculty of Law and Administration

Representative of the Polish Ministry of Agriculture and Rural Development

Professor Bogumiła Kaniewska, Rector of Adam Mickiewicz University

Geoff Whittaker, President CEDR, European Council for Rural Law

Professor Roman Budzinowski, President of the Polish Association of Agrarian Lawyers; Chief of Department of Agricultural, Food and Environmental Law, Adam Mickiewicz University in Poznań

10:15–14:00 National Session – in Polish

Deputy Director of the Budget Department, Aleksandra Szelągowska (Ministry of Agricultural and Rural Development, Warsaw) - *Basic principles of de minimis aid, legal regulations and programs approved or notified by the European Commission in agriculture and practice (Polish Ministry remarks)*

Professor Aneta Suchoń, UAM, Poznań - *Exemption from tax on civil law transactions and relief and exemption from agricultural tax granted under the de minimis formula in agriculture - comments from practice*

Dr. Paweł Popardowski, PAN, Warsaw - *State aid for agriculture from the perspective of national and EU solutions for the protection of competition in the agricultural sector*

Dr. Małgorzata Szymańska, UMCS, Lublin, - *The impact of de minimis aid on the development of rural areas*

Dr. Maciej Muzyka, UMCS, Lublin, - *Systematics of flaws in local legal acts establishing de minimis aid in agriculture*

Professor Aneta Suchoń, UAM, Poznań/Dr. Maria Zuba-Ciszewska, KUL, Lublin - *De minimis aid provided to cooperatives in the agri-food industry - legal and economic aspects*

Professor Aneta Suchoń, UAM, Poznań - *Programs approved (investment relief in agricultural tax, reimbursement of part of the excise tax in the price of diesel fuel) and notified (subsidies to crop insurance premiums) by the European Commission - comments from practice*

Discussion panel (questions from participants to the Speakers) on current problems related to selected legal aspects of agricultural support (de minimis aid, programs approved or notified by the European Union). The panel will discuss general issues regarding the indicated aid and specific problems related not only to taxes, but also to other forms of aid, such as seed subsidies, reduction of lease rent for agricultural real estate from the Agricultural Property Stock of the State Treasury, and reliefs and remission of receivables from KRUS granted under the de minimis formula in agriculture

14.30–16.45 International session – in English
Moderator Dr. Nerys Llewelyn Jones, UK Delegate to CEDR

Gereon Thiele, Head of Unit European Commission DG Competition, Brussels (EU)- *De minimis aid as compared to block exempted aid and aid notified to and approved by the European Commission in agriculture – EU regulations, procedures and the future*

Professor Shinichi Okuda, Takushoku University, Tokyo (Japan), *Introduction of Agricultural Entities and Agricultural Subsidies in Japan*

Professor *Aneta Suchoń,*UAM, Poznań (Poland) - *De minimis aid in agricultural in Poland*

Professor *María Esther Muñiz Espada,* University of Valladolid (Spain) - *De minimis aid in agriculture and its registration in Spain*

Professor Franci Avsec, University of Novo Mesto (Slovenia) - *De minimis aid in agriculture in Słovenia*

Professor Antonios Maniatis, University of Patras (Greece) - *De minimis aid & coop revenues of agricultural producers'*

Georgi Sabev, PhD candidate, Agricultural University Plovdiv (Bulgaria) - *Schemes for application of reduced taxation for energy fuels: current and potential beneficiaries in the member states*

Discussion panel focused on de minimis aid, programs approved or notified by the European Commission in the agriculture sectors and financing of agriculture outside the European Union

16.45–17.00 *Conclusions and end of the conference*

III. CEDR Central European Regional Rural Law Forum

March 25 2022, University of Miskolc and online (Hungary)

(Language of conference: English)

10:00 a.m. – 12:10 p.m.: Conference Part I
presided by Prof. Dr. habil. János Ede Szilágyi, PhD, full professor, Faculty of Law, University of Miskolc, head of Ferenc Mádl Institute of Comparative Law

Words of welcome

Prof. Dr. habil. Csilla Csák, PhD, president of the Hungarian Association of Agricultural Law, full professor, dean of the Faculty of Law, University of Miskolc
Dr. Attila Szinay, administrative state secretary, Ministry of Agriculture – Hungary
Geoff Whittaker, president of the CEDR

***Hungary**:* Dr. Attila Szinay, administrative state secretary, Ministry of Agriculture: The CJEU's approach to the Hungarian Land Circulation Act

***Germany**:* Prof. Dr. Dr. h.c. Dieter Schweizer, coordinator for European Institutions - Honorary President of CEDR: The German legal frame of the agricultural land succession and the acquisition by legal persons

***Italy**:* Dr. Filomena Prete, PhD, associate professor, University of Campania: The Italian legal frame of the agricultural land succession and the acquisition by legal persons

***Austria**: Mag.* Hannes Kronaus, general treasurer of CEDR: The Austrian legal frame of the agricultural land succession and the acquisition by legal persons

***France**:* Jean-Baptiste Millard, French delegate of CEDR: The French legal frame of the agricultural land succession and the acquisition by legal persons

13:10 p.m. – 15:00 p.m.: Conference Part II
presided by Prof. Dr. habil. János Ede Szilágyi, PhD, full professor, Faculty of Law, University of Miskolc, head of Ferenc Mádl Institute of Comparative Law

***Slovakia**:* doc. Judr. Lucia Palsova, PhD, Faculty of European Studies and Regional Development, Slovak University of Agriculture in Nitra: The Slovakian legal frame of the agricultural land succession and the acquisition by legal persons

***Switzerland**:* Philippe Haymoz, former head of the Agricultural Institute of the Fribourg Canton: The Swiss legal frame of the agricultural land succession and the acquisition by legal persons

***Hungary**:* Dr. Ágoston Korom PhD, assistant professor, Gáspár Károli Reformed University: The EU aspects of agricultural land acquisition

Hungary: Dr. István Olajos PhD, associate professor, University of Miskolc: Manifestations of the family farm and its impact on laws of agricultural and forestry land trade

Hungary: Dr. Péter Hegyes PhD, assistant professor, University of Szeged: Legal responses to the challenges facing the young agricultural generation

14:50 p.m. – 15:00 p.m.: Conclusion

Link of the webinarium: **meet.google.com/uhq-amdu-qzb**

Publications

Affolter Sian, Der Umgang der Landwirtschaft mit der natürlichen Umwelt – *de lege lata* und *de lege ferenda*, Zürich/Basel/Genf 2021

Bays Vincent, Les surfaces d'assolement. Étude de droit de l'aménagement du territoire, Genève/Zurich/Bâle 2021

Blau Achim/Busse Christian/Hehn Marcus/Klett Heiner (Hrsg.), Weinrecht – Jagdrecht – Forstrecht – Fischerirecht, 3. Auflage, Hagen 2020

Chiffoleau Yuna/Darrot Catherine/Bodiguel Luc et al., Manger au temps du coronavirus. Enquête sur les systèmes alimentaires, Rennes 2021

Jensen Nils, Die Privilegierung der Landwirtschaft, Baden-Baden 2021

Martínez José (Hrsg.), Jahrbuch des Agrarrechts. Band XV, Baden-Baden 2021

French legal scheme on food waste and agri-food chain

Luc Bodiguel
Research Director, CNRS-UMR 6297 "Law and Social Change" Lecturer at the University of Nantes, Tours and IHEDREA Paris, France

Abstract

In France, along the whole food chain, almost 20% of the food produced ends up in the bin. To fight against this food waste and more precisely in order to achieve the goal of reducing food waste by 50%, France developed a more and more consistent legislative arsenal: at the beginning, it was based on guiding documents, but now there is a strong legislative framework (Law No. 2016-138; Law No. 2018-938; Ordinance n° 2019-1069; Law n° 2020-105 ; Ordinance n°2020-1142). This article aims to provide a brief overview of the French Regulation on food waste, to discuss about the objectives of this regulation and then to develop four specific issues that concerns environment challenges, social considerations, consumer information and food policy. On this basis, it will be possible to question the possible gaps and limits in the French Law on the fight against food waste and to conclude on the potential future developments.

In Frankreich landen entlang der gesamten Lebensmittelkette fast 20 % der produzierten Lebensmittel in der Mülltonne. Um diese Lebensmittelverschwendung zu bekämpfen und um das Ziel zu erreichen, die Lebensmittelverschwendung um 50 % zu reduzieren, hat Frankreich ein immer kohärenteres legislatives Arsenal entwickelt: Zu Beginn basierte dies auf Leitfäden, inzwischen gibt es einen starken gesetzlichen Rahmen (Gesetz Nr. 2016-138; Gesetz Nr. 2018-938; Verordnung Nr. 2019-1069; Gesetz Nr. 2020-105; Verordnung Nr. 2020-1142). Dieser Artikel soll einen kurzen Überblick über die französische Verordnung über Lebensmittelabfälle geben, die Ziele dieser Verordnung erörtern und dann vier spezifische Themen behandeln, die Umweltprobleme, soziale Erwägungen, Verbraucherinformation und Lebensmittelpolitik betreffen. Auf dieser Grundlage wird es möglich sein, die eventuellen Lücken und Grenzen des französischen Gesetzes zur Bekämpfung der Lebensmittelverschwendung zu hinterfragen und eine Schlussfolgerung zu möglichen zukünftigen Entwicklungen zu ziehen.

1. Introduction

In France, along the whole food chain, almost 20% of the food produced ends up in the bin. That means 150 kg of food per person per year, 10 million tonnes of food, 3% of the greenhouse gas emissions of national activity.[1] These figures are broadly in line with those of the European Union (New Circular Economy Action Plan For a cleaner and more competitive Europe, 11.3.2020, §3.7) but seems to defer on the impact on CO2 emission (6% following the Farm to Fork Strategy, 20.5.202, § 5.2).[2]

[1] See Programme national pour l'alimentation (PNA) 2019-2023, p. 20; See also: https://www.ecologie.gouv.fr/gaspillage-alimentaire-0 (06.12.2021).

[2] On Food waste international issue, see: Gioia Maccioni, La legislazione sugli sprechi alimentari, in P. Borghi, I Canfora, A Di Lauro, L. Russo (eds), Trattato di diritto alimentare italiano e dell'Unione europea, Giuffrè, 2021, 694-704; Gioia Maccioni, Spreco alimentare. Regole e limiti nella transizione verso modelli agroalimentatari sostenibile, G. Giappichelli Editore, 2018, 165 p.

Even if we must be very careful not to make a direct causal link between food waste and access to food, this Food Waste seems still to be a nonsense compared to the number of people who received food aid or who are food insecure: in France, 5.5 million people received food aid in 2017 and 8 million people were food insecure.[3]

To fight against food waste and try to help people who are food insecure, France developed a more and more consistent legislative arsenal. After a quick overview of the French legislation on food waste, this article will show the main elements of this field and highlight its scope and limits.

2. Brief overview of the French regulation on food waste

Aiming to reduce food waste, and in line with the policy of the European Union (Integrated action plan for the Circular Economy, Dec. 2015; Framework Directive 2008/98/EC)[4], France has developed a large legal no-food-waste Regulation. At the beginning, it was based on guiding documents (Pact to fight against food waste, 2014-2020, 14 June 2013 renewed in 2017) that set a target of 50% reduction in food waste. Then regulation took the form of law totally or partially focused on food waste: in 2016 was enacted Law No. 2016-138 of February 11, 2016 on the fight against food waste (known as the "Loi Garot"). After this first legislative stone came Law No. 2018-938 of October 30, 2018 for the balance of commercial relations in the agricultural and food sector and a healthy, sustainable and accessible food for all (known as the "loi EGALIM") followed by the Ordinance n° 2019-1069 of October 21, 2019 relating to the fight against food waste. Finally, the current legal edifice has been consolidated by Law n 2020-105 of February 10, 2020 relating to the fight against waste and the circular economy and the Ordinance n°2020-1142 of September 16, 2020 relating to the prevention and management of waste (known as the "loi AGEC").[5] In parallel with these laws focused on food waste, Law and guidelines related to Food Policy also took into account the Waste problem: Law 2014-1170 of October 13, 2014 on the future of agriculture, food and forestry contains new priorities like social justice, food education for youth, and fight against food waste (still in article L. 1 of the *Code rural*) and the French National Food Program (2014 and 2019 versions) provides measures to implement these priorities.

This French regulation on food waste may evolve: a Law Proposal for a new step against food waste has been accepted by the economic affairs commission of the national assembly but the legislative process is not yet concluded.[6]

The following table presents the main developments of the French regulation that involves food waste, with regard to the major stages of EU Law:

	FRENCH LAW (https://www.legifrance.gouv.fr/)	**UE REGULATION** (https://eur-lex.europa.eu/homepage.html)
2021	Loi n° 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets, ***JORF n° 0196 du 24/08/2021***	

[3] https://agriculture.gouv.fr/lutte-contre-le-gaspillage-alimentaire-les-lois-francaises (06.12.2021).
[4] See also the UE Food Loss and Waste Prevention Centre platform: https://ec.europa.eu/food/safety/food-waste/eu-actions-against-food-waste/eu-platform-food-losses-and-food-waste_it (06.12.2021).
[5] See Corinne Lepage, La loi anti-gaspillage et d'économie circulaire, Recueil Dalloz 2020 p.1288.
[6] See below "Conclusion".

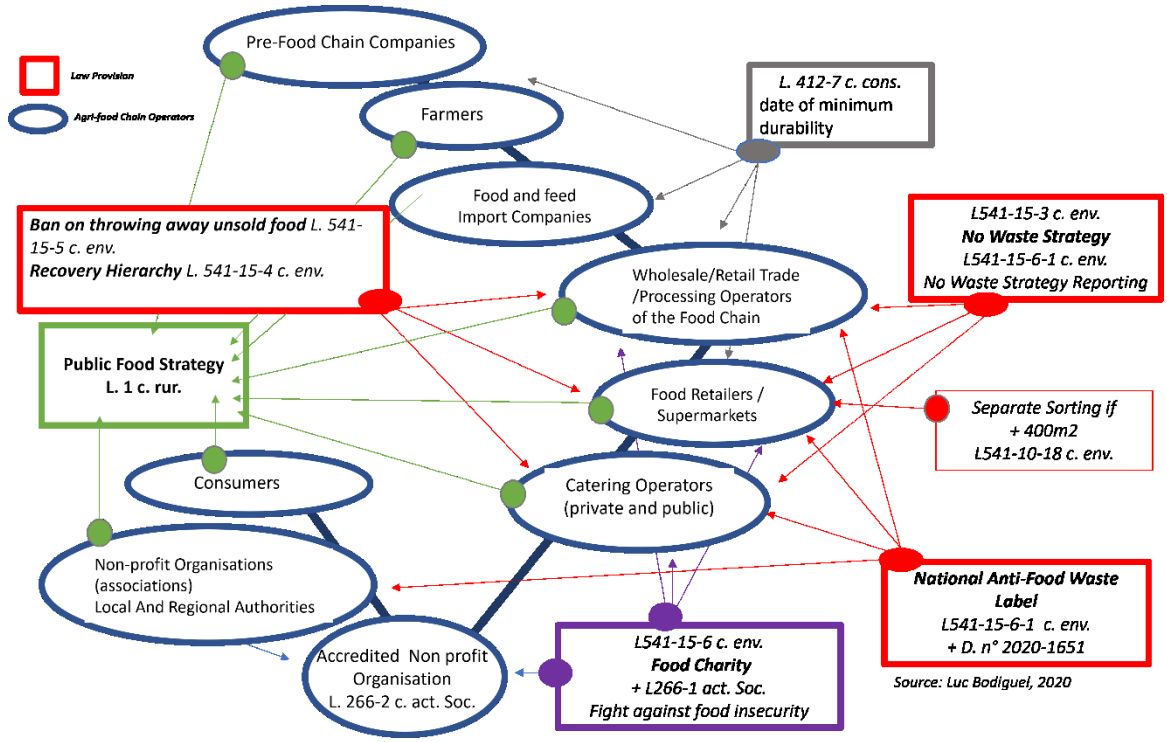
	Proposition de loi pour une nouvelle étape contre le gaspillage alimentaire, n° 3725, 5 janvier 2021	
	Arrêté du 7 janvier 2021 catégories de denrées alimentaires exclues du don, *JORF n°0009 du 10 janvier 2021*	
2020	Décret n° 2020-1651 du 22 décembre 2020 label national « anti-gaspillage alimentaire », *JORF n°0311 du 24 décembre 2020*	COM(2020) 381 - A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system , 20.5.2020
	Décret n° 2020-1274 du 20 octobre 2020 dons de denrées alimentaires prévus à l'article L. 541-15-6, *JORF n°0256 du 21 octobre 2020*	COM(2020) 98 - New Circular Economy Action Plan For a cleaner and more competitive Europe, 11.3.2020
	Ordonnance n° 2020-920 du 29 juillet 2020 prévention et à la gestion des déchets, *JORF n°0186 du 30 juillet 2020*	
	Loi n° 2020-105 du 10 février 2020 lutte contre le gaspillage et à l'économie circulaire (loi AGEC / Poirson), *JORF n°0035 du 11 février 2020*	
2019	Ordonnance n° 2019-1069 du 21 octobre 2019 lutte contre le gaspillage alimentaire, *JORF n°0246 du 22 octobre 2019*	COM(2019) - The European Green Deal, 11.12.2019
	Programme national pour l'alimentation (PNA) 2019-2023 Plan national nutrition santé (PNNS) 2019-2023 Programme national de l'alimentation et de la nutrition (PNAN) 2019-2023	
2018	Loi n° 2018-938 du 30 octobre 2018 pour l'équilibre des relations commerciales dans le secteur agricole et alimentaire et une alimentation saine, durable et accessible à tous, *JORF n°0253 du 1 novembre 2018*	
2017	Pacte national de Lutte contre le gaspillage alimentaire 2017-2020 (https://agriculture.gouv.fr/pacte-national-de-lutte-contre-le-gaspillage-alimentaire-les-partenaires-sengagent)	
	États généraux de l'alimentation (EGA) : 20/07/2017-21/12/2017 (https://agriculture.gouv.fr/alimagri-les-etats-generaux-de-lalimentation)	
2015		Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Closing the loop - *An EU action plan for the Circular Economy,* COM/2015/0614 final
2014	Loi n° 2014-1170 du 13 octobre 2014 d'avenir pour l'agriculture, l'alimentation et la forêt, *JORF n° 238 du 14 octobre 2014* Programme national pour l'alimentation (PNA) 2014-2017	
2013	Pacte national de lutte contre le gaspillage alimentaire (1), 2014-2020, 14 juin 2013.	
2010	Loi n° 2010-874 du 27 juillet 2010 de modernisation de l'agriculture et de la pêche, *JORF n°0172 du 28 juillet 2010* Programme national pour l'alimentation (PNA) 2010-2014	
2008		Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, *OJ L 312, 22.11.2008, p. 3–30*

On these bases, what is the state of law in France ?

3. Objectives of the French law on food waste

From now on, the French law provides a clear framework for the policy to fight against food waste. It defines the object of this policy. It is "any food intended for human consumption that is lost, thrown away or spoiled at any stage of the food chain" (Article L. 541-15-4 Code de l'environnement). It also provides a quantified objective: the "No-Food Waste Policy" aims to reduce food waste by 50% from its 2015 level in food distribution and catering by 2025; in consumption, production, processing and commercial catering by 2030 (Article L. 541-1 Code de l'environnement). This objective is the same at the UE level: "The Commission is committed to halving per capita food waste at retail and consumer levels by 2030 (SDG Target 12.3)" (Farm to Fork Strategy, 20.5.202, § 5.2).

To reach its objective, French law provides different measures concerning part of the agri-food chain, as summarised in the following figure:



These measures need to be further detailed.

4. Main measures of the French law on food waste

The legislative choice to fight against food waste has led to the cohabitation of different types of measures integrated in diverse breaches of law and policy. Environmental law constitutes the first pillar of the legislative edifice providing the principles regulating unsold food under the environmental regulation (Code de l'environnement). Directly linked to this, rules for food aid or charity are set in the environmental regulation (Code de l'environnement) and in the social and health policy (Code de l'action sociale). It is the second pillar. Another breach of law is involved: Information consumer law with the date of minimum durability issue (Code de la consommation). A fourth pillar has to be also underlined: Food policy promotes food waste strategies (Code Rural).[7]

4.1. Environmental issue: hierarchy, strategy and label

This is the pillar on which rests the whole food waste regulation. It is based on two key elements:[8]

[7] We won't speak about: provision on harmonized system of sorting instructions for household packaging (Article L. 541-15-10 Code de l'environnement) or for plastic that can be used for Food (Articles L. 541-15-11 and 12 Code de l'environnement); nor about the subsidies for investment in equipment that can support no-food waste strategy (see for eg. Arrêté du 6 février 2021 relatif au soutien de certaines cantines scolaires dans le cadre du plan de relance, JORF n°0033 du 7 février 2021.

[8] We won't speak about the institutional aspects of the waste policy, but we want to mention the Regional Waste Prevention and Management Plan (Articles R541-13 to R541-27 Code de l'environnement) that refers to "an inventory of measures to prevent bio-waste, including actions to combat food waste" (Article D541-16-1 Code de l'environnement).

The first is a legal ban: food distributors, wholesalers, food industry operators producing foodstuffs (according to the law, "those that can be delivered as such to a food retail outlet and institutional catering operators") may not deliberately declare their unsold food which is still consumable to be unfit for human consumption or for any other form of recovery (Article L. 541-15-5 Code de l'environnement). This measure is reinforced with the prohibition of any advertising or commercial communication that encourages the degradation of products and prevents their reuse or recycling (L. 541-15-9 Code de l'environnement)[9].

Faced with this legal ban, above-mentioned agri-food operators shall ensure the distribution of their foodstuffs or their valorisation in accordance with the following hierarchy (Article L. 541-15-4 Code de l'environnement):

1. the prevention of food waste;
2. the use of unsold food suitable for human consumption, through donation or processing;
3. the recovery for animal feed;
4. the use of compost for agriculture or energy recovery, in particular by methanization.

This hierarchy recalls Article 4 of the Directive 2008/98/EC that states that before eliminating a product, "The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy: (a) prevention; (b) preparing for re-use; (c) recycling; (d) other recovery, e.g. energy recovery; and (e) disposal".

In accordance with this hierarchy, part of the agri-food operators and catering, whether public or private, has to develop a no-food waste strategy before the first of January 2021, on the basis of a preliminary internal diagnosis of food waste (Article L. 541-15-3 Code de l'environnement). That is to say that public Authorities or private Companies have to estimate the quantities of foodstuffs wasted and their cost and the supplies of organically grown products or other quality products, known as "EGALIM" quality products"[10] that the savings linked to the reduction of this waste would have enabled them to finance. Part of these operators will also have to provide their customers, upon request, with reusable or recyclable containers for taking away food or beverages not consumed on the premises (Article L. 541-15-7 Code de l'environnement).

This strategy and their results in terms of food waste and food insecurity[11] will have to be integrated into the extra-financial performance declarations of the companies that are subject to it (Articles

[9] Following the same provision: any advertising or commercial communication promoting the disposal of products must contain information encouraging re-use or recycling.

[10] Since Law EGALIM 2018 (reviewed), following Articles L. 230-5 and L. 230-5-1 Code rural, by January 1, 2022 at the latest, the meals served in collective restaurants for which Public Authorities or Private Companies are responsible must include at least 50% of products that meet one of the following conditions, among which products mentioned in point 2 have to be at least 20%: 1° Products taking into account the costs imputed to environmental externalities during their life cycle; 1° bis Products whose acquisition was based primarily on performance in terms of environmental protection in compliance with the code of public procurement; 2° Or from organic farming; 3° Or benefiting from other official quality signs; 3° bis Or from fair trade; 4° Or benefiting from the sustainable fishing ecolabel; 5° Or benefiting from the graphic symbol specific to the outermost regions; 6° and 7° Or benefiting from an "High Environmental Value" (HVE) label; 8° Or satisfying in an equivalent manner the requirements defined by these signs, labels, ecolabels or certification within the meaning of EU Law on public procurement.

[11] See below 4.2.

L. 225-102-1 and R. 225-105-1-I2ci Code de commerce) and the companies that do not have this obligation will have to make public their commitments in this area by any means of communication (Article L. 541-15-6-1 Code de l'environnement).

The State has also set up a national label against food waste that can be granted to local public Authorities, as well as agro-food companies, retailers, catering and non-profit organizations (Article L. 541-15-6-1-1 Code de l'environnement). These can benefit from this label for three years as long as they contribute to the national objectives of reducing food waste (Reduce food waste by 50% from its 2015 level) and respect the requirement specification approved by decree not yet published (Article L. 541-15-6-2 Code de l'environnement).

4.2. Social issue: food charity

There is a direct link between the fight against food waste and the fight against food insecurity, which "aims to promote access to a safe, diversified, good quality and sufficient quantity of food to people in economic or social vulnerability" (Article L. 266-1 of the Code de l'action sociale). Indeed, implementing the above-mentioned legal ban and hierarchy of the Articles L. 541-15- 4 and L. 541-15-5 of the Code de l'environnement, agri-food chain operators have to re-use their unsold products and one of the ways of re-using is to donate food to non-profit organisations that will distribute foodstuffs to food aid recipients (Article L. 541-15-6 Code de l'environnement).

Relationships between food-chain operators and non-profit organisations are organised on the basis of an agreement. To contract (and to received financial subsidies from EU or French State), these non-profit organisations have to be accredited in accordance with Article L. 266-2 of the Code de l'action sociale (amended by Law No 2021-1104).

The scope of operators required to give their unsold foodstuffs has grown significantly in recent years. In 2016 only food retailers with a sales area of more than 400 square meters were concerned (origin: Law "Garot" of 2016). Since Law No. 2020-105 of 10 February 2020 (Law "AGEC"). Now, it also applies to public or private collective catering operators who produce more than 3,000 meals per day and to food distributors, wholesalers, food industry operators whose annual turnover exceeds fifty million euros (Article L. 541-15-6 Code de l'environnement). Other operators that are not obliged to give their unsold foodstuffs to non-profit organisations are able to do it anyway: it concerns food retailers whose sales area is less than 400 square meters and also non-sedentary traders, caterers and reception organizers (Article L. 541-15-6 Code de l'environnement).

4.3. Consumer information issue: date of minimum durability

It seems that consumers have difficulty to understand the difference between the 'use by' date and the date of minimum durability[12] on food labelling. This confusion would be a source of food waste since foodstuffs including a date of minimum durability are thrown away while they are still healthy and consumable.[13]

[12] In France, it was called the date of optimal consumption (DLUO) until the Law 2020-105 of February 10, 2020 on the fight against waste and the circular economy.

[13] More generally, this question of the expiration date and/or edibility of food refers to the problem of changing consumer practices with regard to food waste: see for eg. A. Di Lauro, Lo sprecho alimentare: il ruolo della norma

This is why the French legislator introduced a provision in 2020 (Law 2020-105) that aims to remind consumers that products with a date of minimum durability can still be consumed: when a food product includes a date of minimum durability, it can be accompanied by a note, informing consumers that the product remains consumable after this date (Article LM. 412-7 Code de la consommation).

Even if this provision still provides a facility and not an obligation, it completes the legal toolbox of the fight against food waste.

Provisions registered within the framework of the French Food Policy go in the same direction.

4.4. Food policy issue: No-food-waste strategy

Food policy, expressed under the French Food National Program (programme national pour l'alimentation – PNA) and the National Food and Nutrition Program (programme national de l'alimentation et de la nutrition – PNAN), aims in particular to provide guidelines, incentives and concrete measures focused on fighting against food waste (Article 1 Code rural).

For example, it promotes a national challenge co-financed by the State and private operators, called "zero food waste", which aims to get students to work on a concrete project related to the fight against food waste (défi national « zéro-gaspi »).[14] There is also a "gourmet bag" brand, launched in 2014 by the Ministry of Agriculture and Food, that can be used by commercial catering establishments and drinking establishments which are obliged to provide re-usable or recyclable containers or recyclable containers to take away food or beverages not consumed (Article L. 541-15-7 Code de l'environnement).

Moreover, it promotes the development of local policies ("territorial anchoring" says the Law). Among the key tools of this policy are the Local Food Plans (projets alimentaires territoriaux – PAT, Article L. 111-2-2 Code rural).[15] These are collective projects developed by and with all the actors of a territory, whose main objective is to create a territorial food system that promotes the economic and environmental resilience of local sectors and guarantees national food sovereignty. Today there are around 200 PAT in France and part of them provides measure to fight against food waste, like food education events (zero waste cooking workshops, for example.).[16] But above all, each PAT creates a space or forum where private and public actors concerned with food have the opportunity to build partnerships and networks in order to improve the local circulation and consumption of local Food.[17]

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sulle determinanti personali e sociali dei comportamenti alimentari, *in* R. Budzinowski (ed.) *Contemporary Challenges of Agricultural Law: among Globalisation, Regionalisation and Locality*, UAM ed., 2018431-437.

[14] Programme national pour l'alimentation (PNA) 2019-2023, Action 15 and 16, p. 21.

[15] L. Bodiguel, Le développement des projets alimentaires territoriaux en France : quel droit pour quelle relocalisation de l'agriculture et de l'alimentation ?, *in* R. Budzinowski (ed.) *Contemporary Challenges of Agricultural Law: among Globalisation, Regionalisation and Locality*, UAM ed., 2018, 409-415.

[16] PAT network : https://rnpat.fr/projets-alimentaires-territoriaux-pat/presentation-banque-pat/ (06.12.2021). See also https://agirpourlalimentationlocale.fr/ on tools for Local Public Authority to act for Local Food Governance (06.12.2021).

[17] C. Darrot, G. Maréchal, T. Bréger, Rapport sur les Projets Alimentaires Territoriaux (P.A.T.) en France : Etat des lieux et analyse, Document de travail pour l'Institut Hanseo-Agrico, Séoul, République de Corée, 4 octobre 2019 diffusion restreinte ; G. Maréchal, J. Noël et F. Wallet, Les projets alimentaires territoriaux (PAT) : entre rupture, transition et immobilisme ? Pour 2018/2-3 (N° 234-235) Pages 261 à 270 [on : https://www.cairn.info/revue-pour-2018-2.htm#].

5. No-food Waste French Regulation Scope and Gaps

In light of the preceding developments, it can be seen that French Law and Policy to fight against food waste now covers a large part of the actors and sectors of the agri-food-chain. Restaurants and caterers, wholesalers and retailers, processors and distributors are all subject to increasing requirements: a ban on throwing away unsold food; an obligation to promote re-use, in particular through food donation, and recycling; an obligation to implement strategies to fight against food waste and to communicate on them; the possibility of additional information on the date of minimum durability to avoid consumer confusion; the provision of doggy bags. Consumers are also directly concerned by the educational and awareness actions carried out or not under the PNA and the PNAN.

The regime of sanction if an agri-food chain operator fails to comply with the different provisions on fighting against food waste is, on the whole, satisfactory. The main rule concerns people who deliberately declare unfit for human consumption unsold foodstuffs that are still consumable (Article L. 541-15-47 Code de l'environnement). This infringement of the article L. 541-15-5 of the Code de l'environnement is punished by a fine of up to 0.1% of the turnover excluding tax (based on the last financial year). Within this limit, judges can apply the amount of the fine proportionately according to the seriousness of the facts established, in particular to the number and the volume of the products in violation. They also can decide to accompany the fine with the additional penalty of publication of the decision pronounced. A second rule aims to limit the influence of marketing: as has been already mentioned, any advertising or commercial communication that encourages the degradation of products and prevents their re-use or recycling is prohibited (L. 541-15-9 Code de l'environnement). And if an agri-food chain operator does not conclude an agreement with accredited non-profit Organisation when it has to do it, it is punishable by a fine for a "fifth-class infraction"[18] (L. 541-15-6 V Code de l'environnement). Last rule, if an operator does not comply with its reporting obligation, it falls under the scope of Article L. 225-102-1 VI of the Code de commerce : any interested person may ask the president of the court to order the board of directors or the management board, to communicate the required information, including that concerning the fight against food waste.

But the legal system to fight against food waste is not perfect and has to be improved in the future:

Firstly, some actors of the agri-food chain have been forgotten: farmers, logistics and transport companies, and all the "Pre-Food" Chain Companies (Chemicals, Grain and seed…) are not targeted by the fight against food waste. However, they should be involved, when they are directly concerned with Food Products. And it is not only a problem of semantics between Food Waste ("*decrease in the quantity or quality of food resulting from decisions and actions by retailers, food service providers and consumers*") and Food Loss ("*decrease in the quantity or quality of food resulting from decisions and actions by food suppliers in the chain, excluding retailers, food service providers and consumers*") that can justify these gaps[19].

Secondly, food charity is organised as the final outlet for the surpluses of supermarkets and other operators in the long supply chains of the dominant economic model. If this organisation seems very

[18] Based on Article 131-13 Code pénal, a fifth-class infraction consists of a fine of 1 500 € to 3 000 €.
[19] Definition from FAO: https://www.fao.org/food-loss-and-food-waste/flw-data) (06.12.2021).

useful and rational, some authors, interested by the Care Approach, criticized it because it does not take into consideration culture and individuals[20].

Thirdly only the biggest operators are really concerned because of the effect of thresholds (400 m2; 50000 euros). It is not to say that the others operators cannot act but Law is not encouraging for nor binding on them.

Fourthly, the regime of sanction should be improved because some uncertainties remain: what about the sanction if agri-food chain operators do not develop a binding food strategy? And is the limitation for advertising enough to balance the impact of food marketing on consumer consent and on waste[21]: if "Legislator" tries to fight against food waste requiring good practice from agri-food chain operators but leaves them free to communicate for more consumption, maybe the balance will be negative. Another point has to be underlined: it is not sure that the facility to add a note informing consumers that the product remains consumable after date of minimum durability (Article LM. 412-7 Code de la consommation) is efficient. It should be discussed.

6. Conclusion

Despite these various criticisms, there is no doubt that since the last Law n° 2020-105 of 10 Feb. 2020, the French legal regime to fight against food waste has been strongly consolidated.

This trend of increasing standards to combat food waste should continue: in this way, a new Law Proposal for a new step against food waste (n° 3725, January 5, 2021) is still in discussion at Parliament. The proposal is far from having completed its legislative course and it is difficult to predict what will remain. At this stage, it essentially includes measures that will contribute to the completion of the legislation on consumer information (compulsory mention of the date of minimum durability; experimentation of a smart label that changes colour or texture when the perishable food approaches its expiration date), on reporting requirement for agri-food operators (more and better quantified) and, for the first-time, measures that concerns farmers in the no-food waste Regulation with the possibility of a harvesting agreement. Two important keys points of the proposal have already been excluded from parliamentary debates: the obligation to integrate food education in the school programmes and the introduction of value-based aid to combat food insecurity.

[20] D. Paturel, M. Ramel, Éthique du care et démocratie alimentaire : les enjeux du droit à une alimentation durable : Rev. fr. éthique appliquée, n° 4, 2017-2, 49-60.

[21] On the consumer consent issue, see A. Di Lauro, La scelta consapevole del consumatore di alimenti: una chimera?, in A. Di Lauro (a cura di) *NutriDialogo. Il Diritto incontra le altre Scienze su Agricoltura, Alimentazione e Ambiente*, Ets, 2015, p. 215-221 ; A. Di Lauro, Marketing sensoriel et normativité alimentaire : quel défi pour les juristes in D. Paturel et P. Ndiaye (eds) *Le droit à l'alimentation durable en démocratie*, Champ Social Editions, 2020, p. 176-190 ; A. Di Lauro, Neuroscienze e diritto. Ripensare il libero arbitrio in campo penale, civile ed alimentare, Rivista italiana di Medicina Legale e del Diritto in campo sanitario, n. 4/2018, 1429.

Food waste and unfair commercial practices

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Abstract

The paper, after an initial introduction to the theme of Unfair Trading Practices in the agrifood chain contracts, highlights the existing link between certain unfair commercial practices in the sector and food wastes; in fact, besides being detrimental to the agricultural or food producer, a few of such practices can contribute to the formation of food waste, like the cancellation of the order of perishable products without notice or with particularly short notice, or the provision of a guarantee for the purchaser that all unsold goods will be deducted from the purchase price and that the costs of removal will be borne by the selling parties.

Le document, après une première introduction au thème des pratiques commerciales déloyales dans les contrats de la chaîne agroalimentaire, met en évidence le lien existant entre certaines pratiques commerciales déloyales du secteur et les déchets alimentaires ; en effet, outre le fait qu'elles portent préjudice au producteur agricole ou alimentaire, quelques-unes de ces pratiques peuvent contribuer à la formation de déchets alimentaires, comme l'annulation de la commande de produits périssables sans préavis ou avec un préavis particulièrement court, ou la fourniture d'une garantie pour l'acheteur que tous les invendus seront déduits du prix d'achat et que les coûts d'enlèvement seront supportés par les parties vendeuses.

Bargaining within the agri-food market often takes place between parties endowed with very different bargaining power, to the complete disadvantage of the sector of the supply of agricultural and food products, so that very often agricultural and food producers are forced not only to suffer the economic content of the contract but also to have to endure the inclusion in the contractual discipline of clauses that are clearly favourable to the protection of only the strong contractor, or having to suffer, more generally, practices - not necessarily reflected in contractual clauses - of the counterparty based on opportunistic or *unfair* behaviour, against which there is no remedy other than the drastic remedy of not concluding the contract or withdrawing from it.

The EU legislator has recently implemented a - still timid - approach, aimed at protecting the weaker contracting party in contracts in the agricultural and foodstuffs supply chain, in particular to prevent the adoption of contractual clauses or unfair commercial practices to the detriment of the person who places agricultural or foodstuffs on the market, in order to prevent disparities in bargaining power from enabling the stronger contracting party to introduce clauses or allow him to adopt unfair practices to the detriment of the other party, the latter being forced to be subjected to the determinations of the purchasing party, including with regard to contractual technicalities, or, more generally, to be subjected to unfair conduct both before and after the conclusion of the contract.

After repeatedly arguing that there was no need for EU legislation in this area[1] to combat the phenomenon, the Commission was forced to revise its thinking, following calls to the contrary from the European Parliament.

In fact, still in the conclusions to the Report to the European Parliament and the Council of 29 January 2016[2], the Commission did not see any added value in an harmonising intervention by the EU on the issue of combating unfair commercial practices.[3] In the report under review, however, the Commission acknowledged that the phenomenon of unfair practices in the sector was widespread, since at the time as many as 20 Member States had already adopted rules to combat them or planned to do so in the immediate future. Moreover, precisely because state interventions were intended to respond to needs for which there was no EU regulation, it was inevitable that the rules adopted at domestic level, although intended to tackle the same phenomenon, would be heterogeneous in content and would thus lead to fragmentation and distortion of the internal market, especially whenever commercial transactions concerning agricultural products or foodstuffs took place at transnational level.[4]

Already in June 2016, on the contrary, the European Parliament, replying to the above-mentioned Communication, invited the Commission to present a legislative proposal on unfair commercial practices in the agri-food sector[5], and the EU Council[6] and the European Economic and Social Committee[7] came to similar conclusions.

[1] An initiative taken on the input of the High-Level Forum for a better functioning of the agri-food chain has been, since 2013, the *Supply Chain Initiative* (SCI), operating on an exclusively voluntary basis: this initiative, besides having a limited impact on the territory of the Union, has not produced, in reality, great and appreciable results, due, in essence, to the lack of adequate sanctions. Moreover, the organisations representing agricultural producers have not joined the scheme, partly because of the alleged lack of confidentiality - in the scheme in question - for the person denouncing an unfair practice to their detriment.

[2] The Report referred to in the text was classified as COM (2016) 32 final, Unfair Business-to-Business Commercial Practices in the Food Supply Chain. Previously, and of similar tenor, see Commission Communications COM (2009) 591 final, A *better functioning food supply chain in Europe*, and COM (2014) 472 final, *Addressing unfair trading practices in the business-to-business food supply chain*.

[3] For a critical stance, towards the Commission's position, see. L. GONZALEZ VAQUÉ, *Unfair Practices in the Food Supply Chain*, in "EFFL", 2014, 293 ff. ; against a direct intervention of EU law in the sector, see, instead, HILTY, HENNING-BODEWIG, PADSZUN, *Comments of the Max Planck Institute for Intellectual Property and Competition Law, MUnich of 29 April 2013 on the Green Paper of the European Commission on Unfair Trading Practices in the Business-to-Business Food and Non-Food Supply Chain in Europe Dated 31 January 2013, Com (2013) 37 final*.

[4] For a meritorious study of national regulations aimed at countering the phenomenon of unfair trading practices also, but not only, in the food sector, CAFAGGI and IAMICELI, *Unfair Trading Practices in the Business-to-Business Retail Supply Chain, An overview on EU Member States legislation and enforcement mechanisms*, EC Commission JRC Technical Reports, Publication Office of the European Union, Luxembourg, 2018.

[5] Thus European Parliament Resolution 2015/2065(INI) of 7 June 2016 *on unfair trading practices in the food supply chain*.

[6] See Council Conclusions of 12 December 2016 *on strengthening the position of farmers in the food supply chain and combating unfair trading practices*.

[7] See COM (2016) 32 final of 30 September 2016.

The Commission thus presented a proposal for a directive in April 2018:[8] which, in the light of the attention, including in the media, that this legislation generates, was then with unusual speed transfused into Directive 2019/633 of 17 April 2019, so that the directive saw the light just before the closure of the legislature due to the European elections in May 2019.[9]

The directive proposes to create a unitary regulatory framework on the subject, even though the harmonization resulting from the adoption of the directive appears to be of a minimal nature, Member States remaining free to implement and strengthen the discipline by reinforcing - or maintaining, if already existing - the protections for the party affected by the *unfair*[10] behaviour. Member States, in particular, are given the possibility of maintaining or introducing stricter rules compared to those provided for by the directive, as well as of regulating cases which do not fall within the scope of the directive (thus the 2nd paragraph of art. 9).[11]

The minimalist approach can indeed be understood in the light of the Commission's own scepticism, which has been mentioned, and of the fact that this is essentially the first organic intervention on the subject[12], and as such is susceptible to verification and integration over time.

The enterprises potentially benefiting from the protection offered by the directive are both agricultural enterprises, i.e. those engaged in the production of products defined as such and listed in Annex I to the TFEU, and enterprises producing foodstuffs, i.e. not only products for food use listed in Annex I to the TFEU, but also "products not listed in that Annex, but processed for use as food using products listed in that Annex"[13]; and, finally, enterprises which simply market agricultural products or foodstuffs.

The directive, moreover, is intended to intervene only in contracts which are likely to allow the transfer of ownership of foodstuffs: consider Article 1(1), which refers to the prohibition of contracts 'between buyers and suppliers'; references to such positions are, moreover, contained several times in the articles of the directive, and specific definitions are offered to identify both 'buyer' and 'supplier'.[14]

Moreover, in addition to these objective requirements, the directive contains further, equally important, subjective requirements: it limits its action to supply relationships concluded between pro-

[8] Of 12 April 2018, (COM) 173, on unfair business-to-business commercial practices in the food chain.
[9] In Italy at the state, the Directive has been subject to partial transposition, with the European Delegation Law 2019-20: Law 22 April 2021, no. 53, in OJ no. 97 of 23.4.21.
[10] See Art. 9, according to which "in order to ensure a higher level of protection, Member States may maintain or introduce national rules for combating unfair commercial practices which are more stringent than those laid down in this Directive". Nor does the Directive purport to do away with the *Supply Chain Initiative,* mentioned above in n. 10, which may thus be maintained, operating on a different footing from that of the Directive.
[11] Provided that the internal rules are compatible with those relating to the functioning of the internal market: see Article 9(1) and (2).
[12] In fact, it has already been pointed out that EU law does not lack interventions on specific aspects, such as the regulation on interest on arrears in commercial transactions, or such as the possibility of written formalization of contracts of first sale of agricultural products subject to EU regulation no. 1308/2013.
[13] Thus, Article 2(d) of the proposal, entitled *Definitions*.
[14] Within the framework of those relationships, certain services may also be sanctioned as commercial services, provided that they are included among the prohibited conduct referred to in Article 3 of the directive: see Article 1(2)(5).

ducers and traders in agricultural products and foodstuffs, on the one hand, and purchasing companies, on the other, which do not exceed (as far as the supplying companies are concerned) and do not exceed (as far as the purchasing companies are concerned) certain annual turnover thresholds.[15]

In particular, the solution chosen provides that, in order for the relative discipline to apply, the maximum threshold of annual turnover of the transferring company (agricultural or food) must be lower than the annual turnover of the purchasing company. In substance, the application of the discipline is subordinate to the presence of a situation characterized by a dimensional disparity of the contracting companies, such as to entail - with a sort of absolute presumption - asymmetries of negotiating power between them such as to justify the normative intervention in question.

It should also be noted that the text of the directive in question does not contain – unlike Directive 2005/29/EC on unfair business-to-consumer[16] commercial practices – a general definition of unfair commercial practice: there is, therefore, no definition or general concept of unfair commercial practice, characterised by the presence of characteristic elements or indices denoting its unfair nature, but only[17]an exhaustive list of typical cases.

On the contrary, the directive identifies - in Article 3 - fifteen types of unfair conduct of which nine, listed in paragraph 1, are considered always prohibited, and the remaining six, listed in paragraph 2, are prohibited only under certain conditions.[18]

Among the practices which are always prohibited is Article 3(1)(b), which prohibits the cancellation by the purchaser of “orders of perishable agricultural and food products at such short notice that a supplier cannot reasonably be expected to find an alternative means of commercialising or using those products; notice of less than 30 days shall always be considered as short notice; Member States may set periods shorter than 30 days for specific sectors in duly justified cases”.

The second paragraph of the same Article 3 identifies further prohibited practices, "unless they have been previously agreed in clear and unambiguous terms in the supply agreement or in a subsequent agreement between the supplier and the buyer".

The presence of the above condition for the applicability of the prohibitions in question thus makes the actuality of the prescriptions and prohibitions themselves merely residual. It will, in fact, be sufficient to take care to include clear and detailed contractual provisions at the time of the conclusion of the contract or in a subsequent agreement to avoid the application of paragraph 2. The presence of clear and unambiguous clauses does not seem to be an effective deterrent to the inclusion of such clauses in the contract, since the inequality of bargaining power is likely to make suppliers willing to accept clauses such as those under consideration.

[15] The rules do not apply to sales to consumers, as they are reserved for business-to-business relations only.

[16] On which see, for all, M. BERTANI, *Pratiche commerciali scorrette e consumatore medio*, Milan, 2016; G. DE CRISTOFARO (edited by), *Le "pratiche commerciali sleali" tra imprese e consumatori. La direttiva 2005/29/CE e il diritto italiano*, Torino, 2007; ID., *Le pratiche commerciali scorrette e il codice del consumo*, Torino, 2008; E. MINERVINI e L. ROSSI CARLEO, (edited by), *Le pratiche commerciali sleali,* Milano, 2007.

[17] A list of prohibited practices is also contained in Directive 2005/29/EC, and in particular in its Annex I, but it is not the only instrument for the identification of p.c.s.

[18] The original Commission proposal listed a total of eight types of unfair conduct, four of which were considered to be always prohibited and the remaining four prohibited only under certain conditions.

Among these clauses, paragraph 2(a) provides for the case where “the buyer returns unsold agricultural and food products to the supplier without paying for those unsold products or without paying for the disposal of those products, or both”.

Coming to the topic of the meeting, it is thus evident how certain unfair commercial practices, besides being detrimental to the agricultural or food producer, can contribute to the formation of food waste: in the first of the two hypotheses considered, the cancellation of the order of perishable products without notice or with particularly short notice means that the supplier cannot reasonably market or in any case use the production subject to cancellation, which thus risks becoming waste; in the second, the guarantee that all unsold goods will be deducted from the purchase price and that the costs of removal will be borne by the selling parties suggests that the large retailers will certainly not mind limits on the quantities of product supplied in order to offer a wide range of products in quality and quantity, regardless of the remainder. The latter return to the availability of the suppliers who theoretically have the possibility of allocating the waste to other uses, but probably, also in view of the daily nature of such an event and the quantities of product involved, they may prefer to simply dispose of them.

We point out here that in Italy Directive no. 2019/633 is still in the implementation phase, only the delegated law having been adopted (with the 2019/20 European delegation law) but not yet the delegated decree; however, the Italian legal system has already equipped itself with a discipline of contrasting u.c.p.’s substantially with greater protection for the weaker party than that offered by the directive, and such as to prohibit, inter alia, the imposition of contractual clauses "unjustifiably burdensome", with a general provision aimed in any case to prohibit any "further unfair commercial conduct that is such also taking into account the complex of commercial relations that characterize the conditions of supply" (so the art. 62, 2 co, Decree Law No. 1 of 2012).

On this regulatory basis, the Italian Enforcement Authority (the Competition and Market Authority: AGCM) has dealt with a case of certain interest for the purposes of the fight against food waste: in the Bulletin of the Authority No. 28 of 15 July 2019, in fact, a number of measures of the AGCM taken at the conclusion of several investigative proceedings[19] concerning a series of entirely similar conducts held by several operators of the large-scale retail trade in relation to the supply relationships of fresh bread have been published. Such being, according to the definition of the Ministerial Decree of 1 October 2018 of the Ministry of Economic Development no. 131 ("Regulation governing the denomination of "bakery", "fresh bread" and the adoption of the wording "preserved bread"), the "bread prepared according to a continuous production process, without interruptions aimed at freezing or deep-freezing, except for the slowing down of the leavening process, devoid of preservative additives and other treatments having a preservative effect" (so art. Ministerial Decree no. 131 does not set a time limit within which fresh bread must be put on sale: however, according to the interpretation of the regulations in force on the preservation of foodstuffs, this time limit is assumed to be 24 hours after manufacture, given the nature of the product.

The AGCM order states, verbatim, that “Given the rapid perishability of fresh bread, it is normally produced at night and consumed within 24 hours of production. Accordingly, bread that remains un-

[19] With AL numbers 15A, 15B, 15C, 15D, 15E, 15F.

sold by the time retail outlets close in the evening is removed from the shelves at the end of the evening and is not offered for sale again the following day. Unsold fresh bread can be used for animal feed, other food production, charitable donation or - more frequently - disposal as organic waste (...). However, because of the limited commercial advantages of selling it for animal feed and reusing it for other food purposes, unsold bread is mostly a disposal item for bakers and retailers alike and, therefore, waste to be disposed of, or donated to charity".

Well, it has emerged, in fact, that in a generalized way many big retailers imposed to almost all of their suppliers of fresh bread (and therefore to be consumed in the day) to provide for the withdrawal of fresh bread remained unsold in the day, involving the disposal of the returned goods at the expense of the suppliers themselves[20], and the re-credit to the distribution chain of the price paid for the purchase of goods returned.

At the end of the investigation, and after having invariably ascertained the existence of a significant imbalance of bargaining power between the parties concerned[21], the Authority considered that such commercial conduct took the form of the imposition of unjustifiably onerous conditions to the detriment of suppliers of fresh bread, such as to transfer, moreover, unjustifiably to the latter a commercial risk typical of distribution activities, with a consequent breach of letters a) and e) of paragraph 2 of Article 62.

Thus, the defensive arguments of the distribution operators aimed, inter alia, at arguing that the sale price included a specific remuneration for the activity of withdrawal and disposal of unsold goods and that the obligation to return goods was the subject of effective negotiation (rather than imposition) between the parties were not accepted.

The Authority has not dealt with the consequences of such practices on daily wastage of large quantities of bread, as this is not the purpose, but there is no doubt that a finding that the practice is unlawful may lead not only to an economic benefit for suppliers of fresh bread, but also to a better balance between the daily quantities of fresh bread delivered and the daily returns and thus to a not insignificant saving of production and delivery factors (energy, ingredients and raw materials, labour, transport).

[20] The destination of unsold food is to be used as animal feed, to be used in the production of other foodstuffs, to be donated to charity and to be disposed of as organic waste.

[21] Although there are no agricultural producers involved, the AGCM has also noted the presence of a high fragmentation of supply in the bread-making sector, in the light of the presence of more than 20,000 small businesses (an average of 5 employees per business), mostly set up as one-man businesses. The Authority also found that, in the face of a general decline in demand in recent decades, there is an excess supply of fresh bread, a rapidly deteriorating product. A further weakness of the producers is the lack of recognition of individual producers by consumers, which makes it easy for suppliers to be substituted.

Food loss and food waste – the legislative deficit in Germany

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Abstract

Food losses arise mainly in connection with production along a value chain. 52 % of food waste in Germany occurs in households. This is caused in particular by the very low food prices in Germany and excessive labelling on the shelf life of food. The German government has set itself the goal of halving food waste by 2030. Existing regulations on waste prevention, recycling and disposal in general are proving inefficient. Due to the largely private origin of food waste, the government is not looking for the solution in law, but in non-binding instruments such as a national strategy and voluntary commitments. Possible options would be food donations from food retailers or the decriminalisation of container diving.

Lebensmittelverluste treten hauptsächlich im Zusammenhang mit der Produktion entlang einer Wertschöpfungskette auf. 52 % der Lebensmittelabfälle in Deutschland fallen in den Haushalten an. Ursache sind insbesondere die sehr niedrigen Lebensmittelpreise in Deutschland und eine übermäßige Kennnzeichnung zur Mindesthaltbarkeit von Lebensmitteln. Die deutsche Regierung hat sich das Ziel gesetzt, die Lebensmittelabfälle bis 2030 zu halbieren. Die bestehenden Regelungen zur Abfallvermeidung, zum Recycling und zur Entsorgung im Allgemeinen erweisen sich als ineffizient. Aufgrund des weitestgehend privaten Ursprungs der Lebensmittelverschwendung sucht die Regierung die Lösung nicht im Gesetz, sondern in unverbindlichen Instrumenten wie einer nationalen Strategie und freiwilligen Verpflichtungen. Mögliche Optionen wären Lebensmittelspenden aus dem Lebensmitteleinzelhandel oder die Entkriminalisierung des Containertauchens.

1. Concepts amd food waste in figures

First of all, talking about food loss and food waste requires to distinguish between the two concepts. Food losses occur mainly in the context of production along a value chain. They are attributed to technical and infrastructural difficulties. Food waste, on the other hand, refers to food that has been produced for consumption but not consumed or not wanted to be consumed. In addition, a distinction must be made between avoidable, partially avoidable and non-avoidable food waste. The first are those whose consumption would not have been problematic at the time of disposal. Partially avoidable wastes occur due to consumption habits. This second type of food waste should not be disposed of, as is the case with bread crusts or leftover food, for example. The third group, i.e. unavoidable food waste, mainly comprises substances that are unfit for consumption, such as bones.

In Germany, around 12 million tonnes of food waste are generated every year. Per capita, that means that every German wastes about 55 kilos of food per year. 52% of food waste occurs in households, although another study claims that it is only 40%. The second largest contributor to food waste is food processing, with 18%. Gastronomy comes in third place with 14%. Supermarkets dispose of 720,000 tons of food, which is only 4%. If food waste in households were reduced by 50 %, greenhouse gas (GHG) emissions in Germany could be reduced by 6 million tonnes of CO2 equivalent. The value of

(avoidable or partially avoidable) food waste in Germany is estimated at around 21.6 billion euros. However, more than two thirds of the discarded food would still be fit for consumption. In the case of Germany, the composition of food waste is dominated by vegetables (25.4%). This is followed by fruit (17.9%), bakery products (15.1%) and rice (12.4%). Meat and fish, as well as dairy products and beverages, are in single digits.

Food losses can be divided into five areas along the value chain. Starting with harvest losses (about 1 million t), followed by post-harvest losses (about 1.59 million t) and processing losses (about 2.61 million t), i.e. losses that occur in further processing both in industry and at home. In addition, there are distribution losses in the wholesale and retail trade (about 2.575 million t.) and among large consumers (about 3.4 million t.), as well as consumer losses (about 7.2 million t.). facilities such as canteens and restaurants. In the agricultural sector, the harvest and associated losses can be defined as the harvest itself. In the livestock sector, it is the path from breeding to slaughter, but also the extraction of milk and eggs. In crop production, post-harvest losses include all actions of the harvested crop, which can range from the first treatment to transport and storage. In the livestock sector, it includes the spoilage of meat before processing at the slaughterhouse, as well as the spoilage of milk and eggs during transport. Process losses occur during the refining of agricultural raw materials, e.g. cider making or meat processing. Distribution losses originate at the wholesale and retail level, where food is lost, e.g. disposal of a product due to damaged packaging or disposal because a new product design replaces the old one. Consumer losses at the final consumer level are due to poor planning of purchase quantity, poor storage conditions, poor preparation techniques or misinformation about the best-before date, as well as in out-of-home catering.

Why is it mainly private households that dispose of food in Germany? The first reason is the low price of food in Germany. Compared to other industrialised countries, Germany has the lowest food costs. One of the reasons is the long tradition of discount stores, which has flourished since the supermarket chain Aldi entered the food retail sector. Whenever one large discount chain changes its pricing policy, others immediately follow. Another reason is that food has a lower tax rate (7%) than other products (19%).

The second reason is the widespread use of best-before dates in the food sector. There are many areas where it makes sense: for example, fresh meat or milk. But there are just as many areas where it is absurd: for example, salt, sugar or pasta. In Germany, many people believe that best-before dates should be taken seriously and throw these foods away.

2. Legislative deficit

How is the legislator responding to this challenge? The German government has set itself the target of halving food waste by 2030. Germany has a number of regulations for waste prevention, recycling and disposal in general, which partly address the problem of food waste. However, as the persistent amount of food waste shows, these have not been efficient. But the government is not looking for the solution in law, but in non-binding instruments such as a national strategy and voluntary commitments from industry and the food trade. For example, the German Minister of Agriculture does not want to introduce a law against the disposal of perfectly edible food, as France has recently done.

In February 2019, the Federal Cabinet adopted the National Strategy for Reducing Food Waste. The strategy identifies potential causes of food waste. It outlines challenges and areas of activity to substantially reduce food waste along the food supply chain.

The aim is to halve per capita food waste in Germany at retail and consumer level and to reduce food losses along the production and supply chains, including post-harvest losses, by 2030. The Länder, civil society actors and associations from the agri-food sector, artisanal food production and the restaurant and catering sector have been involved in the development of the *National Strategy for Reducing Food Waste*.

Therefore, in our National Strategy, civil society, industry, government and scientists are called upon to contribute to the process necessary to accomplish this task. To this end, participation in sectoral dialogue forums is foreseen: the intention is to work together to develop specific measures on food waste reduction and to set sectoral targets. Dialogue fora have been set up for primary production, processing, wholesale, retail, out-of-home catering and households.

In March 2020, the Federal Minister for Food, together with the presidents of seven associations from the agri-food sector, trade, artisanal food production and the restaurant and catering sector, signed a general agreement on reducing food waste. This general agreement forms the basis for cooperation in the implementation of the *National Strategy for the Reduction of Food Waste*.

Germany launches many **communication campaigns** that can be divided into governmental and private campaigns (launched by universities, NGOs, activists). In particular, a network on food waste prevention has been created, which aims to bring together various stakeholders from the fields of research and consumer protection to conduct and report on research on food waste issues. BMEL launched the "Too Good for Waste!" initiative in March 2012. The main character is a potato - of course, we are in Germany. This campaign has focused public attention on the issue of food waste and made consumers have a greater appreciation for food. *Too Good for Waste! is* continually being expanded and extended to include the entire food supply chain.

How successful are these measures? With regard to Delegated Decision (EU) 2019/1597, which requires in-depth measurements at four-year intervals for each sector of the value chain, reliable data to determine the quantities of food waste in Germany on a statistically representative basis are still lacking. The overall potential for food waste reduction in Germany is approximately 11.9 million tonnes, of which 6.6 million tonnes are theoretically avoidable or still fit for consumption. Most of the avoidable food waste is from households. In contrast to the UK, for example, household food waste in Germany has remained at more or less the same level since 2012. Given these results, the question arises whether awareness campaigns and initiatives in Germany will have a similar positive effect as in other countries. Therefore, the potential impact of consumer-related measures in Germany requires further research, especially the feasibility of achieving the policy objectives. However, the results of recent studies do not show a statistically relevant reduction of food waste along the different sectors of the food value chain.

3. Possible options

3.1. Food donations from the food retail trade

One possible solution to food waste would be to offer German retailers simplified options for donating food that is still edible and fit for consumption. The draft federal law to simplify food donations must be in accordance with the German Basic Law (LF). According to Art. 72 para. 1 and Art. 74 para. 1 no. 20 alternative 1 FG, the federal government has concurrent legislative competence for the "law on foodstuffs, including the animals used for their production". On this basis, a national law on food donations could be formulated. According to Art. 72 para. 2 LF the Federal Government is only entitled to legislate "if and insofar as the creation of equivalent living conditions or the maintenance of legal or economic unity in the federal territory requires federal legislation". This means that the Federation must achieve the listed objective better than the Länder with legislation. However, the Federation only acquires the power to regulate "when living conditions in the Länder have diverged significantly in a way that is detrimental to the federal social structure or such a development becomes concretely evident". Moreover, the legislation of the federal government must also maintain the functioning of the economic area of the Federal Republic of Germany. Consequently, the interest of the entire state can only be justified if (or if not) regulations are made at the state level that negatively affect the entire economy. As far as the federal legislative competence for food donations is concerned, it could be argued that as soon as different regulations on food donations are established at the state level, divergent living conditions can be expected, as individuals will have different opportunities to obtain free access to food. This would lead to a change in the social sphere. In addition to the economic component, it should be added that the top 5 food retailers have a total market power of 67.9% in Germany. The centrally organised food retail sector would be weakened if it had to follow different regulations on the distribution of donations at state level.

3.2. Decriminalisation of dumpster diving

Dumpster diving is considered theft in Germany and is still illegal. However, the courts are very inconsistent in their prosecution of this crime. If one looks at this problem from a legal point of view, the accusation of criminal behaviour is quite legitimate. At first glance, it appears that the owner gives up ownership of the food by disposing of it. However, there are several reasons why supermarket operators do not want to dispose of waste until it is collected. For example, it can be assumed that most supermarket operators do not want to give away older food, as this could affect their sales revenue. Also, securing the containers with padlocks makes it clear that ownership will not be relinquished. Containers with leftover food in supermarkets are always locked separately, also for reasons of civil liability. Therefore, theft according to § 242 of the German Criminal Code is certainly a possibility. If the containers are opened, the offender is formally liable for a particularly serious case of theft (§§ 242, 243 StGB) and property damage (§ 303 StGB).

Finally, from the point of view of legal policy, it has to be mentioned that urban collection may be punishable, but does not deserve punishment. This is also recognised by criminal prosecutors, who make generous use of their possibility to discontinue such proceedings according to the Code of Criminal Procedure (cf. LG Aachen, ref. 94 Ns 15/13). In case of discontinuance, no penalty is imposed.

At the political level, there are calls for the public prosecutor's office to receive "a general instruction that the policy against food waste must be on a par with the actions of the public prosecutor's office".

In this respect, closer cooperation with social organisations is necessary. He also rightly calls for society to rethink these issues, which ultimately affect us all.

4. Conclusion

Therefore, we can conclude: The German government does not use all means to reduce food waste. Two important instruments remain untouched to this day for political reasons: 1. the increase of food prices by raising the food tax. 2. the ban on the use of best-before dates for products that cannot expire biologically.

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Different land uses and regulations on the territory – case of Poland

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Abstract

The article aims at evaluating legal regulations on agricultural land to determine whether or not the regulations ensure that the land is used for agricultural purposes in Poland, especially as part of sustainable agriculture as well as for other purposes, i.e., afforestation, renewable energy and broadly defined development of rural areas (construction purposes, services, infrastructure). Additionally, the article analyses axiological grounds for actions taken by the Polish and the EU legislators in terms of agricultural land protection and using the land for different purposes. It also refers to applicable European Union documents, e.g. European Commission "farm to fork" strategy for a fair, healthy and environmentally friendly food system (F2F) of 20 May 2020, EU Biodiversity Strategy for 2030 called "Bringing nature back into our lives".

The paper shows quantitative and qualitative instruments of agricultural land protection in Poland and the use of agricultural land and impact on biodiversity. Particular attentions is drawn to Act of 11 April 2003 on the Formation of the Agricultural System and the Act on Agricultural and Forest Land protection of 3 February 1995. The Author concludes that in Poland there is an increasing number of regulations under which the owners and holders have obligations connected with the environmental protection, soil erosion protection, obligation to run an agricultural activity on agricultural land. Agricultural land tends to be more often dedicated for renewable energy investments which involve building and maintaining solar power plants or wind farms. The regulations and actions in Poland are in line with the European Green Deal.

Der Artikel setzt sich zum Ziel, die rechtlichen Regelungen für landwirtschaftliche Flächen zu bewerten, um festzustellen, ob die Regelungen sicherstellen, dass die Flächen in Polen für landwirtschaftliche Zwecke genutzt werden, insbesondere als Teil einer nachhaltigen Landwirtschaft sowie für andere Zwecke, d.h. Aufforstung, erneuerbare Energien und eine breit angelegte Entwicklung des ländlichen Raums (Bauzwecke, Dienstleistungen, Infrastruktur). Darüber hinaus analysiert der Artikel die axiologischen Gründe für die Maßnahmen des polnischen und des EU-Gesetzgebers in Bezug auf den Schutz landwirtschaftlicher Flächen und die Nutzung der Flächen für verschiedene Zwecke. Er bezieht sich auch auf einschlägige Dokumente der Europäischen Union, z.B. die Strategie der Europäischen Kommission für ein faires, gesundes und umweltfreundliches Lebensmittelsystem (F2F) vom 20. Mai 2020 und die EU-Strategie zur Erhaltung der biologischen Vielfalt bis 2030 mit dem Titel "Die Natur zurück in unser Leben bringen".

Der Beitrag zeigt die quantitativen und qualitativen Instrumente des landwirtschaftlichen Bodenschutzes in Polen sowie die Nutzung landwirtschaftlicher Flächen und deren Auswirkungen auf die biologische Vielfalt. Besonderes Augenmerk wird auf das Gesetz vom 11. April 2003 über die Gestaltung des Agrarsystems und das Gesetz über den Schutz landwirtschaftlicher und forstwirtschaftlicher Flächen vom 3. Februar 1995 gelegt. Die Autorin kommt zu dem Schluss, dass es in Polen eine wachsende Zahl von Vorschriften gibt, die den Eigentümern und Besitzern Verpflichtungen im Zusammenhang mit dem Umweltschutz, dem Schutz vor Bodenerosion und der Verpflichtung zur Ausübung einer landwirtschaftlichen Tätigkeit auf landwirtschaftlichen Flächen auferlegen. Landwirtschaftliche Flächen werden

tendenziell häufiger für Investitionen in erneuerbare Energien genutzt, die den Bau und die Instandhaltung von Solarkraftwerken oder Windparks beinhalten. Die Vorschriften und Maßnahmen in Polen stehen im Einklang mit dem europäischen Green Deal.

1. Introduction

Land is used for different purposes, such as agriculture, forestry, renewable energy, housing or business activity (van Vliet, et al., 2020). In Poland, agricultural land accounts or more than 60% of the area, including 45% of arable land. Unfortunately, 34% of that land is of 5th and 6th class valuation, which means it is of a poor quality and gives not enough crops. More than 25% of soil is at risk of wind erosion and 28% - of water erosion (Ministry of the Environment, 2016). A vital issue is restoration of degraded and destroyed land by bringing back its natural or practical significance (Ministry of the Environment, 2016).

The soil formation modification process has been deeply contributed by human activity, including business, agricultural and other types of activity. The analyses in the article focus, most of all, on agricultural land used for agricultural purposes. Agricultural land is of high importance for the food production and environmental protection.

Under the European Green Deal (European Commision, 2019) the importance of soils in the biodiversity strategy, farm to fork and climate law has been specified. In all three policies, greater soil protection is to be achieved by 2030 by the following means: 50% reduction of pesticides, 50% reduction of excess nutrients, 20% reduction of fertilizers, organic farming on 25% of agricultural land, 10% increase in landscape of the feature, increase of protected areas by 30%, restoration of wetlands and stopping soil degradation (Montanarella & Panagos, 2021).

The EU legislator also brings to the table the opportunity to use low-quality agricultural land for afforestation purposes. The increasing amount of agricultural land is used for the renewable energy purposes such as, inter alia, wind farms or photovoltaics. Some smaller plots, especial those up to 1 hectare, are used for the housing purposes or business activity purposes. Land is used for the development of rural areas.

It needs to be pointed out that the Polish Act of 2003 on the Formation of Agricultural System lays down the goals which are similar to those provided for in the EU documents. The Act has been enacted "to ensure proper management of agricultural land in the Republic of Poland, to *guarantee food security of the citizens and to support sustainable agriculture run in compliance with the environmental protection requirements and facilitate the development of rural areas*".

The article aims at evaluating legal regulations on agricultural land to determine whether or not the regulations ensure that the land is used for agricultural purposes in Poland, especially as part of sustainable agriculture as well as for other purposes, i.e., afforestation, renewable energy and broadly defined development of rural areas (construction purposes, services, infrastructure). Additionally, the article analyses axiological grounds for actions taken by the Polish and the EU legislators in terms of agricultural land protection (Consolidated text: Journal of Laws of 2020, item 1655) and using the land for different purposes. It also refers to applicable European Union documents.

2. Land protection in current EU documents and policy

The European Union has been currently working on the execution of the European Commission "farm to fork" strategy for a fair, healthy and environmentally friendly food system (F2F) of 20 May 2020 (European Commision, 2020; Montanarella & Panagos, 2021). The aim of this document is to bring about a holistic change in the approach to food production. It indicates that the food chain should have a neutral or positive impact on the environment and it also focuses on ensuring food safety, nutrition safety and public health, as well as preserving the affordability of food. The strategy underlines that the COVID-19 pandemic, the increasing incidence of droughts, floods, forest fires and new pests, is a reminder that the food system is under threat and must become more sustainable and resilient (European Commision, 2020; Montanarella & Panagos, 2021). There is an urgent need to reduce dependency on pesticides, reduce excess fertilisation, increase organic farming, improve animal welfare, and reverse biodiversity loss. That is why it is of such high importance to use land for agricultural purposes.

Under the European Commission "farm to fork" strategy for a fair, healthy and environmentally-friendly food system (F2F) of 20 May 2020 (European Commision, 2020), the farmers cultivating agricultural land need to transform their production methods more quickly, and make the best use of nature-based, technological, digital, and space-based solutions to deliver better climate and environmental results, increase climate resilience and reduce and optimise the use of inputs (e.g. pesticides, fertilisers).

In March 2020, the European Commission also proposed the first European Climate Law (EU Climate Law, 2020) to achieve a climate-neutral EU by 2050 (as part of the European Green Deal). With regard to soil, this ambitious plan involves maintaining wetlands as an important carbon sink and reducing CO2 emissions in the agricultural sector. In addition, the Commission is to adopt an Action Plan for Zero Air, Water and Soil Pollution in 2021, Soils and agriculture (Montanarella & Panagos, 2021).

Using agricultural land for the purpose of agriculture and environmental protection fits into the EU Biodiversity Strategy for 2030 called "*Bringing nature back into our lives*". It was published by the European Commission on 20 May 2020. As far as biodiversity (EU Biodiversity Strategy for 2030 called "Bringing nature back to our lives" was published by the European Commission on 20 May 2020. The Strategy envisages the restoration of biological diversity of Europe with the benefit for people, climate and the planet; (European Commision, 2020) is concerned, the European Commission suggests that 10% of agricultural land needs to consist of high-diversity landscape features, for instance in the form of hedges or buffer strips, and recommends substantial reduction of the impact of the agricultural sector on the environment by 2030. A quarter of agricultural land needs to be managed for organic farming (ibidem) by the year 2030 (Montanarella & Panagos, 2021).

Unfortunately, soil degradation is a common, systemic process present in all parts of the world and it can take many forms in the EU and worldwide (Gilbey, et al., 2019, pp. 230-237). Tackling soil degradation and restoring degraded land is an urgent priority for the protection of biodiversity and ecosystem services. Various soil degradation (farming, soil contamination, compaction, soil sealing, organic carbon decline), climate changes and intensive exploration by a person endangered by microorganisms require the introduction of Sustainable Soil Management (SSM). Such system can bring many environmental benefits and funding sources (Lugato E., 2014, pp. 3557-3567).

Sustainable soil management was defined in 2016 by FAO in Voluntary Guidelines for Sustainable Soil Management Food and Agriculture Organization of the United Nations (FAO, 2017, p. 4 et seq.). All FAO members, including EU Member States and the European Commission, endorsed those guidelines that intended to minimize soil erosion, foster soil nutrient balance and cycles, prevent and minimize soil contamination and soil acidification, preserve and enhance soil biodiversity, prevent and mitigate soil compaction, improve soil water management.

3. Quantitative and qualitative instruments of agricultural land protection in Poland. The use of agricultural land and impact on biodiversity

It needs to be pointed out that owing to their natural qualities and inevitable process of the depletion of their resources, agricultural land constitutes valuable national good (Stempka C., 1979, p. 107). It cannot be replaced with any other production means and, therefore, it needs to be prevented from being "worn out" (Błażejczyk, 1967, pp. 78-100; Wróbel, 1984, pp. 8-16). The soil is one of the most complex ecosystems there are and it is a highly crucial non-renewable resource of a high significance for human health as well as for the production of food and medicine (European Environment Agency, 2019).

Therefore, it is essential to take actions to protect soil fertility, prevent soil erosion and increase the amount of soil organic matter. To achieve that the sustainable development practices, also within the Common Agricultural Policy (mission in soil health and food carried out as part of "Horizon Europe", European Commision, 2020), need to be adopted. The consequences of soil erosion and depletion of organic carbon in soil are getting more and more apparent. Desertification is yet another threat in the EU which is growing in significance (European Court of Auditors, 2018). Additionally, the Resolution of the European Parliament of 27 April 2017 on the state of play of farmland concentration in the EU: how to facilitate the access to land for farmers, emphasizes that whereas land is on the one hand property, on the other – it is a public asset and is subject to social obligations. The Resolution also points out that land is a finite, increasingly scarce resource and it constitutes the basis of the human right to healthy and sufficient food as well as of many ecosystem services vital to survival. Thus, the document rightly concludes that agricultural real property should not be treated as an ordinary item of merchandise (European Parliament, 2016).

Sustainable agriculture aims at promoting a sustainable management system. In general, based on its broader interpretation, sustainable agriculture is about rational management of natural resources, which allows for reducing a negative impact of agriculture on the environment and prevents the depletion of organic substance in soil (ARiMR, 2015). Sustainable agriculture, in its broad meaning, assumes running an agricultural activity in a socially responsible way (Polskie Stowarzyszenie Rolnictwa Zrównoważonego „ASAP", 2014).

There are instruments of quantitative and qualitative protection of agricultural land in Poland that need to be noted. They are included in various legal acts. Most of all, it is the Act on the Formation of Agricultural System that needs to be mentioned. Consequently, the Polish law makers strive to provide for instruments which are to protect the real estate. Pursuant to Article 23 of the Constitution of the

Republic of Poland, the agricultural regime in our country is grounded in family holdings, and this constitutional principle is respected in contracts of the purchase of agricultural real estate.

On 16 July 2003, the Act of 11 April 2003 on the Formation of the Agricultural System (Consolidated text: Journal of Laws of 2018, Item 1405, 1496, 1637, as amended) came into force in Poland. As a rule, the legislator introduces legal instruments supporting the development of family farms run by individual farmers. As it has already been indicated, agricultural properties are purchased, most of all by persons who have agricultural qualifications and if the area of agricultural land does not exceed 300 ha (Suchoń, 2017).

Agricultural property can be purchased only by an individual farmer (a family farming holding, in turn, is a unit run by an individual farmer, that is a natural person who is an owner, perpetual usufructor, autonomous possessor or lessee of agricultural real property whose combined area of arable land does not exceed 300 hectares, who holds agricultural qualifications and has been residing for a period of at least 5 years in the commune in whose territory at least one of the agricultural real properties forming part of the farming holding is located, and who has been running this farm personally throughout this period), unless the act specifies otherwise The act specified that the rule (an agricultural real estate can be purchased only by an individual farmer) does not apply to, for example, next of kin, territorial self-government units, State Treasury or the Agricultural Property Agency (now National Support Centre for Agriculture) acting on its behalf, legal entities acting on the basis of provisions on the relationship between the State and the Catholic Church in the Republic of Poland, on the relationship between the State and other churches and religious associations and on guarantees of the freedom of conscience and religion, national parks (in the event of the purchase of agricultural real property for purposes in connection with the protection of the natural environment). At the same time, the provisions provide for some exceptions allowing the acquisition of agricultural property based on permits issued by the National Support Centre for Agriculture: at the application of the seller or buyer upon the satisfaction of statutory prerequisites. One of the conditions allowing for the use of agricultural land is going to be the obligation to run agricultural activity on that land. The acquirer of the agricultural property is obliged to run the farming holding whose part is the acquired agricultural property for a period of at least 5 years from the acquisition of that property, and in the case of natural persons - to run it personally (Blajer, 2020). Throughout that period, the acquired property may not be disposed of nor given for possession to other entities, at the application of the acquirer of agricultural property, will issue a permit for such transaction prior to the lapse of 5 years from the transfer of ownership of that property if it is necessary due to unforeseen circumstances outside of the control of the acquirer.

It needs to be clarified that an agricultural farm is a unit where the area of agricultural real estate or a total area of real estates is not smaller than 1 hectare.

What needs to be emphasized is that in the period from 30 April 2016 to 25 June 2019, the agricultural activity had to be run on agricultural real estates for 10 years from the time of their purchase. Currently, that obligation amounts to 5 years but it has been extended and covers close relatives who acquired land under the contract of sale, donation or other type of a contract (Suchoń, 2019, pp. 91-111).

The real estate can be purchased by other entity than an individual farmer if the real estate is smaller than 1 hectare, as a result of dissolution of co-ownership, division of common estate after the dissolution of marriage and division of the estate; as a result of division, transformation or merger of commercial-law companies. In such a case, however, the National Support Centre for Agriculture has the right of pre-emption or the right to purchase the real estate in question. The right of pre-emption and the right of buyout of National Support Centre for Agriculture does not apply if, most of all, as a result of purchasing a family farm gets enlarged to a surface area not bigger than 300 hectares and the purchased real estate is located in the commune where the purchaser resides or in the neighbouring commune.

The land below 1 hectare is often purchased so that it can be used for housing or business activity purposes, which fits into the development of rural areas. That term is broadly defined in the EU legislation. Its main goals include diversifying rural economy and enhancing the quality of life in rural areas by providing better access to employment, public goods and services and, at the same time, by reducing unfavourable processes. Not sufficient infrastructure and poor access to public services in rural areas result from lower investment level and lack of entrepreneurship in reference books there is also a term "vitality of agricultural land", which refers to jobs, minimum level of services and infrastructure as well as to human potential, good social networks, attractiveness of rural areas as a place to live, work and visit. Lands, landscape features, climate and other natural factors collectively contribute to the way customs, traditions and identity of rural areas are shaped. (Baldock, et al., 2010).

Apart from the Act on the Formation of the System, there is also the Act on Agricultural and Forest Land protection of 3 February 1995 (Consolidated text: Journal of Laws of 2017, Item 1161, as amended), which provides for instruments of quantitative and qualitative protection of agricultural land**.** It can be exemplified by the procedure of changing the status of agricultural land into a non-agricultural one. First, the spatial development plan is modified and, then, land gets excluded from agricultural production. As a rule, excluding land from the production entails fees. As for the best 1st-3rd class valuation, the fees are high and the permission of the Ministry of Agriculture is needed. There are a number of instruments connected with qualitative protection of agricultural land. A general rule is that Article 15 of the Act on Agricultural and Forest Land protection indicates that the owner of land constituting agricultural land and land restored for agricultural purposes is obliged to take actions preventing the soil degradation, especially erosion and soil mass movements.

There are EU schemes relating to environment protection dedicated for agricultural land owners that need to be mentioned. Article 9 of Act of 5 February 2015 on payments under direct payments (Journal of Laws of 2015, Item 308 as amended) specifies that a farmer is obliged, under Article 43(1) of Regulation No 1307/2013, to comply with the practices referred to in that Article: Article 43 prescribes that, on all their eligible hectares, farmers entitled to a payment under the basic payment scheme or the single area scheme must observe agricultural practices beneficial for the climate and environment referred to in (3) of that Article. The agricultural practices beneficial for the climate and the environment are the following: a) crop diversification; b) maintaining existing permanent grassland; and c) having ecological focus area on the agricultural area.

The regulation of the Minister of Agriculture and Rural Development of 18 March 2015 on detailed conditions and procedure for granting financial aid under "Agricultural, environmental and climatic action" measure covered by the 2014–2020 Rural Development Programme (Journal of Laws of 2015,

Item 415 as amended) specifies that agricultural, environmental and climatic action is executed as part of: one package (if a package does not include an alternative) or an alternative, e.g. Sustainable agriculture; Soil and waters protection: Maintaining orchard and traditional types of fruit trees: Precious habitats and endangered species of birds in the areas of Natura 2000: Preserving endangered genetic resources of plants in agriculture – in the event of crops; maintaining endangered genetic resources of animals in agriculture.

A farmer has environmental and climatic obligation: has an agri-environmental activity plan, is not allowed to transform grassland or feedland that is included in the agricultural farm, preserves, existing in an agricultural farm, elements of agricultural landscape which are not used for agricultural purposes but they create nature refuges, specified in the plan of agri-environmental activity. By executing the above-mentioned activities, they contribute to the protection of the environment and biodiversity.

It needs to be highlighted that grassland and feedland have been, for centuries, genuine oasis of biodiversity, rich in various types of plants and animals (Kujawsko-Pomorski Ośrodek Doradztwa Rolniczgo w Minikowie, 2017). In Poland, grassland and feedland, namely so-called permanent grassland accounts for about 12% of the surface area of the country (about 3 million hectares), and about 8% in the whole European Union (57 million hectares). Intensive cultivation of grassland and feedland (instead of extensive one), large amounts of artificial fertilizers, herbicides and early harvesting leave numerous types of birds stranded for food, destroy their nests and harm their cubs (Kujawsko-Pomorski Ośrodek Doradztwa Rolniczgo w Minikowie, 2017). Permanent grassland consumes almost as much carbon dioxide as forests. Agriculture can play a significant part in reducing greenhouse gases that it generates. Removing part of cumulated CO2 from the atmosphere is of high importance for stabilizing global climate (European Commision, 2010).

It needs to be highlighted that biological diversity in soil is higher than above it. Soil is home to more than a quarter of all species on earth. Humus cannot be produced in an artificial way as it is created by biological diversity of soil (Feledyn-Szewczyk, 2014), sustainable, ecological and integrated agriculture (Feledyn-Szewczyk, 2014). It is possible to distinguish the concept of protection of biodiversity of agroecosystems “land sharing”, i.e., running in one area an agricultural activity of low intensity that ensures the protection of the resources of the environment (Feledyn-Szewczyk, 2014). On the other hand, there is a concept called “land sparing” – splitting the areas that are intensively used for agricultural purposes from natural or partially natural habitats which constitute diversity reservoir (Feledyn-Szewczyk, 2014).

4. Agricultural land afforestation

The regulations incentivize to dedicate agricultural land of poor valuation for afforestation. Forest land, because of its plants, constitutes a highly crucial element of the environment, helping to improve the quality of air, giving shelter to many animals and contributing to leisure activities of people. As it is highlighted, it has got a favourable impact on climate, soil, water, living conditions and human health as well as biological balance (Radecki, et al., 2016, p. 25 et seq.). In 2019, the area of forest land in Poland amounted to 9 462,9 hectares, including forests of an area of 9 258,8 hectares, which accounted for 29,6% of the area of Poland. Compared with 2018, there was an increase in the area of forests by almost 4 thousand hectares, which resulted from afforestation of non-forest land used for

agricultural purposes or of wasteland. In 2019, public forests accounted for 80,7% of total area of forests (76,9% of total area of forests was managed by the National Forests). Private forests area was 1 787 hectares (19,3% of forests in the country), including more than 94% of those owned by natural persons (18,2% of forests in total) (GUS, 2019).

Article 14 of the Act on Forests specifies that forest resources can be enlarged by land afforestation and enhancing forest productivity in a manner regulated in the forest management plan. Afforestation can be performed on wasteland, agricultural land useless for agricultural production and agricultural land not used for agricultural purposes and other types of land suitable for afforestation, in particular: 1) land located near rivers and spring water heads, on watersheds, along river banks as well as on the perimeter of lake and water reservoirs; 2) quicksand and sandy dunes; 3) steep slopes, hillsides, bluffs and subsidence; 4) spoil heaps and areas where sand, gravel, peat and clay used to be located.

Agricultural land afforestation is incentivized by the EU schemes. Both Polish and the EU (Tomkiewicz, 1999, p. 72 et seq.) legislators make attempts to support the land afforestation process by implementing financial instruments incentivizing to assign land to afforestation areas. Even before Poland's accession to the EU, the Act of 8 June 2001 on Agricultural Land Afforestation (Journal of Laws of 2001, No 73, Item 764, as amended) was adopted. Under the Act, agricultural land which was part of an agricultural farm or made the farm on its own could be dedicated for afforestation if it fulfilled at least one from the below-mentioned conditions: was a land 1) of 6^{th} z, 6^{th} and 5^{th} class as well as the 4^{th} class if its area does not exceed 10% of total area of land dedicated for afforestation, 2) located on the average slope above 15%, 3) degraded within the meaning of Act of 3 February 1995 on Protection of Agricultural and Forest Land (and if it is intended for afforestation in the local spatial development plan or decisions of land development).

Following Poland's accession to the European Union, the issue of afforestation was regulated in Regulation of the Council of Ministers of 11 August 2004 on detailed conditions and procedure for granting financial aid for afforestation of agricultural land under the Rural Development Programme (Journal of Laws of 2004, No 187, Item 1929, as amended). Pursuant to that regulation, payment for afforestation shall be granted to an agricultural producer who is a natural person or an agricultural production co-operative and undertakes, among other things, to afforest agricultural plots on which, until the date of applying for payment, agricultural activity had been run, maintain an afforestation area for the period of 5 years from the date of the afforestation – in compliance with the afforestation plan, within the meaning of the regulations on forests; run created afforestation areas for the period of 20 years from the date of being granted the first afforestation payment.

In another regulation of the Minister of Agriculture and Rural Development of 19 March 2009 on detailed conditions and procedure for granting financial aid under "Afforestation on agricultural lands and afforestation of non-agricultural lands" measure covered by 2007-2013 Rural Development Programme (Journal of Laws of 2009, No 48, Item 390, as amended), aid for afforestation was granted not only for agricultural land but also for non-agricultural one. According to the Regulation of the Minister of Agriculture and Rural Development of 8 May 2015 on detailed conditions and procedure for granting aid under "Investments in the development of forest areas and the improvement of forest viability" measure covered by 2014-2020 Rural Development Programme (Journal of Laws of 2015, Item 655, as amended) aid is granted to the farmer who undertakes, among other things, to: perform afforestation of land in compliance with the afforestation plan requirements, maintaining afforestation on the land

referred to for the period of 12 years from the date of applying for the first afforestation bonus – in the event of applying for the afforestation bonus (Suchoń, 2018, pp. 207-227).

Currently, this is the Regulation of the Minister of Agriculture and Rural Development of 26 March 2019 on detailed conditions and procedure for granting financial aid under "Support for afforestation and creating afforested areas" measure covered by 2014-2020 Rural Development Programme that is in force. A farmer is granted aid pursuant to Article 4(1) letter a of the Regulation of the European Parliament and of the Council (EU) No 1307/2013 of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, if: among other things, they were granted an identification number under regulations on the national system of keeping register of producers, register of agricultural farms and register of payment applications, that can be used while applying for that aid.

Additionally, the farmer undertakes to: a) perform land afforestation in compliance with the afforestation plan requirements referred to in Article 35(5) point 1 of the Act of 28 September 1991 on Forests, hereinafter referred to as "Afforestation Plan" and, if specified in the afforestation plan, to make a fence or secure trees with 3 pegs – in the event of applying for afforestation aid, b) maintain the afforestation performed on land referred to in letter a, or the afforestation that took place on the land as a result of natural succession, in compliance with the afforestation plan requirements, for the period of 5 years from the date of applying for the first maintenance bonus – in the event of applying for the maintenance bonus, c) keep afforestation on the land referred to in a) for the period of 12 years from the date of applying for the first afforestation bonus – in the event of applying for the afforestation bonus; 3) got a decision on the environmental constraints for the afforestation plan – in the event of applying for afforestation support and if the planned afforestation is a project the execution of which requires getting such a decision pursuant to Act of 3 October 2008 on Sharing Information about the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact (Journal of Laws of 2018, Item 2081). The farmer is granted aid in connection with land: 1) included in the land and buildings register pursuant to Article 2 point 8 of the Act of 17 May 1989 on Geodetic and Cartographic Law (Journal of Laws 2017, Item 2101 and of 2018, Item 650 and 1669) as agricultural land; 2) constituting arable land or an orchard; 3) which was dedicated for afforestation in the local spatial development plan and if there is no such plan, if afforestation of such land does not go against the land use plan of a commune and, if there is neither afforestation plan nor land use plan – if the land has been dedicated for afforestation under a land development conditions decision.

RDP 2007–2013 afforestation covered 36.763,15 hectares, including 2008 – 6.405,97 hectares; 2010 – 6.142,17 hectares; 2011 – 6.166,45; 2012 – 5.646,34; 2013 – 4.672,45; 2014 – 2.409,83 hectares; 2015 – 1.299,79 hectares (GUS, 2016, p. 86 et seq.). The area of afforested agricultural land and wasteland in 2019 amounted to 1 164,5 hectares and was more than 156 hectares lower compared with 2018 (decrease by 12%). 59 hectares qualified as natural succession (in 2018 – 69 ha). Owners of private forests accounted for 66,1% of total afforestation in 2019, while the State Forest – for 29,7% (GUS, 2019, p. 31 et. seq.).

It needs to be pointed out that, under the Act on the Protection of Agricultural and Forest Land, the starost is allowed, due to soil protection against erosion and earth mass movements, by means of decision, to order the agricultural land owner, to perform afforestation, tree planting or shrub planting

of land or creating permanent grassland on it. The land owner is entitled to be reimbursed for the costs of necessary seeds and seedlings from the budget of a province (Article 15 of the Act).

5. Using agricultural land for renewable energy purposes

In recent years there has been a tendency to make agricultural land available for the purposes of building and maintaining a solar power plant or a wind farm (Gram w zielone, 2020). One of priorities of that strategy is that by 2020 Poland will have had at least 15% share of renewable energy sources in final energy consumption gross, including at least 10% share of renewable energy used in transport (Suchoń, 2015, pp. 313-321). The obligation to achieve the above-mentioned goal results directly from the Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/177/EC and 2003/30/EC (Official Journal of the European Union L 140/16). It goes without saying that in order to achieve these indicators it is necessary to adopt acts favourable for the development of that sector as well as to ensure fast and effective implementation of renewable energy projects. Currently in Poland, the main act regulating the issue of renewable energy is the Act of 20 February 2015 on renewable energy sources (Journal of Laws of 2020, Item 261, 284, 568, 695, 1086, 1503) and Act of 10 April 1997 on Energy Law (Journal of Laws of 2020, Item 833, 843, 875, 1086, 1378, 1565).

The contracts regulating renewable energy projects on agricultural land have various names: real estate lease contract or contract for using land for renewable energy purposes. It is worth explaining that the Supreme Court in its decision of 5 October 2012 (IV CSK 244/12) ruled that *the contract providing a party with the right to generate income from the sales of electric energy obtained from processing wind energy by means of wind turbines in turn for periodical monetary benefit defined as the percentage from the value of sold electric energy is an innominate contract to which, to the matters not regulated in such a contract, provisions of the civil code on lease can appl*y (Suchoń, 2015, pp. 313-321). The limited scope of the article does not allow to refer to that decision. Many specialists in the subject, however, do not agree with the decision of the Supreme Court, which is exemplified by, among other things, the gloss to the above-mentioned decision by Ł.M. Wyszomirski (Wyszomirski, 2013).

Undoubtedly, it is less time-consuming and much easier to carry out solar power plant investments in terms of legal and construction aspects than wind power plant investments. If there is no spatial development plan in a given commune, agricultural land is allowed to be used for investment after obtaining a decision on land development and management conditions. Execution of such investments entails excluding agricultural land from agricultural production. The contracts are usually concluded for the period of 25 years. Power of photovoltaic power plants in Poland as of the end of July amounted to 2261,3 MW, increasing in the first seven months of this year by 961,7 MW (Gram w zielone, 2020). In 2019, 3,5-fold more photovoltaic installations were put to use that a year before (Macuk, 2020). Despite a fast increase in power in photovoltaics in Poland, it is still wind power plants that have much bigger power (Gram w zielone, 2020). Biogas power plants are also constructed on agricultural land and used for renewable energy purposes. It also needs to be determined whether a selected location of the project will have a negative impact on the network of protected areas NATURA 2000. The negative impact may make the whole procedure much longer.

If the land was purchased after 29 April 2016, it is required to obtain consent of the APA for transferring the dependent possession of the real estate and for carrying out renewable energy investments. The consent is required in the period of 5 years from the date of purchasing the land.

6. Conclusions

Based on the above considerations, the following conclusions can be drawn:

Firstly, under Polish legal regulations the agricultural real estate purchasers are obliged to run an agricultural activity on agricultural land. The obligation refers to the land included in an agricultural farm of an area of at least 1 hectare. There are also provisions regulating changes to the intended use of land and excluding it from agricultural production. Agricultural land, owing to its natural qualities and inevitable process of depletion of its resources, constitutes valuable social good that should be fully and intensively exploited regardless of a type of legal title to it (Stempka-Jaźwińska, 1979, p. 107). It cannot be replaced with any other production means and, therefore, it needs to be prevented from being "worn out" (Błażejczyk M., 1967, p. 78; Wróbel A., 1984, pp. 8-16). Actions taken by the Polish legislator fits into the message coming from European Commission's "farm to fork" strategy for a fair, healthy and environmentally friendly food system (F2F) of 20 May 2020.

Secondly, there are regulations pursuant to which the owners and holders have obligations put on them connected with the environmental protection, soil erosion protection, in particular erosion and soil mass movements. The considerations presented in the paper highlight the influence of grassland and feedland on biodiversity. Farmers who cultivate agricultural land in line with sustainable agriculture principles might play a crucial role in biological soil diversity protection. Cultivation tools, techniques and methods influence the land condition (e.g., hedges and grass strips surrounding fields provide for stable habitats and food source for animals that can help to control pest). Farmers apply solutions based on natural environment protection to achieve better results in terms of climate changes and environment protection. Using the EU funds, including direct payments or agricultural, environmental and climatic measures impose obligations relating to environment protection on farmers. Fulfilling those obligations support sustainable agriculture, which is promoted by the European Commission. What needs to be pointed out is that the approach to agricultural land has shifted into the direction of ecological economics, which assumes priority of ecological perspective compared with economics, complemented by the call for intergenerational and intragenerational justice (Biechońska-Goździewicz J., 2018, pp. 41-57). The European Union and Members States, including Poland, have lifted their awareness of the issue of soil (Biechońska-Goździewicz J., 2018, pp. 41-57). Undoubtedly, some further actions need to be taken in the matter.

Thirdly, the legal provisions regulating agricultural land below 1 hectare are more lenient since there is no obligation to run an agricultural activity on that land for 5 years, unless in becomes part of an agricultural farm. The only thing which is not allowed with reference to that land is to sell it or transfer possession of it in the period of 5 years. Some of the land can be used in the future for housing purposes as well as renewable energy or business activity purposes. Such actions contribute to the development of rural areas.

Fourthly, for a few years now there has been a tendency to perform afforestation on the lowest quality agricultural land. Such action is facilitated by the EU funds dedicated for it. There are more and

more private forests every year in Poland, which can be attributed to the schemes in Rural Development Programmes. In the years of 2007–2013, the area of 36.763,15 hectares was afforested.

Fifthly, agricultural land tends to be more often dedicated for renewable energy investments which involve building and maintaining solar power plants or wind farms. Development of renewable power industry in Poland helps to fulfil our international obligations and constitutes a pillar of constitutional principle of sustainable development.

Sixthly, The European Green Deal sets out a comprehensive strategy to tackle climate and environmental problems. Soils play a key role in achieving the Sustainable Development Goals (SDGs) by 2030 (Bouma, et al., 2019). Soils in particular play a key role in achieving the EU's ambitious 2050 climate neutrality target. As a major carbon sink, soils play an important role in mitigating greenhouse gas emissions. In addition, soils are highly biodiverse (Jeffrey, S., et al., 2010, p. 128, Montanarella & Panagos, 2021, p. 5) included in the new EU Biodiversity Strategy to 2030.

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Südtiroler Agrargemeinschaften im Lichte des Regelungsregimes der italienischen *domini collettivi*[1]

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Abstract

Il contributo analizza le associazioni agrarie altoatesine dal punto di vista della legge statale n. 168/2017, che disciplina le varie forme di domini collettivi. Pur fornendo un quadro normativo generale, tale legge non abolisce né diluisce le differenze locali o regionali. Per quanto riguarda le regioni a statuto speciale e le province autonome – e quindi l'Alto Adige – l'art. 2 comma 5 L. n. 168/2017 precisa, che i principi di questa legge sono da applicare secondo le specifiche competenze legislative in capo alla regione o alla provincia autonoma. Questo articolo fornisce una prima analisi di come i principi delineati nella Legge 168 siano riconoscibili nelle associazioni agrarie come regolate dalla legge provinciale n. 2/1959.

This paper analyses South Tyrol's agrarian associations (a specific type of commons) from the perspective of state law no. 168/2017, which regulates the various forms of Italian commons (so-called domini collettivi). While providing a general regulatory framework, this law neither abolishes nor dilutes local or regional differences. With regard to special statute regions and autonomous provinces – and thus South Tyrol – Article 2 paragraph 5 L. no. 168/2017 specifies, that the principles of this law are to be applied according to the specific legislative competences of the region or autonomous province. This article provides an initial analysis of how the principles outlined in Law 168 are recognisable in agricultural associations as regulated by provincial law no. 2/1959.

1. Einleitung

Im Jahre 2017 wurde in Italien mit Gesetz Nr 168 der Bereich der sog *domini collettivi*[2] neu geregelt; dieses Gesetz regelt gesamthaft die verschiedenen Ausprägungen von Gemeinnutzungsrechten, das sind althergebrachte, einer Gemeinschaft zugewiesene (kollektive[3]) Nutzungsrechte, wie zB Holz, Weide- oder Fischereirechte, um diesen einen allgemeinen Regelungsrahmen zu bieten, ohne aber lokale oder regionale Unterschiede aufzuheben oder zu verwässern: vielmehr sollen durch dieses Gesetz die verschiedenen lokalen und regionalen Regelungen, die sich mit derlei Nutzungsrechten befassen, auf eine einheitliche Grundlage gestellt werden. Diese Vereinheitlichung betrifft zum einen die systematische Darstellung dieser Rechte (indem ein für derlei Gegebenheiten allgemein anwendbares

[1] Erstveröffentlicht in: Norer/Holzer (Hrsg.), Agrarrecht Jahrbuch 2021, Wien 2021, 331-346.
[2] Diese Rechte werden vielfach unter dem Begriff usi civici zusammengefasst. Vgl Miribung, Die domini collettivi, in: Mansel/Pfeiffer/Stürner/Jayme (Hrsg), Europäischer Rechtsverkehr in Zivil- und Strafsachen (2020) 185, 185.
[3] Vielfach wird in diesem Zuammenhang auch der Begriff proprietà collettive (kollektives Eigentum) verwendet. Vgl Sibilla, Strutture corporative e proprietà collettive nelle Alpi occidentali. Il caso della cultura Walser, Scialoja-Bolla (2010) 27; C. Trebeschi/A. Trebeschi, Le proprietà collettive, in: Cagnazzo/Toschei/Tucci (Hrsg), Sanzioni amministrative in materia di usi civici (2013), 229.

Regelungskonzept zur Verfügung gestellt wird), aber auch die Bestimmung des Begriffes *domini collettivi* als Sammelbegriff.[4] Zwar gibt es verschiedene Begriffe *(usi civici, terre civiche, terre collettive, demanio comunale, demanio civico, demani collettivi*[5]),[6] gleichwohl aber weisen alle diese Regime bestimmte Merkmale auf:[7]

- Sie sind mit einer Gemeinschaft verbunden, die entweder mit den Einwohnern einer Gemeinde (also öffentliche Körperschaft) übereinstimmt, oder als Gemeinschaft mit rechtlicher oder nur faktischer Persönlichkeit besteht (Nachbarschaften, traditionelle Familienverbände).

- Die Mitglieder der Gemeinschaft üben (individuell oder gemeinschaftlich) Nutzungsrechte aus.

- Die Rechte weden an Grundstücken, die dem gemeinsamen Nutzen gewidmet sind, ausgeübt.

[4] Vgl Cosulich, La legge 20 novembre 2017, n. 168 "Norme in materia di domini collettivi". Osservazioni a prima lettura, Rivista di diritto agrario 2017, 691-705; Germanò, I domini collettivi, Rivista di diritto agroalimentare 2018, 83, Marinelli, Dagli usi civici ai domini collettivi, Giustizia civile 2018, 1039; P. Nervi, I dominii collettivi nella condizione neo-moderna, Rivista di diritto agroalimentare 2018, 621; Miribung in: Mansel/Pfeiffer/Stürner/Jayme. Für eine kritische Betrachtung vgl Fulciniti, I domini collettivi tra archetipi e nuovi paradigmi, Rivista di diritto agroalimentare 2018, 547; auch Di Genio, Gli usi civici nella legge n. 168 del 2017 sui domini collettivi, federalismi.it 2018.
Bezogen auf die Begrifflichkeit kann an dieser Stelle ergänzt werden, dass das Amt für Sprachangelegenheiten des Landes Südtirol, für den Begriff domini collettivi den Begriff Allmende verwendet (vgl https://www.provinz.bz.it/politik-recht-aussenbeziehungen/recht/sprachangelegenheiten/uebersetzte-staatsgesetze.asp; abgerufen am 30.04.2021). Dieser Begriff entstand im Hochmittelalter aus dem Altdeutschen und bezeichnete das zu einer Gemeinschaft gehörende Land innerhalb eines bestimmten Territoriums. Rechtlich gesehen ist die „Allmende" ein Stück Land, auf dem alle Einwohner einer Gemeinde (damit ist nicht die „moderne" Gemeinde als öffentliche Körperschaft gemeint; vgl in diesem Zusammenhang Schennach, Das Provisorische Gemeindegesetz 1849 und das Reichsgemeindegesetz 1862 als Zäsur? Mitteilungen des Instituts für Österreichische Geschichtsforschung 2012, 369) ein Nutzungsrecht geltend machen können. Die „Allmende" besteht in den meisten Fällen aus Grundstücken wie Straßen, Wäldern, Gewässern oder Weideflächen, die jeder Berechtigte der Sache entsprechend (zB in dem er sein Vieh auf die Weide treibt) nutzen kann. Zum Begriff Almende, der in Zusammenhang mit den Südtiroler Gemeinnutzungsgütern verwendet wird, vgl Sternbach, Die Neuregelung der Gemeinschafts-Nutzungsrechte (usi civici) (1926), 9 f. Allgemein zum Begriff Almende, vgl Grüne/Hübner/Siegl, Institutionen und Praktiken kollektiver Ressourcennutzung in der europäischen Agrarwirtschaft, in: Grüne/Hübner/Siegl (Hrsg), Ländliche Gemeingüter (2016), 287.

[5] Marinelli, Giustizia civile 2018, 1039 und Germanò, Rivista di diritto agroalimentare 2018, 84 f.

[6] Diese unterliegen unterschiedlichen territorialen und damit verbundenen legislativen und administrativen Entwicklungen.

[7] Vgl P. Nervi, Assetti fondiari collettivi, identità territoriale - risorse per lo sviluppo sostenibile, in: Nössing/Hofer/Mayr (Hrsg), Gemeinschaftlicher Besitz (2016) 39, 40. An anderer Stelle werden folgende Merkmale festgehalten: (a) Bei allen Rechten handelte sich um Realrechte, deren Inhalt eine dauerhafte Nutzung einer Sache gewährleisten soll. (b) Alle Nutzungsarten entsprechen Rechten, die einer Gemeinschaft zugewiesen sind. (c) Bei allen handelt es sich um Rechte ohne genaue Bestimmung des Anteils an der nutzenden Sache (Eigentum zur gesamten Hand). Vgl Germanò, Manuale di diritto agrario, 8. Auflage (2016), 158 ff.

Des weiteren erkennt das Gesetz allgemein an, dass diese Nutzungsrechte mit dem Zweck entstanden sind, Grund und Boden so zu verwenden, damit existenzielle Bedürfnisse der auf einem bestimmten Territorium lebenden Menschen befriedigt werden können – und zwar dauerhaft.[8] Dieser historischen, zeitlosen Komponente der domini collettivi wird das Gesetz ua dadurch gerecht, dass es auf die generationenübergreifende Zweckbindung verweist, die diese Nutzungsregime zu beachten haben und indem es die zu nutzenden Liegenschaften als Naturerbe sowie wirtschaftliches und kulturelles Erbe konzipiert.[9] In diesem Sinne erkennt das Gesetz die domini collettivi ausdrücklich als primäre Rechtsordnung einer ursprünglichen Gemeinschaft an.[10] In anderen Worten: die Republik erkennt an, dass es auf ihrem Territorium Rechtsordnungen gibt, die älter sind als ihre eigene.[11]

Bezogen auf Regionen mit Sonderstatut und autonomen Provinzen – und somit Südtirol – legt Art 2 Abs 5 G 168/2017 fest, dass die Prinzipien bzw Grundsätze[12] dieses Gesetzes auch in diesen Gebieten anzuwenden sind und zwar in Einklang mit seinen spezifischen legislativen Kompetenzen. Bereits das 1. Autonomiestatut hat dbzgl dem Land Südtirol die primäre Gesetzgebungsbefugnis zuerkannt, diese Nutzungsregime lokalbezogen zu regeln,[13] wodurch in Folge zwei spezifische Gesetze erlassen worden sind, um die in Südtirol bestehenden unterschiedlichen Nutzungsregime zu regeln.[14] Bei diesen Landesgesetzen handelt sich um das LG Nr 2 vom 7. Januar 1959, das die „Neuordnung der Agrargemeinschaften (Interessentschaften, Nachbarschaften usw) zur Ausübung der Rechte an den gemeinsamen Grundstücken" enthält, und um das LG Nr 15 vom 23. November 1960 über die „Sonderverwaltung der mit Gemeinnutzungsrechten belasteten Fraktionsgüter", das später durch das LG Nr 16 vom 12. Juni 1980 ersetzt worden ist. Es sei ergänzt, dass dieser Regelungsbereich als Teil der primären Gesetzgebungsbefugnis Südtirols „nur“ durch die Verfassung, die Grundsätze der staatlichen Rechtsordnung, die internationalen Verpflichtungen und die nationalen Interessen sowie die grundlegenden Bestimmungen der wirtschaftlich-sozialen Reformen der Republik beschränkt wird.[15] Es stellt sich somit die Frage, welche Prinzipien das G Nr 168/2017 meint und somit, welche Aspekte von G Nr 168/2017 auf die Südtiroler Realitäten Anwendung finden können.

Dieser Beitrag versucht hierauf eine *erste* Antwort zu geben und legt offen, ob und wo diese Prinzipien in den Agrargemeinschaften laut LG Nr 2/1959 erkennbar sind. Der Sammelbegriff „Agrargemeinschaft“ umfasst verschiedene Arten von Organisationen wie zB Interessentschaften, Nachbarschaften

[8] Vgl Art 1 Abs 1 Bst c, Art. 2 Abs 2 und 3 G 168/2017. Vgl auch P. Nervi in: Nössing/Hofer/Mayr, 39 ff.
[9] Vgl Art 1 Abs 1 Bst c G Nr 168/2017.
[10] Vgl Art 1 Abs 1 G Nr 168/2017.
[11] Vgl Miribung in: Mansel/Pfeiffer/Stürner/Jayme, 189.
[12] Das Amt für Sprachangelegenheiten des Landes Südtirol übersetzt den Begriff principi mit dem Begriff Grundsätze. Für die genaue Quellenangabe, siehe Fn 3.
[13] Vgl Art 11 Sonderstatut für Trentino-Tiroler Etschland (gem Verfasssungsgesetz Nr 5/1948), sog 1. Autonomiestatut. Vgl idZ auch Art 8 des 2. Autonomiestatuts.
[14] Vgl Frassoldati, Il maso chiuso e le associazioni agrario-forestali dell'Alto Adige nelle recente legislazione della Provincia di Bolzano (1963), 69; Silbernagl, Die Güter der Allmende in der Provinz Bozen zwischen den Grundsätzen der grossen wirtschaftlich-sozialen Reformen, wie sie in den Bestimmungen über die Allmenden enthalten sind, die mit Gesetz vom 20. November 2017, Nr 168, eingeführt worden sind, und das Sonderautonomiestatut für die Region Trentino-Südtirol, Archivio Scialoja-Bolla (2019) 119. Vgl auch Romagnoli, Regole dell'arco alpino, Nuovissimo digesto italiano (1986) 605, 613.
[15] Vgl Art 8 iVm Art 4 des 2. Autonomiestatuts (erlassen durch Dekret des Präsidenten der Republik vom 31. August 1972, Nr 670).

und ähnliche Vereinigungen. Die meisten dürften iVm mit einem (geschlossenen) Hof stehen, um dessen wirtschaftliche Möglichkeiten bzw dessen Ertragsfähigkeit zu verbessern.[16] Mittels dieser Gemeinschaften wird das Eigentum oder ein anderes dingliches Nutzungsrecht an den Gütern, die Gegenstand der Agrargemeinschaft sind, ausgeübt. Im Fall des dinglichen Nutzungsrechtes beziehen sich die Rechte auf Grundstücke, die der Ausübung der Gemeinnutzungsrechte iS des Art 1 des Staatsgesetzes Nr 1766/1927, auf welches nachfolgend noch kurz eingegangen wird, unterliegen; sie werden auch als Nutzungsinteressentschaft bezeichnet.[17] Die Nutzungsinteressentschaften werden von der hier vorgenommenen Analyse ausgeklammert.

Für die gegenständliche Untersuchung wird in einem ersten Schritt der Frage nachgegangen, welche Prinzipien bzw Grundsätze von Relevanz sein könnten. In Folge wird der Untersuchungsgegenstand „Agrargemeinschaften" genauer dargestellt. Hernach werden einige Punkte diskutiert, die sich aus dem Abgleich der staatsrechtlichen Prinzipien mit dem LG Nr 2/1959 ergeben.

2. Art 2 Abs 5 G Nr 168: Welche Prinzipien sind für Südtiroler Agrargemeinschaften anzuwenden?

Zunächst ist darauf hinzuweisen, dass mittels Prinzipien die Leitideen oder Grundwertungen einer Rechtsordnung festgehalten werden, die in den konkreten Regeln zum Ausdruck kommen.[18] Es geht somit um allgemeine Aussagen, mittels welcher die Werte an denen sich die Regeln einer Rechtsordnung zu orientieren haben, bestimmt werden. Rechtsprinzipien bzw Rechtsgrundsätze sind demnach rechtliche Vorgaben mit einem allgemeinen Inhalt, die auf den Schutz von Werten abzielen, die durch verschiedene Normen des Rechtssystems (als Ordnungssystem) ausgedrückt werden.[19] Sie werden auch beschrieben als der Geist des Ordnungssystems, der es zu dem macht, was es ist, der es zusammenhält und seine wesentlichen Werte definiert:[20] in anderen Worten, Rechtsprinzipen sind die systemtragenden Grundwertungen einer Rechtsordnung.[21]

[16] Vgl Pace, Usi civici, Associazioni agrarie e Comunioni familiari nella Regione Trentino-Alto Adige (1975), 116 und Romagnoli, 613. Vgl auch iVfGH Urteil Nr 87/1963.

[17] „In besonderer Weise muss festgehalten werden, dass jene Agrargemeinschaften, welche reine Nutzungsinteressentschaften sind, also kein Eigentumsrecht innehaben, wohl im Landesverzeichnis der Agrargemeinschaften, in der Regel aber nicht explizit im Grundbuch aufscheinen. Sie ‚betreten' das Grundbuch sozusagen ‚durchs Hintertürl' und scheinen in einer höchst eigentümlichen und nicht angemessen Form auf, nämlich durch die Anmerkung, dass der Grundbuchskörper den Bestimmungen des LG Nr 2 vom 7. Jänner 1959 unterliegt." Vgl Gius, „Fraktionen" und „Agrargemeinschaften" aus der Sicht des Grundbuches, in: Nössing/Hofer/Mayr (Hrsg), Gemeinschaftlicher Besitz (2016) 99, 101. Vgl auch Niederjaufner Nußbaumer, Verwaltung der Gemeinnutzungsgüter in Südtirol, in: Nössing/Hofer/Mayr (Hrsg), Gemeinschaftlicher Besitz (2016) 67, 75.

[18] Vgl F. Bydlinski/P. Bydlinski, Grundzüge der juristischen Methodenlehre, 2. Auflage (2012), 94; Bobbio, Prinicipi generali di diritto, in: Azara/Eula (Hrsg), Novissimo digesto italiano XIII (1966), 889. Allgemein Raiser, Grundlagen der Rechtssoziologie, 5. Auflage (2009), 196 ff und Reßing, Prinzipien als Normen mit zwei Geltungsebenen: Zur Unterscheidung von Regeln und Prinzipien, Archiv für Rechts- und Sozialphilosophie 2009, 28, 30 f.

[19] Vgl auch https://dizionari.simone.it/10/principi-giuridici (abgerufen am 13.05.2021).

[20] Vgl Crisafulli, Per la determinazione del concetto dei principi generali del diritto, Rivista internazionale di filosofia del diritto 1941, 157, 158.

[21] Vgl F. Bydlinski/P. Bydlinski, Grundzüge der juristischen Methodenlehre, 2. Auflage, 94.

Was nun sind die spezifischen/tragenden Werte dieses Gesetzes[22] und welche sind gem Art 2 Abs 5 auch für Südtirol von Bedeutung? Das Gesetz Nr 168/2017 hat dbzgl keine klaren Vorgaben, jedoch einige Orientierungspunkte die aufzeigen, welche wesentlichen Werte hinter den Regulierungsbestrebungen des italienischen Gesetzgebers stehen und auf welche sich die *domini collettivi* als primäre Rechtsordnungen stützen können bzw sollen. In diesem Zusammenhang hält Art 1 Abs 1 fest, dass diese wie auch immer benannten *domini collettivi* als primäre Rechtsordnung der ursprünglichen Gemeinschaften anerkannt werden und zwar in Durchführung der Artikel 2, 9, 42 Abs 2[23] und 43[24] der italienischen Verfassung (iVerf). Von Belang für die hier geführte Diskussion sind in erster Linie die Art 2 und 9, welche Teil der *principi fondamentali* (grundlegende Prinzipien/Rechtssätze) sind, wohingegen Art 42 und 43 in Teil 1 der Verfassung geführt werden, der den Rechten und Pflichten der Staatsbürger gewidmet ist: diese beiden Normen verweisen zum einen auf die soziale Aufgabe des Privateigentums und zum anderen auf die Möglichkeit, bestimmte durch eine Gemeinschaft ausgeführte unternehmerische Tätigkeiten dem Allgemeininteresse zu unterstellen.[25]

Während nun Art 2 iVerf[26] dazu dient, die Gemeinschaft der Nutzungsberechtigen (in anderen Worten: die Trägerschaft der *domini collettivi*) als solche zu schützen,[27] hilft Art 9 einen der zentralen Beweggründe zu verstehen, warum diese Materie regelungsbedürftig ist. Demnach fördert die Republik zum einen „die Entwicklung der Kultur und die wissenschaftliche und technische Forschung“ und schützt zum anderen „die Landschaft und den historischen und künstlerischen Reichtum der Nation.“[28] Ergänzend hierzu sei auf Art 2 G 168/2017 verwiesen der bestimmt, dass die Republik die gemeinschaftlich genutzten Güter nicht nur schützt, sondern auch aufwertet und zwar (a) als „für das Leben und die Entwicklung der örtlichen Gemeinschaften grundlegende Elemente“, (b) als „primäre Instrumente zur Gewährleistung des Erhalts und der Aufwertung des nationalen Naturerbes“, (c) als „feste Bestandteile des Umweltsystems“, (d) als „territoriale Grundlage historischer Institutionen zum Erhalt des nationalen Kultur- und Naturerbes“, (e) als „Ökolandschaftsstrukturen der nationalen Land-, Forst-

[22] Diese entsprechen mE den allgemeinen Prinzipien der (primären) Rechtsordnungen, welche das G 168/2017 als domini collettivi bezeichnet.

[23] Die Norm lautet wie folgt: „Das Privateigentum wird durch Gesetz anerkannt und gewährleistet, welches die Arten seines Erwerbes, seines Genusses und die Grenzen zu dem Zweck regelt, seine sozialen Aufgaben sicherzustellen und es allen zugänglich zu machen.“ Übersetzung laut http://www.regione.taa.it/normativa/costituzione.pdf (abgerufen am 12.05.2021).

[24] Die Norm lautet wie folgt: „Aus Gründen des Allgemeinwohles kann das Gesetz dem Staat, den öffentlichen Körperschaften oder Vereinigungen von Arbeitern oder Verbrauchern bestimmte Unternehmen oder Kategorien von Unternehmen im vorhinein vorbehalten oder im Enteignungswege gegen Entschädigung übertragen, wenn diese wesentliche öffentliche Dienste oder Energiequellen oder Monopolstellungen betreffen und ihrem Wesen nach ein überwiegendes Allgemeininteresse haben.“ Übersetzung laut http://www.regione.taa.it/normativa/costituzione.pdf (abgerufen am 12.05.2021).

[25] Vgl hierzu Germanò, Rivista di diritto agroalimentare 2018, 87.

[26] Die Norm lautet wie folgt: „Die Republik anerkennt und gewährleistet die unverletzlichen Rechte des Menschen, sei es als Einzelperson, sei es innerhalb der gesellschaftlichen Gebilde, in denen sich seine Persönlichkeit entfaltet, und fordert die Erfüllung der unabdingbaren Pflichten politischer, wirtschaftlicher und sozialer Verbundenheit.“ Übersetzung laut http://www.regione.taa.it/normativa/costituzione.pdf (abgerufen am 12.05.2021).

[27] Vgl Miribung in: Mansel/Pfeiffer/Stürner/Jayme, 189; Germanò, Rivista di diritto agroalimentare 2018, 83, 87 f.; Marinelli, Giustizia civile 2018, 1050.

[28] Dieser Zusammenhang ist aber nicht neu, sondern wurde bereits durch die Rechtssprechung klar herausgearbeitet. Vgl zB Urteil des Kassationsgerichtshofes Nr 19792 vom 28.09.2011. Für die Quellenangabe bezüglich der übersetzten verfassungsrechtlichen Vorgaben, vgl Fn 25.

und Weidelandschaft“ und (f) als „Quelle erneuerbarer Ressourcen, die zugunsten der anspruchsberechtigten örtlichen Gemeinschaften aufzuwerten und zu nutzen sind“.[29] ME werden hier die Folgen der Anerkennung als primäre Rechtsordnungen (der ursprünglichen Gemeinschaften) – im Lichte der Prinzipien bzw wesentlichen Werte dieses Gesetzes – aufgezeigt. In anderen Worten: der Schutz der Güter vollzieht sich durch deren verfassungskonforme Aufwertung. Die tragenden Wertungen, die dabei zur Anwendung kommen, zielen im Wesentlichen auf den Schutz von Natur und Umwelt und auf den Erhalt historisch gewachsenerer, kultureller Eigenheiten einer Gemeinschaft ab. Die Gemeinschaft und das Territorium/die Umwelt werden als Einheit betrachtet, die als primäre Rechtsordnung anerkannt wird und folgedessen fortwährend zu schützen ist. Ausdruck der Rechtsordnung ist die Fähigkeit der Gemeinschaft zur Selbstregelung[30] und die Fähigkeit, das wirtschaftliche und kulturelle Erbe zu verwalten.[31]

Andere Regeln, die Hinweise auf Prinzipien geben, sind im Gesetzestext mE nicht ersichtlich. Vielmehr werden mittels verschiedener Vorgaben allgemeine Eigenschaften und Kriterien der *domini collettivi* definiert oder in allgemeiner Weise Rechte und Rechtsansprüche der Nutzungsberechtigten festgehalten.[32] Diese zugegebenermaßen eher enge bzw vorsichtige Auslegung von Art 2 Abs 5 G Nr 168/2017 wird in Folge verwendet um zu diskutieren, ob – und wenn ja, wo – sich diese Prinzipien im Südtiroler LG Nr 2/1959 zeigen. Dabei ist zunächst auf die Frage einzugehen, worin die Besonderheiten der Südtiroler Agrargemeinschaften bestehen.

3. Entwicklung und Definition der Südtiroler Agrargemeinschaften

Für die Südtiroler Agrargemeinschaften von Bedeutung ist die Entwicklung der italienischen Vorgaben, wie sie spätestens nach dem 10.01.1920, also dem Tag der formellen Annexion Südtirols an das Königreich Italien, stattgefunden hat. Wesentlich ist der Erlass von G Nr 1766/1927, dessen spezifisches Ziel es war, alle Formen der sog *usi civici* (Gemeinschaftsnutzungsrechte oder bürgerliche Nutzungsrechte[33]) zu liquidieren, mit Ausnahme der Rechte auf die Nutzung von Wäldern und Weiden, wie in Art 11 G Nr 1766/1927 festgelegt, der zwischen Grundstücken, die für die landwirtschaftliche Produktion, und Grundstücken, die für die Nutzung als Wald oder Dauerweide geeignet sind, unterscheidet; nur letztere waren weiterhin der bürgerlichen Nutzung unterstellt.[34]

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[29] So übersetzt durch das Amt für Sprachangelegenheiten des Landes Südtirol. Vgl Fn 3.
[30] Vgl Art 1 Abs 1 Bst b G Nr 168/2017.
[31] Vgl Art 1 Abs 1 Bst c G Nr 168/2017.
[32] Vgl Art 1 Abs 1 Bst b, c und d sowie Abs 2, Art 2 Abs 2, 3 und 4 sowie Art 3 Abs 1, 2 und 3.
[33] Zur Terminologie vgl Sternbach, Die Neuregelung der Gemeinschafts-Nutzungs-rechte (usi civici), 5.
[34] Vgl Silbernagl, 122. Allgemein zu den usi civici und damit zusammenhängenden Diskussionen vgl ua Grossi, Assolutismo giuridico e proprietà collettive, Rivista di diritto agrario 1991, 247; Germanò, Sugli usi civici, Rivista di diritto agrario 2015, 131; Germanò, Manuale di diritto agrario, 158 ff; Germanò, La tutela della natura civica delle terre e degli usi civici quale interesse pubblico generale: il dictum della Corte costituzionale, Diritto e giurisprudenza agraria, alimentare e dell'ambiente 1993, 278; Grossi, I domini collettivi come realtà complessa nei rapporti con il diritto statuale, Rivista di diritto agrario 1997, 261; Grossi, Aspetti storico-giuridici degli usi civici, in: Accademia dei Georgofili (Hrsg), Quaderni dei Georgofili (2006) 21; P. Nervi (Hrsg), Il ruolo economico e sociale dei demani civici e delle proprietà collettive, 3. Auflage (1999); Costato, Gli usi civici e le proprietà collettive, in: Costato/Abrami (Hrsg), Trattato breve di diritto agrario italiano e comunitario, 3. Auflage (2003), 566; Marinelli,

Die Anwendung dieses Gesetzes bedeutete aus Südtiroler Sicht einen Perspektivwechsel bei der Betrachtung, wie derlei Nutzungsrechte in Anspruch genommen werden können. Wenn ursprünglich die Nutzungsrechte auf eine Hofstelle radiziert waren und die Rechtsinhaber die Nutzung aufgrund der tatsächlichen Größe des Hofes und damit der Bedürfnisse des Hofes als Ganzes zusammen mit seinen Bewohnern in Anspruch nehmen konnten, verlagerte die neue Gesetzgebung den Nutzungsanspruch auf die in einem spezifischen Gebiet ansässigen Bürger, wodurch die Gesamtheit der *uti cives* als ansässige Gemeinschaft zu Nutzungsberechtigen wurden.[35]

Jedoch wurde relativ schnell erkannt, dass der italienische Gesetzgeber mit einem solchen verallgemeinernden Ansatz der Vielfalt der sich auf dem italienischen Staatsgebiet befindlichen, historisch unterschiedlich entwickelten *domini collettivi* nicht gerecht werden konnte. Entsprechend kam es nach dem Zweiten Weltkrieg zu verschiedenen Gesetzesinitiativen, mit denen von diesem zentralistischen bzw vereinheitlichenden Ansatz abgerückt werden sollte.[36]

Südtirol konnte bereits ab 1948 aufgrund des ersten Autonomiestatuts „seine“ althergebrachten/tradionellen (kollektiven) Nutzungsrechte regeln. Bezugspunkt für diese Entwicklung waren einerseits die österreichische Rechtsordnung wie sie vor dem Anschluss Südtirols an Italiens gegolten hat und andererseits der Inhalt des genannten Staatsgesetzes Nr 1766/1927. Bei der Ausübung seiner Kompetenzen hat Südtirol zwischen „Agrargemeinschaften" – als Erbe der alten österreichischen Rechtsordnung[37] – und Sonderverwaltungen der mit Gemeinnutzungsrechten belasteten Fraktionsgüter unterschieden. Die auf den Fraktionsgütern lastenden Rechte stellen jedoch, im Unterschied zu den

Gli usi civici, 2. Auflage (2013); Palermo, I beni civici, la loro natura e la loro disciplina, Rivista di diritto civile 2006, 591 ff; Cerulli Irelli, Proprietà pubblica e diritti collettivi (1983); Cerulli Irelli, Organismi di gestione di proprietà comunitarie nella realtà italiana: profili pubblicistici, in: Martin (Hrsg), Comunità di villaggio e proprietà collettive in Italia e in Europa (1990), 193; Petronio, Rileggendo la legge usi civici, Rivista di diritto civile 2006, 616; Cagnazzo/Toschei/Tucci (Hrsg), Sanzioni amministrative in materia di usi civici (2013); Di Genio, Tutela e rilevanza costituzionale dei diritti di uso civico (2012); Lombardi, I profili giuridici delle terre civiche: beni del comune o beni della collettività, in: Nervi (Hrsg), Il ruolo economico e sociale dei demani civici e delle proprietà collettive (1999), 13; A. Nervi, Common Goods and the Role of the Contract, European Property Law Journal 2013, 342; Simoncini, Il rilievo costituzionale degli usi civici: „un altro modo" di regolare?, in: Accademia dei Georgofili (Hrsg), Quaderni dei Georgofili (2006), 37.

[35] Niederjaufner Nußbaumer in: Nössing/Hofer/Mayr, 73, bezeichnet das G Nr 1766/1927 passenderweise als „ein Gesetz mit einem fremden Geist.“ Vgl auch Pechlaner, Agrargemeinschaften und Gemeingüter in Südtirol, in: Grüne/Hübner/Siegl (Hrsg), Ländliche Gemeingüter (2016) 137, 137 f; Nössing, Geschichte der Dienstbarkeiten und Nuztungsrechte in Tirol, in: Nössing/Hofer/Mayr (Hrsg), Gemeinschaftlicher Besitz (2016), 13; Sternbach, Die Neuregelung der Gemeinschafts-Nutzungsrechte (usi civici), 9 ff.

[36] Weiterführend Petronio, Rivista di diritto civile 2006; Germanò, Usi civici, terre civiche, terre collettive: punti fermi per le future leggi regionali in materia, http://www.demaniocivico.it/public/public/705.pdf (abgefragt am 01.03.2021). Vgl auch Grossi, Un altro modo di possedere (2017), 385; Marinelli, Giustizia civile 2018, 1039 und allgemein Marinelli, Un'altra proprietà. Usi civici, assetti fondiari collettivi, beni comuni, 2. Auflage (2018).

[37] „Mit Landesgesetz Nr 2/1957 hat der Landesgesetzgeber diese auf altösterreichischem Recht beruhenden Bräuche und Traditionen sichern und regeln wollen und hat zur Erhaltung derselben Einschränkungen und Verbote zur Abtretung der Nutzungsrechte und zur Veräußerung und Teilung dieser Grundstücke vorgesehen.“ Vgl Urteil VwGH Bozen Nr 303/2019. Sternbach hält in diesem Zusammenhang fest, „dass im Etsch-, Eisack- und Pustertale und in den Seitentälern die Nutzungsrechte der Bürger wohl fast ausschließlich in der Form der sogenannten Gemeinde-, Fraktions- oder Interessentschafts-Gutsnutzungen vorkommen. Bürger-Nutzungsrechte an anderen Grundstücken, an Privatgründen dürften aus dem doppelten Grunde nicht zu den Häufigkeiten zählen, weil die Beschaffenheit unseres Landes im Verein mit der frühzeitigen Entwicklung eines freien Bauernstandes mit genügend eigenem Boden sofort nach der ständigen Besiedlung unserer Gebiete durch die Bajovaren in den der Völkerwanderung nachfolgenden Jahrhunderten keine eigentlichen Großgrundbesitz aufkommen ließ und

Nutzungsrechten von Teilhabern – in ihrer Rolle als Eigentümer – an Agrargemeinschaften, *iura in re aliena* dar und sind dadurch gekennzeichnet, dass die Inhaberschaft dieser Rechte einer bestimmten Gemeinschaft (die Mitglieder der Fraktion) zusteht, weshalb der Einzelne als Mitglied dieser Gemeinschaft zur Ausübung dieser Rechte auf Liegenschaften Dritter berechtigt ist.[38]

Weiters ist zu erwähnen, dass der Südtiroler Gesetzgeber den Agrargemeinschaften einen privatrechtlichen Charakter verliehen hat, indem er diese „Interessentschaften, Nachbarschaften und anderen Agrargemeinschaften und -vereinigungen, wie immer sie benannt und errichtet sind" als „Privatgemeinschaften von öffentlichem Interesse" bezeichnet, die zum einen den Bestimmungen gem LG Nr 2/1959 unterliegen, und zum anderen, sofern das LG nichts verfügt, den Bestimmungen des italienischen Zivilgesetzbuches (ZGB) unterstellt sind. Gem Art 2 LG 2/1959 gilt dies aber nicht für Gemeinschaftsverhältnisse, die nach der Errichtung des Grundbuches gebildet worden sind, und jene, die, auch wenn sie vorher gebildet wurden, nicht mehr als fünf Mitglieder umfassen. Für diese gelten ausschließlich die Regelungen des ZGB.

Wie aber ist nun eine als „Privatgemeinschaft von öffentlichem Interesse“ definierte Agrargemeinschaft aus der Perspektive des gesamtstaatlichen Rahmengesetzes und den darin enthaltenen Prinzipien einzuordnen?

4. Agrargemeinschaften und Regelungsregime der *domini collettivi*: ein Abgleich

Seit In-Kraft-Treten des LG Nr 2/1959 (und gem des darin enthaltenen Verweises auf die Bestimmungen des ZGB[39]) werden die Agrargemeinschafen als sog (Miteigentums-)Gemeinschaften gem Art 1100 ff ZGB anerkannt; die hieraus sich ergebenden Rechte und Pflichten ergänzen die Bestimmungen des LG, welche im Wesentlichen die Verwaltung und Veräußerung der Liegenschaften betreffen und im Wesentlichen Beschränkungen des Eigentumsrechtes vorsehen.

Gem ZGB entsteht eine solche Gemeinschaft, wenn das Eigentum oder ein anderes dingliches Recht an demselben Gut einer Vielzahl von Subjekten gehört.[40] Die Regelung einer Gemeinschaft ergibt sich

daher auch die Lehen keine Ausdehnung über ganze Talschaften oder mehrere Gemeinden nahmen, so dass die Bewohner Nutzung am Lehensgute zum Leben nötig gehabt hätten. Es bestand danach auch nicht einmal die Notwendigkeit, für den Bauern zur Aufrechterhaltung oder Förderung seiner Wirtschaft sich Nutzungen an fremden Boden mit oder ohne Zustimmung der Grundherren zu verschaffen. Unser freier Bauer hatte in den Gebieten, in welchen die Rechts- und Wirtschaftsentwicklung dem alten deutschen Rechte folgte, alles, was es für Familie und Wirtschaft, für Haus und Gut brauchte, auf seinem Hofe auf der Allmende, dem Gemeinde- oder Gemeingute“. Vgl Sternbach, Die Neuregelung der Gemeinschafts-Nutzungsrechte (usi civici), 9 f. Im Jahre 1963 hat das italienische Verfassungsgericht feststellt, dass das LG Nr 2/1959 teilweise vom Staatsgesetz Nr 1766/1927 über die Neuordnung der bürgerlichen Nutzungen ab weicht. Dies sei gerechtfertigt, zumal das G Nr 1766 zu einer künstlichen Vereinheitlichung führte, die hauptsächlich auf den Traditionen und der Gesetzgebung der südlichen Provinzen beruhte. VglVfGH Urteil Nr 87/1963.

[38] Vgl die Urteile des VwGH Bozen Nr 303/2019 und 304/2019.

[39] Vgl Art 1 LG Nr 2/1959.

[40] Entsprechend hält Art 1100 ZGB fest: „Wenn das Eigentum oder ein sonstiges dingliches Recht mehreren Personen gemeinsam zusteht und der Rechtstitel oder das Gesetz nichts anderes verfügt, sind die folgenden Vorschriften anzuwenden.“ Übersetzung laut http://www.provinz.bz.it/politik-recht-aussenbeziehungen/recht/downloads/ZGB_ita_deu_Okt2020.pdf (abgerufen am 12.05.2021).

aus dem Willen der Teilhaber oder aus dem Gesetz. Gibt es dagegen keine ausgehandelten Vereinbarungen oder besondere gesetzliche Bestimmungen,[41] so gelten für die Gemeinschaft die Regeln der Art 1100-1116 ZGB. Die kodifizierte Regelung sieht vor, dass jeder Teilnehmer an der Gemeinschaft Eigentümer eines bestimmten Anteils ist, der als gleichwertig mit dem der anderen angenommen wird. Unabhängig von der Höhe des Anteils steht es jedem Teilnehmer jedenfalls zu, das Gut zu nutzen, sofern er dessen Nutzung nicht verändert und die anderen Teilnehmer nicht daran hindert, dasselbe zu tun.[42]

Bei den Agrargemeinschaften bestimmen sich die Anteile gem Art 5 LG 2/1959 in erster Linie entsprechend den grundbücherlichen Eintragungen. Sollten diese fehlen, kann die gebietsmäßig zuständige Höfekommission versuchen eine Einigung zu erzielen. Bspw können, wenn die entsprechenden Nachweise erbracht werden, die Teilhaberanteile mittels der Ertragsfähigkeit eines Hofes bemessen werden (Haus- und Gutsbedarf)[43]. Wenn dies nicht gelingt, sind die einschlägigen Vorgaben aus dem ZGB zu beachten und die Anteile bestimmen sich, wie erwähnt, zu gleichen Teilen.[44]

IZm den Anteilen sind die Nutzungsmöglichkeiten der Teilhaber einer Agrargemeinschaft zu betrachten. Grundsätzlich werden die spezifischen Nutzungsmöglichkeiten durch die Satzung einer Agrargemeinschaft festgelegt.[45] Sollten derlei Vorgaben fehlen, kann die Vollversammlung hierüber bestimmen, dies darf aber nicht dazu führen, dass einem Teilhaber die konkrete Nutzung entzogen wird.[46] Die Rechtsprechung unterstreicht, dass in den meisten aller Fälle diese Nutzungsrechte (zumindest ursprünglich[47]) mit der Bewirtschaftung des geschlossenen Hofes verbunden und somit ein wichtiges

[41] Das Rechtsverhältnis der Gemeinschaft über ein oder mehrere Grundstücke kann entstehen: (a) durch einen Willensakt der Parteien (in diesem Fall liegt eine freiwillige Gemeinschaft vor: zB wenn ein Auto im Miteigentum gekauft wird); (b) durch das Gesetz (sog Zwangsgemeinschaft: dies geschieht bei Wohnungseigentum); (c) durch einen zufälligen Umstand (sog zufällige Gemeinschaft: zB diejenige, die bei einer Erbschaft eintritt). Weiterführend hierzu vgl *Eccher*, Gemeinschaftliches Eigentum, in: Eccher/Schurr/Christandl (Hrsg), Handbuch Italienisches Zivilrecht (2009), 418.

[42] Art 1102 ZGB.

[43] Betrachtet werden dabei die Mähflächen, die beweideten Flächen, die Belastung der Weideflächen zugunsten Dritter, die Höhenlage der Flächen, die Fruchtbarkeit des Bodesn usw. Vgl Urteil des VwGH Bozen Nr 55/2016.

[44] Vgl Urteil des VwGH Bozen Nr 55/2016. Im konkreten Fall wurden die Anteile als Folge der zivilrechtlichen Bestimmungen in einem ersten Schritt zwischen den betroffenenen Nachbarschaften (als Bezeichnung für eine Agrargemeinschaft) unterteilt; hernach wurden die so errechneten Quoten zwischen denTeilhabern jeder Nachbarschaft zu gleichen Teilen zugewiesen. Es war im gegebenen Fall nicht möglich, den Nachweis eines früher bestehenden, dokumentierten „Haus- und Gutsbedarfes“ zu erbringen, so dass die zuständige Höfekommission nicht gem Art 5 LG Nr 2/1959 entscheiden konnte. Vgl Urteil des VwGH Bozen Nr 55/2016.

[45] Vgl Art 8 LG Nr 2/1959. Ein wichtiges vom LG vorgesehenes Regelwerk ist die Satzung der Agrargemeinschaft, welches für die Agrargemeinschaften auf Grundlage der von der Landesverwaltung ausgearbeiteten Mustersatzung erstellt und in Folge mit Dekret des zuständigen Landesrates zu genehmigen ist. Siehe https://www.provinz.bz.it/land-forstwirtschaft/landwirtschaft/konsortien-gemeinschaften/agrargemeinschaften.asp (abgerufen am 30.04.2021).

[46] Vgl Urteil des VwGH Bozen Nr 55/2016. ZB ist es nicht möglich eine Alm zu verpachten und dadurch einem Teilhaber die Möglichkeit zu nehmen, die Alm mit den eigenen Tieren zu bestoßen. Eine indirekte Nutzung (zB durch den Erhalt eines Pachtzinses) ist der direkten Nuztung nicht gleichgestellt. Sollten die anderen Teilhaber keine Interesse an der Bestoßung haben, dann ruht ihr Anrecht auf Nutzung und wird nicht verwirkt. Vgl Urteil des VwGH Bozen Nr 55/2016 und Art 16/ter LG Nr 2/1959.

[47] Wenn nun festgestellt wird, dass ursprünglich die Agrargemeinschaften an den Hof radiziert waren, so wird in der Literatur darauf hingewiesen, dass der Anerbe als Repräsentant der Familie verstanden worden sei. Vgl Gabrielli, La tutela „costituzionale" dell'erede del maso chiuso, Giurisprudenza Italiana 2017, 1782, 1783. Im Zentrum der Diskussion standen demnach immer die Bedürfnisse der auf einem Hof lebenden bäuerlichen Famile und die

Instrument für die Bewirtschaftung des geschlossenen Hofes waren.[48] Dadurch wird ersichtlich, dass der Zweck der Agrargemeinschaften, ähnlich dem geschlossenen Hof,[49] der Schutz der kleinbäuerlichen Landwirtschaft sein muss.[50] Dies wiederum steht in Einklang mit Art 9 iVerf und nicht zuletzt mit Art 2 Abs 1 Bst b und d G Nr 168/2017, welche – wie erwähnt – die genutzten Güter zum einen als für das Leben und die Entwicklung der örtlichen Gemeinschaften grundlegende Elemente und zum anderen als territoriale Grundlage historischer Institutionen zum Erhalt des nationalen Kultur- und Naturerbes aufwerten. Hieraus ergibt sich, dass die Nutzungsmöglichkeiten zum einen im persönlichen Interesse eines Nutzungsberechtigten stehen und gleichzeitig, zum anderen, einem zumindest zweischichtigen gemeinsamen/kollektiven Interesse unterstellt sind: a) den allgemeinen und gemeinsamen Interessen der Gruppe der Nutzungsberechtigten und b) den Interessen des Staates die Kultur und Natur/die Umwelt zu schützen. Somit ergibt sich für das einzelne Mitglied eine komplexe Rechtslage, da es als individuelles Rechtssubjekt und gleichzeitig als Mitglied eines sozialen Gefüges zu betrachten ist; es agiert im persönlichen Interesse und im allgemeinen Interesse der Gemeinschaft.[51] Folgerichtig hält Art 2 der vom Land Südtirol ausgearbeiteten Mustersatzung für Agrargemeinschaften fest: „Die Agrargemeinschaft hat den Zweck, ihre Grundstücke und Vermögenschaften nach bestem Wissen und Gewissen den wirtschaftlichen Grundsätzen entsprechend zu bewirtschaften, die Verpflichtungen gegenüber Dritten zu erfüllen und die gerechten Ansprüche der Mitglieder zu befriedigen, sowie das Gemeinschaftseigentum zu erhalten und im Sinne der bestehenden Forstgesetze zu verbessern.“[52]

Hinsichtlich der Nutzungsmöglichkeiten von Agrargemeinschaften hat der Staatsrat im Jahre 1992 präzisiert,[53] dass diese den ausschließlichen Zweck verfolgen, ihren Mitgliedern die Nutzung der realen Rechte, die auf den Grundstücken der Agrargemeinschaften lasten, zu ermöglichen. Dies führt dazu, dass Agrargemeinschaften keine unternehmerischen Ziele verfolgen dürfen und nur auf die Erhaltung der Sache, die durch die Mitglieder genutzt werden soll, ausgerichtet sind. Dies ist in Einklang mit dem bereits erwähnten Kriterium des „Haus- und Gutsbedarfes“ und auch sinnvoll, wie ein Vergleich mit Agrargemeinschaften der Region Venetien, den sog *Regole*[54], zeigt: diese dürfen eine unternehmeri-

Nutzungsrechte, welche mittlels einer Agrargemeinschaft verwaltet werden, hatten diesen Bedürfnissen zu genügen.

[48] Vgl VfGH Urteil Nr 87/1963. Vgl auch Frassoldati, Il maso chiuso e le associazioni agrario-forestali dell'Alto Adige nelle recente legislazione della Provincia di Bolzano, 64.

[49] Vgl Urteil des Staatsrats Nr 3021/2020. Im Urteil wird darauf verwiesen, dass die Bestimmungen über geschlossene Höfe (LG 17/2001) im öffentlichen Interesse stehen und den Bedürfnissen der Landwirtschaft gerecht werden sollen, indem sie kleine und mittlere Familienbetriebe schützen. Die Bestimmungen des Höfegesetzes sind „Bestimmungen öffentlichen Rechts" (vgl Art 37 LG 17/2001) und damit zwingend.

[50] „Aus einer systematischen Auslegung der Bestimmungen des Landesgesetzes Nr. 2/1957 geht hervor, dass das öffentliche Interesse, welches den Erhalt und den Fortbestand dieser auf altösterreichischen Recht stammenden Bräuche begründet, darin besteht, dass diese Almflächen nicht durch Veräußerungen oder Teilungen zerstückelt werden und somit weiterhin als ein einheitliches Gut den verschiedenen geschlossenen Höfen, in deren Eigentum sie sich befinden, zur Nutzung zur Verfügung stehen.“ Vgl Urteil des VwGH Bozen Nr 303/2019.

[51] P. Nervi in: Nössing/Hofer/Mayr, 44.

[52] Vgl FN 44.

[53] Vgl Staatsrat Urteil Nr 441/1992.

[54] Der deutsche Begriff hierfür ist Riegel. Vgl. das dreisprachige Statut der Gemeinschaft der Dorfgenossen der Talgemeinde Fleims http://www.mcfiemme.eu/documenti/statuto-trilingue-2020.pdf (abgerufen am 29.04.2021).

sche Tätigkeit ausüben und bedienen sich dabei, in Einklang mit Art 1 Abs 2 G Nr 168/2017, einer Körperschaft mit privater Rechtspersönlichkeit um ua sicherzustellen,[55] dass die Mitglieder der *Regola* (die sog *Regolieri*) nicht mit ihrem privaten Vermögen für Risiken, die aus der unternehmerischen Tätigkeit stammen, haften.[56] Diese durch Staatsgesetz zugewiesene private Rechtspersönlichkeit ist von der Klassifizierung einer Agrargemeinschaft als Privatgemeinschaft gem Art 1 LG 2/1959 zu unterscheiden und kann mE nicht in Bezug zu einem Prinzip gesetzt werden, welches für die Südtiroler Besonderheiten gem Art 2 Abs 5 G 168/2017 anzuwenden wäre.

In diesem Zusammenhang ist zu ergänzen, dass die gemeinschaftlichen Güter, die durch eine Körperschaft gem G Nr 168/2017 verwaltet[57] werden, unveräußerbar, nicht ersitzbar und unteilbar sind. Hierbei handelt es sich um Zweckbindungen, die typischerweise auf öffentlichen Gütern (Demanialgütern) lasten.[58] Zudem lastet auf diesen Gütern eine fortwährende Zweckbestimmung für die Land-, Forst- und Weidewirtschaft.[59] Zwar können diese Vorgaben nicht als Prinzip bzw Grundsatz von G Nr 168/2017 verstanden werden, weswegen sie für die Südtiroler Agrargemeinschaften nicht von Bedeutung sind,[60] sehr wohl aber zeigt eine detailliertere Betrachtung, dass das LG Nr 2/1959 Vorgaben enthält, die eine ähnliche fortwährende/dauerhafte Nutzungswidmung erzwingen.

Wie bereits erwähnt, ist das Nutzungsregime der Agrargemeinschaften beschränkt und spezifisch und nimmt bzw nahm ursprünglich gegenüber dem geschlossenen Hof eine, wenn man so will, dienende Haltung ein. Wenn man diesen Gedanken zu Ende führt, kommt man zum Schluss, dass die Flächen der Agrargemeinschaften, die eine dienende Funktion gegenüber dem geschlossenen Hof ein-

[55] Vgl Art 3 Abs 1 Bst a G Nr 97/1994, Art 2 G der Region Venetien, Nr 26/1996. Zu den Regole vgl Miribung, Cooperative di lavoro e Regole Cadorine: somiglianze e differenze in un confronto, Diritto agroalimentare 2020, 105.

[56] Vgl. weiterführend Miribung, Diritto agroalimentare 2020, insb 138 ff.

[57] Die Körperschaft verwaltet diese Güter, ist aber nicht deren Eigentümer.

[58] Vgl Miribung in: Mansel/Pfeiffer/Stürner/Jayme, 191. Aufgrund dieser Zweckbindungen ist in diesem Zusammenhang von einem Eigentumsregime sui generis zu sprechen, welches von der verfassungsrechtlichen Unterteilung in privates und öffentliches Eigentum (vgl Art 42 iVerf) zu unterscheiden ist. Hierzu ausführlich Germanò, Rivista di diritto agrario 2015. Diese Zweckbindungen lasten hingegen auf den sog Fraktions-/Gemeinnutzungsgütern. Dbzgl wurde festgestellt: „Nutzungsrechte unterliegen einer besonderen Regelung (Art 1 Gesetz Nr 1766/1927) nach Sondergesetzen, welche gegenüber den Bestimmungen des Zivilgesetzbuches Vorrang haben, dh dass sie nicht mit den üblichen Realnutzungsrechten, wie Fruchtgenuss, gleichzusetzen sind. Diese Liegenschaften unterliegen der unaufhörlichen Zweckbestimmung für die Ausübung der bürgerlichen Nutzungsrechte. Sie sind unveräußerlich, unteilbar und Veräußerungen oder Veränderungen der Nutzung bedürfen besonderer Verfahren, welche nicht dem grundbücherlichen Eigentümer, sondern dem Kommissar für die Bürgerlichen Nutzungsrechte bzw in der Autonomen Provinz Bozen dem zuständigen Landesrat anheimgestellt sind.“ Vgl VwGH Bozen Urteil Nr 76/2011.

[59] Diese Bindungen lasten auf den gemeinschafltichen Gütern gem Art 3 Abs 1 G 168/2017. Die darin enthaltene Aufzählung muss aber nicht abschließend sein: in der Dokumentation der italienischen Abgeordnetenkammer für die Begutachtung von G 168/2017 wird nämlich angeführt, dass Abs 1 in particolare, also insb – und somit nicht ausschließlich – die in diesem Absatz aufgelisteten Güter als gemeinschaftlich qualifiziert, auf welchen wiederum die Bindungen gem Abs 3 lasten (vgl http://documenti.camera.it/leg17/dossier/pdf/AG0465.pdf, abgerufen am 13.05.2021); dies hat aber nicht zur Folge, dass die Südtiroler Agrargemeinschaften hierunter subsumiert werden können (mit der Konsequenz, dass die in Art 3 Abs 3 angeführten Bindungen zwingend zu beachten wären), da – wie erwähnt – die primäre Gesetzgebungsbefugnis betreffend Agrargemeinschaften bei Südtirol liegt und das hier betrachtete Staatsgesetz nur hinsichtlich seiner darin enthaltenen Prinzipien für Südtirol von Relevanz ist.

[60] AM Silbernagl, 131 ff.

nehmen und somit an dessen Bestehen gebunden sein sollten, analog zum aus dem Südtiroler Höfegesetz resultierenden Flächenschutz einem ähnlichen dauerhaften Schutz unterstellt sein müssten, der nur in seltensten Fällen aufgehoben werden kann.[61] Das LG Nr 2/1959 enthält hierfür auch einige sehr klare Hinweise. So wird bestimmt, dass die Veräußerung von einzelnen Grundstücken des gemeinsamen Gutes ausdrücklich durch die Landesregierung genehmigt werden muss. Zudem gilt, dass der Obmann der Gemeinschaft zur Unterzeichnung der dbzgl Akte nur dann ermächtigt werden kann, wenn keine öffentlichen Interessen entgegenstehen[62] und dadurch das Interesse der Teilhaber nicht beeinträchtigt wird.[63]

Anhand dieser Vorgaben und in Einklang mit Art 1 LG 2/1959, welcher Agrargemeinschaften als „Privatgemeinschaften von öffentlichem Interesse“ bezeichnet, wird deutlich, dass die Besonderheit der Agrargemeinschaft in der Erfüllung eines öffentlichen Interesses besteht. Woraus aber ergibt sich dessen Inhalt? Es handelt sich um das öffentliche Interesse diese Gemeinschaften zu erhalten und deren Fortbestand und die damit von ihr ausgeübte Funktion zu sichern. Es ist dieses öffentliche Interesse, welches die Existenzberechtigung der Agrargemeinschaften begründet.[64] Um dies zu gewährleisten, weist das LG der Landesverwaltung umfangreiche Entscheidungs- und Kontrollfunktionen zu. Diese reichen von der Rechtsmäßigkeits- und Sachkontrolle der Satzungen,[65] über die Entscheidungen von

[61] Das LG 17/2001 (Südtiroler Höfegesetz, HG) sieht für die hier geführte Diskussion folgendes vor: Eine Übertragung des geschlossenen Hofes unter Lebenden ist idR zulässig, wenn der Hof in seiner Gesamtheit so übertragen wird, dass die in Art 2 HG festgelegte Produktions- und Ertragsfähigkeit nicht beeinträchtigt wird. Diese strenge Regel der Unteilbarkeit des Hofes wird jedoch durch die Möglichkeit der Abtrennung abgeschwächt. Wenn das am Hof erwirtschaftete durchschnittliche Jahreseinkommen die Obergrenze des dreifachen Einkommens, das für den angemessenen Lebensunterhalt von mindestens vier Personen ausreicht, überschreitet, kann die örtliche Höfekommission die Erlaubnis erteilen, Teile des betroffenen geschlossenen Hofes abzutrennen. Des weiteren besteht die Möglichkeit bei der örtlichen Höfekommission eine Bestandsänderung durch Abtrennung zu beantragen, wenn dem Hof bei Abtrennung von Teilen desselben gleichzeitig ein anderes für die Bewirtschaftung gleichwertiges Grundstück eingegliedert wird (vgl Art 5 HG). Ausnahmen von diesem Erfordernis der Eingliederung können nur aus schwerwiegenden wirtschaftlichen, sozialen oder landwirtschaftlichen Gründen gewährt werden; dabei muss aber gewährleistet werden, dass die Abtrennung nicht zu einer erheblichen Verminderung des Gesamtertrages des geschlossenen Hofes führt. Von der letztgenannten Bedingung kann abgesehen werden, wenn die Abtrennung von Grundstücken die einzige Möglichkeit ist, damit eine bäuerliche Familie den geschlossenen Hof erhalten kann und vorausgesetzt, dass der gem Art 2 geforderte Jahresdurchschnittsertrag gewährleistet werden kann. Ausdrücklich bestimmt Art 6 Abs 3 HG, dass die abgetretenen Teile zu anderen Höfen zugeschrieben werden müssen (nur in begründeten Ausnahmefällen kann davon abgesehen werden), wodurch sich ein Schutz ergibt, der sich über viele landwirtschaftliche Flächen Südtirols erstreckt. Erwähnt sei zudem, dass die örtliche Höfekommission den Status als geschlossener Hof auf Antrag des Eigentümers oder jeder daran interessierten Person aufheben kann, wenn das am Hof erzielte Einkommen eine nachhaltige Verringerung erfährt, so dass nicht einmal mehr die Hälfte des in Art 2 HG geforderten Jahresdurchschnittsertrages gewährleistet ist. Der einzige Fall, in dem eine Abtrennung erlaubt werden kann und bei der die verbleibende Ertragskraft des Hofes nicht berücksichtigt wird, ist die Abtrennung im öffentlichen Interesse (vgl Art 9 HG).

[62] Dies dürfte zumindest immer dann zutreffen, wenn die Fläche des zu veräußernden Grundstücks so gering ist, dass eine Beeinträchtigung der Ausübung des Nutzungsrechtes ausgeschlossen werden kann. Vgl Silbernagl, 127.

[63] Vgl Art 16 Abs 1 und 2 LG Nr 2/1959. Einen anderen Hinweise, dass das LG auf die dauerhafte Erhaltung der Agrargemeinschaften ausgerichtet ist, findet man in Art 16 Abs 1, der festlegt, dass der Gemeinschaft und nach ihr den Teilhabern die Selbstbebauer sind, bei Veräußerung von Anteilen des gemeinschaftlichen Gutes das Vorkaufsrecht zusteht. Art 16/ter LG 271959 wiederum hält fest, dass das Recht bei Nichtnutzung nicht verwirkt wird, sondern ruht.

[64] Vgl VwGH Bozen Urteil Nr 303/2019.

[65] Vgl Art 8 LG Nr 2/1959.

Beschwerden gegen die Beschlüsse der Vollversammlung,[66] bis hin zu direkten Verwaltungstätigkeiten für die Gemeinschaft, um deren Funktionieren zu gewährleisten.[67] Diese Regeln dienen der fortwährenden Existenzsicherung von Agrargemeinschaften und dies in Einklang mit den Prinzipien laut G Nr 168/2017, welches – wie aufgezeigt – nicht nur die historische Entwicklung von solchen Gemeinschaften schützt, sondern auch darauf abzielt, die genutzten Güter als Ökolandschaftsstrukturen und Quellen erneuerbarer Ressourcen zu schützen.[68] Dabei muss nicht im Vordergrund stehen, dass die genutzten Flächen weder teilbar, noch veräußerbar oder ersitzbar sind, sondern in erster Linie, dass die Nutzung der Flächen für eine Gruppe von (geschlossenen) Höfen gesichert bleibt – und zwar losgelöst vom Eigentümer des Hofes.[69]

5. Ausblick

In diesem Beitrag wurden die Südtiroler Agrargemeinschaft aus Sicht des italienischen Staatsgesetzes Nr 168/2017 kurz diskutiert. Ausgehend von den Prinzipien der staatlichen Norm wurde festgestellt, dass die Südtiroler Agrargemeinschaften insb aufgrund ihres Beitrages zum Landschafts- und Kulturschutz den Grundgedanken (Prinzipien) des Staatsgesetzes entsprechen und dass die damit verbundenen Nutzungsrechte in Einklang mit den Interessen einzelner aber auch der Gemeinschaft (der Nutzungsberechtigten und des Staates) ausgeübt werden müssen.

Im Rahmen der Diskussion wurde allgemein angenommen, dass die Agrargemeinschaften mit geschlossenen Höfen verbunden seien. Dem muss aber nicht so sein,[70]und es wäre wohl eine genauere rechtshistorische und rechtstatsächliche Überprüfung und Bewertung notwendig, um Aufschluss über die tatsächliche Funktionsweise von Agrargemeinschaften zu erhalten. Ähnlich weist *Gius* auf derlei Notwendigkeiten hin, wenn er folgendes feststellt: „Die grundbücherliche Realität, bestehend aus historisch gewachsenen Gegebenheiten, die auch entstanden sind durch verschiedene, wohl gut gemeinte, aber nicht immer dogmatisch einwandfrei gesetzliche Regelungen, erscheint jedoch mehr denn je komplex und verworren. Es gibt ‚Fraktionen', deren Mitglieder mehrere Gemeinden sind, und es gibt ‚Agrargemeinschaften', deren Mitglieder mehrere ‚Fraktionen' sind. Schließlich gibt es nicht wenige Rechtsgebilde, bei denen eine eindeutige Identifizierung der Rechtsnatur schwerfällt."[71]

Vertieft werden sollte auch das Kriterium der Unteilbarkeit des geschlossenen Hofes iZm den Agrargemeinschaften: welche Bedeutung kann diese Vorgabe für eine dem geschlossenen Hof „dienende" Agrargemeinschaft haben? Bezogen (ua) auf die Unteilbarkeit als Merkmal der *domini collettivi* kritisiert *Silbernagl*, dass „mit Inkrafttreten des Landesgesetzes Nr 2/1959 … eine Umwälzung – wenn nicht

[66] Vgl Art 12 Abs 5 LG Nr 271959.

[67] Vgl Art 15 LG Nr 2/1959. Jene Maßnahmen, welche der Verwirklichung des öffentlichen Interesses dienen bzw dieses Interesse beeinträchtigen können, unterliegen der Rechtmäßigkeitskontrolle der Verwaltungsgerichtsbarkeit, weil dieses öffentliche Interesse auch die Existenzberechtigung dieser Gemeinschaften begründet. Vgl VwGH Bozen Urteil Nr 303/2019.

[68] Vgl in diesem Zusammenhang auch Art. 2 Mustersatzung, der festhält, dass die Agrargemeinschaft ua den Zweck hat, „das Gemeinschaftseigentum zu erhalten und im Sinne der bestehenden Forstgesetze zu verbessern." Für die Quellenangabe siehe FN 44.

[69] Im Unterschied zu den Regole in Venetien: dort ist das Nutzungsrecht grundsätzlich an eine Familie (sog Feuerstelle einer Familie, fuoco famiglia) gebunden und das Eigentum folgedessen nicht ersitzbar. Hierzu ausführlich Miribung, Diritto agroalimentare 2020.

[70] Vgl VfGH Urteil Nr 87/1963; ähnlich VwGH Bozen Urteil Nr 303/2019.

[71] Gius in: Nössing/Hofer/Mayr, 105.

gar eine Verdrehung – in Bezug auf die juridische Natur jener Güter, welche zu den historischen ‚Agrargemeinschaften' gehören" erfolgt sei. Er unterstreicht, dass die Agrargemeinschaften „ausschließlich Gemeinschaftscharakter im Sinne der Allmende als Rechtsbegriff, wie er vom österreichischen Recht gebraucht wurde" hatten.[72] Auch diese Aussage wäre genauer zu überprüfen, nicht zuletzt vor dem Hintergrund des langjährigen Streits über die Agrargemeinschaften im Bundesland Tirol.[73]

[72] Vgl Silbernagl, 124. AM Frassoldati, Il maso chiuso e le associazioni agrario-forestali dell'Alto Adige nelle recente legislazione della Provincia di Bolzano, 68.

[73] Für einen kurzen Überblick vgl Miribung, Le controversie „infinite" sulle associazioni agrarie nel Bundesland Tirol: qualche annotazione critica, in: Sirsi/Di Lauro/Cristiani (Hrsg), Agricoltura e Costituzione (2019) 261 (für weitere Quellenangaben siehe FN 1 des genannten Beitrags).

Conference report – Legal and economic perspectives of energy cooperatives' development in Poland and other countries

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Abstract

Aim of the international conference on-line Legal and Economic Perspectives of Energy Cooperatives' Development in Poland and Other Countries was an attempt to determine, whether the legal provisions that are in force in different countries encourage citizens to establish energy cooperatives and to conduct economic activity in this legal form. 27 speakers took part in the conference. They represented 18 academic centers and 11 countries. Issues raised in presentations during the conference were a part of the global discussion on the transformation of energy systems in order to stop climate change. Speakers also highlighted how local communities benefit from the common use of the renewable energy installations, owned by citizens. The most widely discussed topic was a legal framework for conducting economic activity by energy cooperatives in different states. Presentations also included an economic analysis of the factors for the development of energy cooperatives at the local and national level.

L'objectif de la conférence internationale en ligne Perspectives juridiques et économiques du développement des coopératives d'énergie en Pologne et dans d'autres pays était de déterminer si les dispositions légales en vigueur dans différents pays encouragent les citoyens à créer des coopératives d'énergie et à mener une activité économique sous cette forme juridique. 27 intervenants ont pris part à la conférence. Ils représentaient 18 centres universitaires et 11 pays. Les questions soulevées dans les présentations lors de la conférence s'inscrivaient dans le cadre du débat mondial sur la transformation des systèmes énergétiques afin d'enrayer le changement climatique. Les intervenants ont également souligné comment les communautés locales bénéficient de l'utilisation commune des installations d'énergie renouvelable, propriété des citoyens. Le sujet le plus discuté a été le cadre juridique pour la conduite d'une activité économique par les coopératives d'énergie dans différents États. Les présentations comprenaient également une analyse économique des facteurs de développement des coopératives d'énergie au niveau local et national.

Conference report

The international conference on-line *Legal and Economic Perspectives of Energy Cooperatives' Development in Poland and Other Countries* took place on 27th May 2021 in Faculty of Law and Administration, Adam Mickiewicz University in Poznań. Due to the restrictions caused by COVID-19 epidemic, the conference was a virtual meeting. The audience had access to the proceedings through a YouTube online stream. All sessions were held in English.

The conference was organised by members of the Department of Agricultural, Food and Environmental Protection Law and of the Department of Public Economic Law. Prof. UAM dr hab. Aneta Suchoń was a Chair of the Organizing. Prof. Krzysztof Zmijewski Association for Efficiency supported the

conference as its Partner. Organisational works were consulted with the International Cooperative Alliance. Also, the event was organized under the Honorary Patronage of the Cooperative Europe and the European Federation of Citizen Energy Cooperatives (REScoop).

The conference was officially opened by AMU Deputy Rector prof. dr. hab. Zbyszko Melosik and by the Dean of Faculty of Law and Administration, AMU prof. dr. hab. Tomasz Nieborak. Opening speeches were also delivered by: Mr. Dirk Vansintjan, the President of REScoop, prof. dr hab. Roman Budzinowski, the Chief of the Department of Agricultural, Food and Environmental Protection Law and the President of the Polish Association of Agrarian Lawyers, Prof. Dr. Hagen Henrÿ, Chairman of the International Cooperative Alliance Co-operative Law Committee, Dr. Andreas Wieg, Head of the German Office for Energy Cooperatives (DGRV) and Mr. Rafał Czaja, President of Prof. Żmijewski Association for Efficiency.

The aim of the conference was an attempt to determine, whether the legal provisions that are in force in particular countries encourage the citizens to establish energy cooperatives and to conduct economic activity in this legal form. The speakers also tried to determine, what factors – mainly legal and economical – influence the development of energy cooperatives.

The event was divided into three panels. First of them was moderated by Prof. Dr. Roland Norer, representing the University of Lucerne. The first part of the conference was opened by prof. UAM dr hab. Aneta Suchoń (Adam Mickiewicz University in Poznań) with the presentation *Legal, economic and environmental aspects of functioning of energy cooperatives – introductory consideration*. The speech included describing the key terms for the conference subject (i.a. energy cooperative, renewable energy sources, energy security) and the presentation of the cooperative sector in Poland. Then Prof. Dr. Thomas Schomerus from Leuphana Universität Lüneburg gave thoughts on subject – *Renewable Energy Requirements in the Building Sector - advantage for energy cooperatives?* Further, prof. dr hab. Marzena Czarnecka (University of Economics in Katowice) has brought the topic – *Citizen energy communities in the scope of Polish and European regulations*. Prof. UJ. dr hab. Tomasz Długosz (Jagiellonian University) has answered the following question – *Creating a regulatory framework for energy communities in Poland - some legal challenges?*

Subsequently Dr. Andreas Wieg (Philipps-University Marburg) addressed the audience with the consideration – *The role of energy cooperatives in the German energy transition*. The representative of the REScoop – Mrs. Sara Tachelet presented the subject: *Energy Democracy: European citizens taking ownership of the energy transition*. After that prof. KUL dr hab. Piotr Zakrzewski (The John Paul II Catholic University of Lublin) continued with the consideration about the Polish legal system, with the speech - *Energy cooperative as a new sub-type of cooperative in Polish cooperative law*. The first panel was closed by dr. hab. Maciej M. Sokołowski (University of Warsaw, University of Tokyo) with deliberation – *Cogeneration and energy communities: cogenatives and cogenmunities (co-CHPs)*. Dr hab. Maciej M. Sokołowski had also undertaken the role of the moderator of the second panel. In the discussion that took place after the presentations in the first panel, the main subject were the differences between the Polish regulation of energy cooperatives and the legal provisions in force in other countries – mainly in Germany. The speakers have also expressed their views on the challenges that energy communities in Europe will have to face.

The first speaker in the second panel was Dr. Martin Lowery, the U.S. Representative to the board of the International Cooperative Alliance, with the speech: *The historic success and future of electric co-operatives in the United States*. Then, Dr. Chiara Candelise (Imperial College London) presented report – *Status and evolution of the community energy sector in Italy*. Subsequently, Dr. Hui-Tzu Huang, affiliated with National Taiwan University gave the speech titled: *Public Participation in Renewable Energy: Diversified Business Models of Citizens' Power Plants in Taiwan.* After that, Dr. Lars Holstenkamp (Leuphana Universität Lüneburg) delivered a presentation: *The cooperative model in Germany's energy sector - remarks on its evolution, diffusion and success criteria*. Research team, created by Prof. Dr. Valeria Jana Schwanitz, Prof. Dr. August Wierling (Western Norwegian University of Applied Sciences), dr .Wit Hubert and PhD Student Tadeusz Rudek (Uniwersytet Jagielloński), introduced a case study to the audience: *The development of citizen-led energy projects in former Eastern Bloc countries - The case of Poland*. The last speech in the second panel was delivered by Dr. Ifigeneia Douvitsa, (Hellenic Open University): *The legal framework of energy cooperatives in Greece*. In the discussion, which followed the presentations, speakers have assessed the legal provisions regulations that are in force in the national legal systems and their changes over the years.

The third session was moderated by prof. UAM dr hab. Katarzyna Leśkiewicz. Last part of the conference was started by an individual report of Dr. August Wierling – *Energy cooperatives in Denmark - A statistical exploration*. After that dr Grzegorz Maśloch (SGH Warsaw School of Economics, Prof. Krzysztof Żmijewski Association for Energy Efficiency) delivered a speech entitled *Energy Cooperatives as an instrument towards the energy transition in Poland - social, economic and organizational conditions*. Another research team, created by prof. dr. hab. Jacek Dach, Dorota Kula (Poznań University of Life Sciences) and Ewa Woźniak (Dynamic Biogas), presented the analysis on the subject: *The exploitation of innovative biogas plant by group of farmers.* Dr. Aleksandra Łakomiak representing Wroclaw University of Economics and Business shared the deliberation entitled: *Civic energy in an orchard farm - prosumer and energy cooperative - a new approach to electricity generation*.

Subsequently Prof. Dr. Antonios Maniatis (University of Patras) presented a speech: *Energy CO-OP icon*, in which he considered the importance of regulation of the energy cooperatives for the development of these entities. In the next presentation, Prof. Dr. Minko Georgiev and Prof. Dr. Boryana Ivanova (Agricultural University – Plovdiv) gave remarks on the topic: *Cooperatives in Bulgaria - integration and circular economy*. After that PhD Student Tomasz Marzec (Adam Mickiewicz University in Poznań) presented a paper: *Legal determinants of energy cooperatives' development in Poland*. The last speech was delivered by PhD Student Koldo Martina Sevillano (University of Vigo), on *Energy co-operatives and social vulnerability*. After the presentations Chair of the Organizing Committee prof. UAM dr hab. Aneta Suchoń made closing remakrs in order to summarise the proceedings and officially closed the conference.

As a result of the discussion, the speakers have formulated a joint conclusion, according to which energetics – in particular based on renewable energy sources - is an area of activity that opens up great opportunities for the modern cooperative sector. The remarks made during the conference speeches also revealed the image of energy cooperative movement in Europe as a phenomenon diversified in terms of territories. According to the presented papers - energy cooperatives play an important role in the energy transformation in Western European countries such as, for example, Germany. As for the countries of Central and Eastern Europe and the Balkans, only individual energy cooperatives operate there. Presented papers proved how important is favourable institutional and legal environment

for the dynamic development of community energy, as well as the historical development of cooperative movement in different countries. Reports on the social importance of energy cooperatives also showed how important can be the impact of these organizations on local communities. Cooperative initiatives in the area of renewable energy sources allow entities involved in them to obtain financial benefits and also strengthen the ties of the local communities.

In conclusion – 27 speakers took part in the conference. They represented 18 academic centers and 11 countries. The issues raised in the presentations are a part of the global discussion on the transformation of energy systems in order to stop climate change. The speakers also highlighted how many benefits local communities have from the common use of the renewable energy installations, owned by citizens. The most widely discussed topic was a legal framework for conducting economic activity by energy cooperatives in particular states. The presentations also included an economic analysis of the factors for the development of energy cooperatives at the local and national level. The presented papers will be published in writing as part of the post-conference publication. The profiles of the speakers and other information are available on the conference website.[1]

[1] Online International Conference: Legal and Economic Prespectives of Energy Cooperatives' Development, source: www.cooperatives.home.amu.edu.pl.


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