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## **LEGAL FRAMEWORK OF ENVIRONMENTAL LAW FOR AGRICULTURAL PRODUCTION IN POLAND**

In Poland, both in the interwar period, and throughout the communist period, the government policy relating to agriculture marked as the primary goal ensuring the public food security in terms of quantity. The first legislation relating to environmental protection in agricultural activities appeared in the seventies and addressed the problem of prevention of changing agricultural land for non-agricultural purposes, preventing of lowering their fertility and restoring value in use to agricultural land, degraded as a result of non-agricultural activities. After accession to the EU the following served to promote environmentally friendly farming practices: The Code of Good Agricultural Practice (2004) and the rules of the Common Good Agricultural Practice, introduced due to the dependence of financial support in the framework of several measures covered by the RDP for the fulfillment of environmental requirements. These standards related primarily to the requirements of the rational management of fertilizers, plant protection products, management of grasslands, water and soil conservation, rational use of wastewater and sewage sludge, conservation of valuable habitats and species found in agricultural areas, as well as maintaining cleanliness and order on the farm. The harmonization period of the Polish legislation with EU law and the first years of Polish membership in the community provided a very dynamic development of legal regulations relating to environmental protection in agriculture. A call to integrate the objectives of environmental protection, especially biodiversity and agricultural activities can be seen in many acts e.g. which include: emission law, regulation relating to the strenuous and dangerous activities, protection and use of recourses of the biosphere.

In conclusions it is important to underline the role of agriculture to the environment. Agriculture is based on the environment, it indisputable delivers environmental public goods but on the other hand agricultural production has its impact to the particular elements of the environment. Including entities involved in agriculture production, into category of entities using the environment regardless of their legal form, is of unquestionable importance in view of the legal instruments of liability for environmental damage, as being guarantees for compliance with the rules in force in this area of the law. The growing use of agri-environment schemes, codes of good agricultural practices, organic farming and financial support for farming in less favored areas have had a positive impact on farmland biodiversity and modern farming in Poland contributes to the conservation of genetic resources, species and habitats.

**Key words:** environmental protection in agriculture, liability for environmental damage, GMO, organic farming

### **I. Genesis of legal regulation of environmental protection in agricultural activities in Poland**

In Poland, both in the interwar period, and throughout the communist period, the government policy relating to agriculture marked as the primary goal ensuring the public food security in terms of quantity. Thus, regulations relating to the effectiveness of

agricultural production in agricultural legislation were dominant, which among others include: 1) an obligation to carry out certain agro technical operations (e.g. irrigation drainage<sup>1</sup> and land consolidation<sup>2</sup>); 2) the order to use pesticides<sup>3</sup>, and 3) the order to apply fertilizers (aka agrominimum)<sup>4</sup>. In these regulations there was no reference even to the minimal extent to any requirements of environmental protection (especially water and soil) from excessive chemization from agricultural sources, or protection of biodiversity. On the other hand, intensification and specialization of agricultural activity, while marginalization and under-utilization of land, led to damage to the environment, including contamination of soil, water pollution by nitrates from agricultural sources and a significant loss of biodiversity.

The first legislation relating to environmental protection in agricultural activities appeared in the seventies<sup>5</sup> and addressed the problem of prevention of changing agricultural land for non-agricultural purposes, preventing of lowering their fertility and restoring value in use to agricultural land, degraded as a result of non-agricultural activities. Only the first Polish Act on Environmental Protection and Management 1980<sup>6</sup>, relating to the overall environmental concerns in art. 13-15 lay down an obligation of rational management of the soil, to protect the value of production, and other conditions necessary to maintain the balance of nature. These provisions remain in the realm of postulative due to lack of regulations precisising those obligations, due to the normative regulation, failure or issues relating to the use of fertilizers or pesticides<sup>7</sup>.

Under the Europe Agreement<sup>8</sup>, changes in legislation started appearing gradually in this field. For the first time, in the Act of 1995 on the Protection of Crops<sup>9</sup>, the legislator introduced rules relating to the manner, scope and conditions of using pesticides in

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<sup>1</sup> Act of 22 May 1958 on Promoting Land Reclamation for Agricultural Purposes, cons. text Journal of Law of 1963 No. 42, item 237 with amendments. The first Polish regulation in this respect was the law of the same title from 13 July 1939, Journal of Laws No. 64, item 428 with amendments.

<sup>2</sup> Act of 24 March 1968 on Merging and Exchange of Land, Journal of Laws No. 3, item 13 with amendments. It replaced Act of 31 July 1923 on Land Consolidation, Journal of Laws No. 92, item 718 with amendments.

<sup>3</sup> Act of 19 November 1956 on the Protection of Crop Plants Against Diseases, Pests and Weeds, Journal of Laws No. 55, item 253. Act replaced President Decree of 19 November 1927 on the Control of Plant Diseases and Extermination of Weeds and Pest Plants, Journal of Laws No. 108, item 922.

<sup>4</sup> Council of Ministers resolution No. 347 of 22 October 1963 on the Agrominimum, M.P. No. 85, item 408, and then Act of 13 July 1967 on the Obligation of Mineral Fertilizers in Agriculture, Journal of Laws No. 23, item 109 with amendments, valid until 1982, more on this subject: **Król M.A.**, 2005. Wpływ regulacji prawno-rolnej na zakres korzystania z gruntu rolnego (Impact of legal agricultural range of agricultural land), "Law and Economic Studies", vol. LXXII, p. 111 [summary in English].

<sup>5</sup> Council of Ministers Resolution No. 198 of 12 July 1966 on the Protection of Agricultural Land, M.P. No. 40, item 200, followed by Act of 26 October 1971 on the Protection of Agricultural Land and Forest Land Reclamation, Journal of Laws No. 27, item 249 with amendments.

<sup>6</sup> Act of 31 January 1980 on the Protection and Management of the Environment, cons. text 1994, Journal of Laws No. 49, item 196, with amendments.

<sup>7</sup> Pointed out by **Radecki W.**, 1996. Prawna ochrona środowiska w rolnictwie (Legal protection of the environment in agriculture), wyd. Agencja Rozwoju Regionalnego, Zielona Góra, pp. 179-180 [in Polish].

<sup>8</sup> Europe Agreement establishing an association between the Polish Republic on the one hand, and the European Communities and their Member States, on the other hand, Journal of Laws No. 11, item 38 with amendments.

<sup>9</sup> The Act of 12 July 1995 on the Protection of Crops, cons. text Journal of Laws 2002, No. 171, item 1398 with amendments, derogated.

agriculture and forestry land use. Then, for the first time in the Act of 1995 on the Protection of Farm and Forest Land<sup>10</sup>, faulty agricultural activity (e.g., caused by the improper use of pesticides) was identified as one of the causes of land degradation and devastation. Another new legal solution was the introduction of the regulation of fertilizer use<sup>11</sup>, which was subjected to many restrictions, both because of the risks it posed to health and life of humans, as well as the need to protect the environment. The first Polish Act of 2001 on Organic Farming<sup>12</sup>, introducing the first legal regulation on organic production method comes from this period as well.

After accession to the EU the following served to promote environmentally friendly farming practices: 1) The Code of Good Agricultural Practice (2004)<sup>13</sup> and 2) the rules of the Common Good Agricultural Practice (ZDPR) introduced due to the dependence of financial support in the framework of several measures covered by the Rural Development Plan for 2004-2006<sup>14</sup> for the fulfillment of environmental requirements. These standards related primarily to the requirements of the rational management of fertilizers, plant protection products, management of grasslands, water and soil conservation, rational use of wastewater and sewage sludge, conservation of valuable habitats and species found in agricultural areas, as well as maintaining cleanliness and order on the farm.<sup>15</sup>

The aim of this article is to present legal instruments relating to the protection of the environment in agricultural activities, and to undertake efforts to assess the degree of implementation of legal regulations introduced in this regard.

## II. Polish legislation on the position and responsibilities of agricultural operators

The harmonization period of the Polish legislation with EU law and the first years of Polish membership in the community provided a very dynamic development of legal regulations relating to environmental protection in agriculture. A call to integrate the objectives of environmental protection, especially biodiversity and agricultural activities

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<sup>10</sup> Cf. Art. 4 sec. 16 and 17 in conjunction with Art. 15 § 1 and 5 of the Act of 3 February 1995 on the Protection of Farm and Forest Land, the original text Journal of Laws No. 16, item 78 with subsequent amendments. More information: **Król M.A.**, 2009. Przejawy europeizacji w prawie rolnym (Manifestations of Europeanization in agricultural law), "Studia Iuridica Agraria", Vol VII, p. 82 [summary in English].

<sup>11</sup> The Act of 26 July 2000 on Fertilizers and Fertilization, Journal of Laws No. 89, item 991 with amendments, Ministry of Agriculture and Regulation of 1 June 2001 on the Detailed Method of Application of Fertilizers and Conduct Training on their Use, Journal of Laws No. 60, item 616, acts derogated.

<sup>12</sup> The Act of 16 March 2001 on Organic Farming, Journal of Laws No. 38, item 452 with amendments, act derogated.

<sup>13</sup> **Król M.A.**, 2010. Dobre praktyki w rolnictwie jako przejaw realizacji zasady zrównoważonego rozwoju (Best practices in agriculture as a manifestation of the principle of sustainable development), "Review of Environmental Law" No 1, p. 54 [in Polish].

<sup>14</sup> Rural Development Plan for 2004-2006, announced M.P. of 2004, No. 56, item 958, designed to flexibly Act of 28 November 2003 on Support for Rural Development from the Guarantee Section of the European Agricultural Guidance and Guarantee Agricultural, Journal of Laws No. 229, item 2273 with amendments, act derogated.

<sup>15</sup> The scope of the obligations arising from ZDPR specified in Annex F to the Plan, and in the form of normative in Appendix 1 of Regulation of 14 April 2004 on Detailed Conditions and Procedures for Granting Financial Aid to Support Agricultural Activities in Areas Favored Covered by the Rural Development Plan, Journal of Laws No. 73, item 657.

can be seen in many acts. Polish legal regulation is very broad and diffuse. General Act of 2001 Environmental Protection Law<sup>16</sup>, and supplemental general rules of liability for damage to the environment<sup>17</sup> and the Act on Access to Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments<sup>18</sup> are essential.

The second group are the sectoral rules, which include:

a) emission law: protection of air, soil, protection against noise and vibration (P.o.ś.); protection of water (Water Law Act<sup>19</sup>); protection of quality and quantity of agricultural and forest land - the Act on the Protection of Farm and Forest Land<sup>20</sup>;

b) regulation relating to the tortuous and dangerous activities: municipal waste management - Waste Management Act<sup>21</sup>, and the Act on Maintaining Cleanliness and Order in Municipalities<sup>22</sup>; hazardous substances - the Act on Fertilizers and Fertilization<sup>23</sup>, the Act on Plant Protection Products<sup>24</sup>;

c) protection and use of resources of the biosphere: the Nature Conservation Act<sup>25</sup>; Forest Act<sup>26</sup>; the Act on Payments under Direct Support Schemes<sup>27</sup> and its implementing legislation<sup>28</sup>; the Act on Support for Rural Development<sup>29</sup>, and its implementing legislation including concerning afforestation of agricultural land<sup>30</sup>, and agri-environmental programs<sup>31</sup>; as well as the Act on Organic Farming<sup>32</sup>;

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<sup>16</sup> Cons. text of 2013, Journal of Laws, item 1232 with amendments, hereinafter cited as: "P.o.ś.".

<sup>17</sup> Act of 13 April 2007 on the Prevention of Environmental Damage and its Repair, cons. text 2014 Journal of Laws, item 210, hereinafter cited as: "u.z.s.ś.".

<sup>18</sup> Act of 3 October 2008, on Access to Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessment, con. text. 2013, Journal of Laws, item 1235, with amendments.

<sup>19</sup> Act of 18 July 2001 Water Law, cons. text Journal of Laws of 2012, item 145.

<sup>20</sup> Cons. text of 2013, Journal of Laws, item 1205.

<sup>21</sup> Act of 14 December 2012 on Waste, Journal of Laws of 2013, item 21, hereinafter cited as "P.w.".

<sup>22</sup> Act of 13 September 1996 on Maintaining Cleanliness and Order in the Communities, cons. text Journal of Laws of 2012, item 391.

<sup>23</sup> Act of 10 July 2007 on Fertilizers and Fertilization, Journal of Laws No. 147, item 1033, with amendments.

<sup>24</sup> Act of 8 March 2013 on Plant Protection Products, Journal of Laws of 2013, item 455.

<sup>25</sup> Act of 16 April 2004 on Nature Conservation, cons. text Journal of Laws of 2013, item 627.

<sup>26</sup> Act of 28 September 1991 on Forests, cons. text in 2011, Journal of Laws No. 12, item 59, with amendments, hereinafter cited as "u.l.".

<sup>27</sup> Act of 26 January 2007 on Payments under Direct Support Schemes, cons. text Journal of Laws of 2012, item 1164, with amendments, hereinafter cited as: "u.p.b.".

<sup>28</sup> Ministry of Agriculture and Rural Development Regulation of 11 March 2010 on Minimum Standards, Journal of Laws No. 39, item 211, with amendments.

<sup>29</sup> Act of 7 March 2007 on Support for Rural Development with the Participation of the European Agricultural Fund for Rural Development, cons. text Journal of Laws of 2013, item 173.

<sup>30</sup> Ministry of Agriculture and Rural Development Regulation of 19 March 2009 on the Specific Conditions and Procedures for Granting Financial Assistance under the measure "Afforestation of Agricultural Land and Afforestation of Non-Agricultural Land" under the Rural Development Programme for 2007-2013, Journal of Laws No. 48, item 390, with amendments.

<sup>31</sup> Ministry of Agriculture and Rural Development Regulation of 13 March 2013 on the Detailed Conditions and Procedures for Granting Financial Assistance under the Measure "Agri-environmental program" under the Rural Development Programme 2007-2013, Journal of Laws of 2013, item 361.

<sup>32</sup> Act of 26 June 2009 on Organic Farming, Journal of Laws No. 116, item 975.

### **III. Legal distinction between traditional farms and industrially organized units in relation to the control of environment impacts**

Manufacturing activity in agriculture is a kind of economic activity, although a specific activity and, consequently the body running it is considered to be an entrepreneur within the meaning of Art. 4 of the Act on Freedom of Economic Activity<sup>33</sup>.

At the same time in art. 3 point 20 P.o.ś. the definition of the term "user of the environment," indicates three categories of entities: 1) entrepreneurs and persons carrying out activity embraces manufacture of agricultural crops in the field of agriculture, farming or animal husbandry, horticulture, vegetable growing, forestry and inland fisheries, 2) organizational units not being entrepreneurs and 3) natural persons benefiting from the environment to the extent to which the use of the environment requires a license.

The legislature in that provision, used a broad clause of "embraces manufacture activity in agriculture" that includes not only the activities of agricultural crops, farming or animal husbandry, horticulture, vegetable growing, but also in the field of forestry and inland fisheries.

Art. 3 point 20 P.o.ś. included undisputedly all categories of entrepreneurs, regardless of the type of economic activity in the category of "entities using the environment". Operators of these particular activities are listed separately, in order to obtain the status of recipients of the environment, regardless of the legal form in which they are organized and whether their activities require a permit.

However, Art. 284 sec. 2 P.o.ś. differentiates the legal status of the two groups of entities using the environment:

1) individuals that are not entrepreneurs - are charged for the use of the environment to the extent to which the use requires permission for placing the substance or energy into the environment and water permit for water withdrawal within the meaning of the Water Law Act

2) other entities using the environment.

This means that the vast majority of farmers are not required to pay fees for the use of the environment, for gas and dust emission, keep records and make lists for the voivodship marshal and voivodship environmental protection inspector, if the activity carried on is the type of service which does not require a permit.

In summary, including entities using the environment into category of entities involved in production agriculture, regardless of their legal form, is of indisputable importance in view of the legal instruments of liability for environmental damage, as being guarantees for compliance with the rules in force in this area of the law.

### **IV. The general environmental rules and principles concerning agricultural production**

The legal principles relating to farming activities are located primarily in the Environmental Protection Law. On the basis of this law several principles relating to

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<sup>33</sup> Act of 2 July 2004 on Freedom of Economic Activity, cons. text Journal of Laws of 2013, item 672, with amendments.

farming activities can be extracted such as: 1) the principle of using the environment, 2) the principle of prevention and precaution, 3) the polluter pays principle.

#### **4.1. The principle of using the environment.**

Using the environment can take, on the basis of Art. 4 P.o.ś. one of three forms:

a) common use - vested by law to everyone without any need for authorization. In this sense, the environment benefits from any individual<sup>34</sup> in order to satisfy the needs of personal and household needs, for leisure and sports (without installation), in the scope of introducing into the environment substances or energy, and widespread use of water;

b) simple use is such a use, which is beyond the scope of general service, such as for purposes for which the law does not establish an obligation to obtain a permit, as well as regular use of water. In this regard, agricultural activities in the field crops and extensive activities in the farming and animal husbandry will be normal exploitation of the environment, which does not require obtaining any permit;

c) special use also called regulated use for economic purposes under the Act require a permit. This means that the limits and conditions of such use will be specified in the relevant administrative decision (in the form of allowances or integrated permit for placing substances or energy into the environment).

Integrated Permit in the case of animal breeding refers to the situation when the scale of its activities may cause significant pollution. eg industrial scale poultry or pork and milk production<sup>35</sup>. They need be obtained by both natural persons (farmers) as well as those with the status of entities.

#### **4.2. The principle of precaution with prevention clause**

In accordance with Art. 6 sec. 1 P.o.ś. anyone who pursues an activity which might have a negative impact on the environment is required to prevent this impact. This provision establishes the principle of prevention concerning all operators in agriculture, both farmers and agricultural producers operating on a large scale. The essence of this principle is that the business does not necessarily have a negative impact on the environment today. It is sufficient that there is a possibility that such an activity will have a negative impact in the future. At the basis of the precautionary principle lies an objective assessment of the possibility of adverse effects, but supported by the analysis of using expertise in a given field<sup>36</sup>. This will apply to eg emissions in certain sectors of agriculture and compulsory fitting of equipment counter them.

More far-reaching legal consequences are introduced in art. 6 sec. 2 P.o.ś. pointing out that anyone who undertakes an activity which the environmental impact is not yet fully recognized, is required, guided by caution, to take all possible preventive measures.

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<sup>34</sup> This provision applies only to natural persons: **Górski M.**, 2011. Komentarz do art. 4 P.o.ś. (Commentary to Art. 4 P.o.ś.) [in:] **Górski M., Pchalek M., Radecki W.** and others, Prawo ochrony środowiska. Komentarz (the Environmental Protection Law. Comment), C.H. Beck, Warszawa, p. 132. [in Polish].

<sup>35</sup> This applies to 40 000 places for poultry, 2 000 places for production pigs over 30 kg, 750 places for sows - section 6 8 of the Annex to Regulation of 26 July 2002 on the Types of Installations which may Cause Significant Damage to Individual Components or the Environment as a Whole, Journal of Laws No. 122, item 1055.

<sup>36</sup> **Wierzbowski B., Rakoczy B.**, 2010. Prawo ochrony środowiska. Zagadnienia podstawowe. (Environmental law. Basic Issues), Lexis Nexis, Warszawa, s. 93, [in Polish].

It applies to activities whose effects have not yet been identified because of the lack of scientific evidence on the subject. It is thus at least a hypothetical possibility of adverse effects eg substances used in plant protection products, fertilizers, or in relation to genetically modified food. Violation of this rule will occur when the operator, but also the authorities make no effort to predict the occurrence of the damage.

#### **4.3. The polluter pays principle**

In accordance with Art. 7 P.o.ś. anyone who causes pollution bears the costs of removing the effects of the pollution and who may cause harm - bears the costs of pollution prevention. This provision is both compensatory (e.g. penalties in case of contamination introduced by farmers into water and land contrary to the provisions of or permit issue), but also preventive (e.g. the costs of prevention).

### **V. The environmental impact of subsidies of the CAP on agriculture and forestry and their role as the safeguard of biodiversity**

In Poland, one of the factors causing the degradation and depletion of natural biodiversity is agricultural activity. Risks are caused by drainage of wetlands dehydrating the areas, reducing water retention, monoculture associated with intensification of agricultural production, soil and water pollution due to excessive use of chemicals in agriculture, introducing biogeographically alien species and genetically modified varieties of plants into the environment, disappearance of traditional breeds of farm animals<sup>37</sup>.

On the other hand, there are many factors contributing to the improvement of biodiversity and the environment. These include agri-environment schemes, afforestation of agricultural land, organic farming, as well as cross-compliance requirements.

Assumed basic positive ecological effects of agri-environmental programs in Poland mainly include:

1) conservation of biodiversity by protecting natural habitats, wild birds, implementation support of Nature 2000 sites. Agri-environmental programs make it possible to:

- a. adjust the scope of protection to valuable natural habitats and species of plants and animals protected under the Habitats Directive<sup>38</sup> and the Birds Directive<sup>39</sup>;
- b. better identify these habitats in the country and ensure the monitoring;
- c. gradually restore natural habitats which are in unsatisfactory condition;

2) conservation of genetic resources in agriculture by protecting traditional varieties grown in a particular region and farming local breeds in danger of extinction;

3) adaptation of conducted agricultural activity to valuable areas protected in national parks, natural parks or Nature 2000 sites;

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<sup>37</sup> **Poskrobko B., Poskrobko T., Skiba K.**, 2007. Ochrona biosfery (Protection of the biosphere), Polskie Wydawnictwo Ekonomiczne, Warszawa, p. 178, [in Polish].

<sup>38</sup> Council Directive No 92/43/EEC on 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, OJ UE L 206, 22.7.1992, p.7 with amendments.

<sup>39</sup> Directive No 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the Conservation of Birds, OJ UE L 20, 26.01.2010, p. 7 with amendments.

- 4) contribution to protection of agricultural land against erosion, including the use of intercrops and maintenance of erosion control equipment;
- 5) water conservation implemented by improving their quality, by reducing nitrate and pesticides pollution, which is possible thanks to introduction of the principles of the agricultural use of sewage or sewage sludge in farm;
- 6) climate change mitigation and protecting the rural landscape mosaic maintaining regional differences.<sup>40</sup>

However, extension of forest resources through afforestation of agricultural land weakest classes contributes to:

- 1) improving biodiversity in forest ecosystems;
- 2) control and water conservation;
- 3) erosion protection of soil, air and improves the amplitude reduction of air and soil;
- 4) sun and desiccant action of the wind protection.

Increasing use of agri-environmental programs, including those carried out in the areas of valuable nature, code of good agricultural practices, organic farming and financial support for agricultural holdings in less favored areas have had a positive impact on farmland biodiversity, made modern agricultural activity in Poland contribute to protection of genetic resources, species, habitats and landscape values. One of the indicators is stabilization, after a significant decline in our country at the beginning of the twenty-first century, of the birds useful to agriculture FBI (Farmbirds Index 23).

Legal solutions for environmental protection in agriculture, regardless of the position of the area in which its activities are carried out, are found in many legal acts which are implementation of EU law. It also includes legal solutions establishing support for agriculture and forestry in the CAP. These are:

- 1) Act on Payment under the Direct Support Schemes and its implementing legislation, in which was introduced cross-compliance rules;
- 2) Act on Support for Rural Development together with implementing regulations, in which the following were introduced:
  - a) agri-environmental programs (including support for Nature 2000 sites, support for organic farming);
  - b) afforestation of agricultural land with low suitability for agricultural production;
  - c) support for areas with less favored conditions.

### **5.1. Agri-environmental programmes**

The entity authorized to receive agri-environmental payment prepares agri-environmental plan and takes five-year commitment to meet the requirements of agri-environment, as well as the conditions for granting payments under certain packages or options. The farmer must also keep occurring on the farm permanent grassland and agricultural landscape elements which are not used for agriculture and wildlife refuges.

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<sup>40</sup> More information see: **Król M.A.** 2012. Rola programów rolnośrodowiskowych w ochronie obszarów cennych pod względem przyrodniczym (The role of agri-environmental programs in the protection of valuable areas in terms of nature), "Legal and Economic Studies", vol. 86, pp. 67-92 [summary in English].

Agri-environment payments cover only those commitments going beyond the relevant mandatory standards. The basic requirements are:

- 1) the requirements laid down in the regulations on payments under support schemes, ie, the statutory management requirements and good agricultural rules;
- 2) the minimum requirements for fertilizer and plant protection products use,
- 3) other relevant mandatory requirements listed in the Annex to the Regulation, including requirements set out in the Act on the Maintenance of Cleanliness and Order in Municipalities.

Agri-environmental commitments are implemented within at least one of the nine packages<sup>41</sup>. Within each of these packages there is the possibility of different variants of AEM provided. Payment may be granted under any number of packages, but with certain restrictions.

## **5.2. Afforestation**

CAP financial support serves also widening forest resources in Poland. Afforestation comprises land with low suitability for agricultural production. In accordance with the Act on support for rural development and regulation of the Ministry of Agriculture in 2009, there is a possibility of afforestation of agricultural land and non-agricultural land. The grant aid for afforestation may be requested by a farmer or group of farmers of adjacent land with total area of not less than 2 ha, if their width exceeds 20 m, unless the land borders a forest, as well as local government units or agencies of the local government units. Afforestation on the basis of these provisions can be made on agricultural land (arable land or orchards), non-agricultural land (including set-aside, requiring protection because of their functions or soil-waterproofing) or wooded land and bushy land (among others within the natural succession), on agricultural land not used for agricultural production. The land must be located outside Nature 2000 sites, nature reserves, national parks, landscape and their buffer zones, unless the planned afforestation is not incompatible with the protection of these areas. Given traders have the support for afforestation, nursing bonus and afforestation bonus. Local government units receive only support for afforestation.

## **5.3. Cross-compliance**

Cross-compliance is a legal requirements laid down for the art. 5 and 6 of Council Regulation No 2009/73/EC<sup>42</sup> and Council Regulation No 2009/1122/EC<sup>43</sup>, currently posed to agricultural producers relating to the fulfillment of obligations associated with

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<sup>41</sup> These are the packages: 1 sustainable agriculture; 2 organic farming; 3 extensive permanent pasture, 4 protection of endangered species of birds and habitats outside Nature 2000 sites; 5 protection of endangered species of birds and habitats in Nature 2000 areas; 6 preserve endangered plant genetic resources in agriculture; 7 preserve endangered animal genetic resources in agriculture; 8 soil and water protection; 9 buffer zone.

<sup>42</sup> Council Regulation No 2009/73/EC of 19 January 2009 Establishing Common Rules for Direct Support Schemes for Farmers under the Common Agricultural Policy and Establishing Certain Support Schemes for Farmers, OJ. EU L No. 30 31.01.2009, pp. 16-99.

<sup>43</sup> Commission Regulation No 2009/1122/EC of 30 November 2009 on Detailed Rules for the Implementation of Council Regulation (EC) No 2009/73 as regards Cross-compliance, Modulation and the Integrated Administration and Control of the Direct Support Schemes for Farmers Provided for in that Regulation and the Implementation of Council Regulation No 2007/1234/EC as regards Cross-compliance under the Support Scheme Provided for the Wine Sector, OJ. EU L No. 316, 2.12.2009, pp. 65-112.

environmental protection, public health and animal welfare. The provision of Art. 7 sec.1 u.p.b. makes the possibility of granting the single area payment to the farmer owned agricultural land upon: the statutory management requirements and good agricultural and environmental condition.

Filling management requirements means the need to respect the eighteen basic requirements of Annex II of Regulation No 2009/73 on the protection of the environment, public health or welfare. Orders and prohibitions laid down in the EU regulations are implemented in a number of legal acts: the Act of 2004 on Nature Conservation, Act of 2001 the Water Law, Act of 1997 on Animal Protection<sup>44</sup>, Act of 2013 on the Plant Protection Products. From 1 January 2013, the requirements under cross-compliance include additional responsibilities for the welfare of animals.

The rules to keep land in good agricultural condition consist of do's and don'ts, largely unknown before by the Polish legislation. These principles, in accordance with Art. 6 of Regulation No 2009/73, aim to ensure that all agricultural land, in particular those that are no longer used for production purposes, is maintained in good agricultural condition respecting environmental protection. Catalogue of principles established based on the guidelines contained in Annex III to Regulation No 2009/73, has been established in the Ministry of Agriculture provisions of the regulation defining the so-called. "Minimum requirements" taking into account soil and climatic condition, existing farming systems, land use, farming methods and farm structure.

The obligations indicated in Polish law regulations can be divided into two categories:

a) orders and prohibitions which are already the subject of Polish legislation such as the Law on Environmental Protection and the Law on the protection of agricultural and forestry products, (e.g. prohibition of the destruction of habitats of plants and animals protected species and natural habitats within the areas covered by the forms of nature protection, prohibition of burning grass on agricultural land or cutting of trees that are nature monuments, and prohibition of destroying ponds with an area of less than 100 m<sup>2</sup>);

b) orders previously unknown to the Polish legislation, such as warrant of rotation, meadows and pastures cover crop mowing, rules relating to the uses of arable land situated on slopes above 20 degrees or the principle of maintaining a minimum cover of soil on land threatened with water erosion.

#### **5.4. Organic Farming**

Current regulations relating to organic farming by extending the scope of the legal regulations, the introduction of regionalization instruments effects, and support of organic farms serves maintaining a high level of protection of the environment, biodiversity and animal welfare. An expression of implementing Council Regulation No 834/2007/EC in relation to our country is the Act of 2009 on Organic Farming.

In this act, there is no definition of the term "organic farming". However, the pre-accession Polish Act of 2001 on Organic Farming, made use of the term "organic product", which defined unprocessed agricultural produce and products grown from them, including animals and products and products of animal origin which were produced

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<sup>44</sup> Act of 21 August 1997 on the Protection of Animals, cons. text Journal of Laws of 2003, cons. text 2013, item 856, with amendments.

"organically" - that is, the way in which the greatest extent possible natural methods of production were used, not disturbing natural balance.<sup>45</sup>

The doctrine suggests that organic agriculture is a holistic system of sustainable management of plant and animal production on the farm, based on the application of biological and mineral origin substances that were not processed technologically<sup>46</sup>. Organic farming should primarily rely on renewable resources as part of organized agricultural systems locally. In order to reduce the consumption of non-renewable resources, waste and by-products of plant and animal origin should be recycled, which allows receiving nutrients to the soil.<sup>47</sup>

Organic production is based on a number of principles of organic production. It is not allowed to use synthetic pesticides, artificial fertilizers, seed dressings, artificial concentrates, genetically modified organisms, industry feed, as well as ionizing radiations. It is necessary to maintain and improve life in the soil and natural soil fertility, stability and biodiversity of natural aquatic ecosystems.

## **VI. The position of agricultural production in the framework of environmental pollution control**

The use of pesticides and fertilizers in modern agriculture is necessary because of the need to ensure growth of competitiveness of EU agriculture in world markets, and thereby a requirement of continuous upgrading of its efficiency. Excessive or incompetent use of fertilizers leads to serious contamination of soil, surface water and groundwater. Progress in agriculture due to the use of fertilizers and pesticides has also contributed towards air pollution. The purpose of the legal system is to counteract such threats.<sup>48</sup>

Approval for use of or marketing of plant protection products, fertilizers and plant conditioners is subject to strict legal restrictions. For use and marketing only those may be allowed, which with correct use, according to specifications, do not pose a risk to human or animal health or the environment.<sup>49</sup>

Thanks to the Act of 1995 on the Protection of Crops a number of rules to prevent environmental contamination due to the use of plant protection products were introduced. These rules do not lose their topicality, finding its expression in the legislation relating to

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<sup>45</sup> More information on conditions of access to activities in organic farming and conversion to organic production, see: **Król, M. A.** 2010. Organic farming [in:] Korzeniowski P. (ed.), Prawa i obowiązki przedsiębiorców w ochronie środowiska (Rights and obligations for traders), Difin, Warszawa, p. 486 [in Polish].

<sup>46</sup> **Szumski S.**, 2007. Wspólna polityka rolna Unii Europejskiej (The Common Agricultural Policy of the European Union), Wyd. Akademickie i Profesjonalne, Warszawa, p. 146 [in Polish].

<sup>47</sup> Theme 11 of the preamble to Regulation No 2007/834.

<sup>48</sup> **Radecki W.**, Prawna ochrona ... op.cit., p. 179 and **idem**, 2002, Ustawa o nawozach i nawożeniu z komentarzem (The Law on fertilizers and fertilization with commentary), wyd. Towarzystwo Naukowe POŚ, Wrocław, passim, [in Polish].

<sup>49</sup> List of fertilizers and plant conditioners that can be marketed on the basis of licenses Minister of Agriculture, pursuant to Art. 8 paragraph. 1 and 2 of the Act on Fertilizers and Fertilization, can be found on the website of the office supporting the Ministry of Agriculture, [www.bip.minrol.gov.pl](http://www.bip.minrol.gov.pl).

this issue: the Act of 2003 on the Protection of Crops<sup>50</sup> and in new legislation - Act of 2013 on Plant Protection Products.

These are:

1) the principle of taking into account in the first place agronomic, physical, mechanical or biological methods of protection, allowing to minimize the use of chemicals,

2) the obligation of strict compliance with the recommendations of the use of measures to prevent the pollution of the environment, and

3) the instruments of control, which are equipped with organs of the State Plant Health and Seed Inspection Service of the Republic of Poland, among others, access to land, sampling of plants and plant protection substances, documentation control.

These Acts also introduced the concept of integrated production of plants, ie production using integrated pest management and the use of technical and biological cultivation and fertilization, with particular emphasis on human and animal health and the environment protection. An "integrated pest management" means a method of protecting plants against pests that can exploit all the available methods of plant protection, in particular non-chemical methods in a way that minimizes risk to the health of humans, animals and the environment. Manufacturer using the method may apply for an IP certificate, which confirms that in the produced agricultural crops permissible levels of pesticides, heavy metals, nitrates are not exceeded. The method and procedure for documenting activities related to the integrated production and the manner and procedure is specified by implementing rules.<sup>51</sup>

The Act on fertilizers and fertilization regulates such conditions and procedures for the selling of fertilizers and plant conditioners, rules for the use of these substances in agriculture and for the prevention of threats to human and animal health and the environment which might arise as a result of their transport, storage and use. The Act introduces a number of rules on the use of fertilizers and plant conditioners, which are: 1) the order of application of fertilizers and plant in a way that does not endanger the health of humans, animals or the environment, 2) order for the use only fertilizers which were approved for circulation, and 3) setting an upper limit dose of manure that can be applied on an annual basis, 4) order for the use of soil conditioners and growth stimulants according to the instruction of use and storage.

Rules for the implementation of this Act<sup>52</sup>, established detailed rules of application of fertilizers, in order to prevent threats to human health, animals and the environment, among others order for the balanced use of fertilizers on the whole surface of the ground, banning to use them in certain periods of the year, the use of proper equipment, banning to use them closer than at least 20 m from the protection zone of water sources, water supplies, reservoirs and banks of watercourses, swimming pools located in the surface waters and marine areas of the coastal belt and the restrictions applied at a low level of groundwater. Inspection of Agricultural and Food Quality Republic of Poland supervise

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<sup>50</sup> Act of 18 December 2003 on the Protection of Crops, cons. text Journal of Laws of 2008 No. 133, item 849, hereinafter cited as "u.o.r."

<sup>51</sup> Ministry of Agriculture and Rural Development Regulation of 16 December 2010 on the Integrated Production, Journal of Laws No. 256, item 1722.

<sup>52</sup> Ministry of Agriculture and Rural Development Regulation of 18 June 2008 on the Implementation of Certain Provisions of Fertilizers and Fertilization, Journal of Laws No. 119, item 765, with amendments.

placing on the market of fertilizers and plant conditioners and under such supervision they have the right to access land, to make an inventory of these measures, checks on compliance with the Act, access to facilities where these substances are stored, free sampling for testing.

## **VII. Existing measures for Polish transposition of the Nitrates Directive 91/676/EEC**

### **7.1. Vulnerable zones**

Transposition of Council Directive 91/676/EEC of 12 December 1991 concerning the Protection of Waters Against Pollution Caused by Nitrates from Agricultural Sources (the Nitrates Directive)<sup>53</sup> into national law took place mainly through adjustment of the provisions of the Act of 2001 the Water Law and its implementing rules<sup>54</sup> and also in the Act of 2007 on fertilizers and fertilization and legislation.<sup>55</sup> In accordance with Art. 47 P.w. agricultural output should be carried out in such a way to restrict or prevent water pollution. Minister of Environment and the Ministry of Agriculture were required to identify areas vulnerable to pollution by nitrates from agricultural sources (called Vulnerable Zones). In addition, these authorities draw up code of good agricultural practice and disseminate those principles, in particular by organizing training courses for farmers.

Directors of Regional Water Management Board by means of regulations define surface water and groundwater susceptible to contamination by nitrogen from agricultural sources. For each of these areas is developed a program of measures to restrict the outflow of nitrogen from agricultural sources within two years upon its designation, introduced by regulation Director of Regional Water Management Board. Voivodship environmental protection inspector makes, every four years, assessment of the degree eutrophication of inland waters, marine and coastal areas.

### **7.2. Polish Code of Good Agricultural Practice**

In accordance with Art. 4 Nitrates Directive the Member States are to develop codes on the basis of those guidelines. This was justified, as the ECJ in its judgment of 1999 on C-293/97<sup>56</sup> and Case C-322/00 2003<sup>57</sup> indicated, the need to accommodate different conditions, including physical, geological and climatic conditions in various regions of the Community.

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<sup>53</sup> OJ WE L 375, 31.12.1991, p. 1.

<sup>54</sup> Among other things, Minister of Environment Regulation of 23 December 2002 Concerning the Criteria for Designation of Waters Vulnerable to Pollution from Nitrogen Compounds from Agricultural Sources, Journal of Laws No. 241, item 2093 and Regulation of 23 December 2002 on Detailed Requirements to be met by the Programs of Measures Designed to Restrict the Outflow of Nitrogen from Agricultural Sources, Journal of Laws of 2003, No. 4, item 44.

<sup>55</sup> Ministry of Agriculture and Rural Development Regulation of 16 April 2008 on the Detailed Method of Application of Fertilizers and Conduct Training on their Use, Journal of Laws No. 80, item 479.

<sup>56</sup> ECJ judgment of 29 April 1999 on C-293/97, judgment given in a preliminary ruling: High Court of Justice (England & Wales), Queen's Bench Division - United Kingdom, ECR 1999/4/I-02603.

<sup>57</sup> ECJ judgment of 2 October 2003, C-322/00, Commission v. Kingdom of the Netherlands, ECR 2003/10A/I-11267.

Adjusting to the requirements of the Nitrates Directive, Member States within two years since its entry were obliged to adopt a set or sets of rules relating to agricultural activities. First Polish Code of Good Agricultural Practice, was developed in 1999<sup>58</sup>, still in the pre-accession period. On entry to the EU, it required some adjustments introduced to legislation as well as the new Polish Environmental Protection Law. Another Code was developed in 2004<sup>59</sup> by a group of specialists in the field of ecology and agricultural economics of the Institute of Soil Science and Plant Cultivation. It is available in the form of an official document of specified ministries, available in the form of official publications and electronic ones. Polish set of good agricultural practice consists of six parts, relating respectively to agricultural practices to protect water, agricultural land, air, landscape, biodiversity, and general rules of farm management in sustainable agriculture and rural infrastructure issues.

The Act imposes on appropriate authorities obligation to promote the principles it contains, in particular by organizing training courses for farmers. Their goal is also to raise awareness of the protection of environmental resources, soil, water, air and landscape.<sup>60</sup>

### **7.3. The treatment and disposal of farm-based sludge**

In accordance with the provisions of the Water Law sewage discharge into waters takes place in the framework of a specific water use for which a water permits license is required, which is a type of permit issuance. Outfalls does not require approval involving their agricultural use, carried out under ordinary use - which applies to own land in farms. There is a quantity condition - total amount must not be greater than 5m<sup>3</sup> per day. Article. 44 P.w. lays down the general conditions of such use of wastewater for irrigation and fertilization of agricultural land and ponds used for aquaculture. Domestic waste agricultural use, municipal sewage or industrial, with a composition similar domestic sewage and wastewater runoff are approved. Annual and seasonal dose of water used for agricultural purposes must not exceed needs of plants for nitrogen, potassium, water and impede the self-purification processes in the soil. Land application of sewage in certain situations, such as the frozen land or significant slope is prohibited.

## **VIII. Genetically Modified Organisms in agricultural production in Poland**

The benefits of genetic modification in agriculture have been known for decades (e.g., hybrid of plants), and the development of genetic engineering could lead to significant increase in the efficiency of farm production. Using this method is also possible in forestry and industry. However, the need to ensure the biosecurity of present and future generations, in the absence of a clear position of the natural sciences about the

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<sup>58</sup> For more information see: **Zajac R.**, 2004. Kodeks Dobrej Praktyki Rolniczej a wymagania ochrony środowiska w zakresie produkcji rolniczej (The Code of Good Agricultural Practice and the requirements of environmental protection in the field of agricultural production), Regionalne Centrum Doradztwa Rolniczego, Wrocław, p. 2.

<sup>59</sup> The Code of Good Agricultural Practice, Ministry of Agriculture and Rural Development, Ministry of Environment, Warsaw 2004.

<sup>60</sup> **Poskrobko B., Poskrobko T., Skiba K.**, Ochrona biosfery ... op.cit., p. 167.

effects of the release of these organisms, and raised ethical objections<sup>61</sup> resulted in the recognition of the problem in the framework of EU security strategy. Legal regulation in this area holds the role for normalization of how to deal with GMOs and protect the environment from uncontrolled use and release of GMOs.

In the Polish law the issue is governed by the provisions of the Act of 2001 on genetically modified organisms<sup>62</sup>. The Act authorizes the Minister of Environment to develop National Biosafety Strategy<sup>63</sup>, which is to determine the biological safety along with ensuing program in relation to particular sectors of the economy.

The main legal instrument emitting use of genetic resources is the need to obtain a permit from the Minister of the Environment, following an investigation, assessment of the risks to human health and the environment<sup>64</sup> and meeting a number of requirements set out in the Act, including the principles of good laboratory practice and the general safety rules for the application of the relevant category of the physical containment measures and a plan to deal with accidents.

### **8.1. Prohibition of the cultivation of GMOs in Poland**

On the basis of art. 104 sec. 9 of the Act of 2012 on Seed Production<sup>65</sup> Council of Ministers may, by regulation, prohibit the use of seed of certain varieties, guided by their unsuitability for cultivation in conditions of Polish climate and soil or need to avoid risks to human health, animals, plants and the environment. On the basis of this provision, the Council of Ministers issued two regulations on the prohibition of seed maize MON 810 and on the prohibition of the use of seed potato Amflora<sup>66</sup>. By entering on the list of all registered genetically modified varieties approved in the EU an actual and total ban on genetically modified crops was introduced in Poland.

### **8.2. Genetically modified feeds**

With regard to the regulation of agricultural activities reclamation involves reducing the use of GMOs in animal feed. According to Regulation No 183/2005<sup>67</sup> and

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<sup>61</sup> Cf. **Cheda J.**, 2010, Korzystanie z zasobów genowych (Use of genetic resources) (in:) Korzeniowski P. (ed.), *Prawa i obowiązki ...op.cit.*, p. 470 and literature indicated there, [in Polish].

<sup>62</sup> Act of 22 June 2001 on Genetically Modified Organisms, cons. text Journal of Laws of 2007, No. 36, item 233, with amendments.

<sup>63</sup> The document has not yet been developed in the Ministry of Environment. Draft of the National Strategy for Ecological Safety in Poland has been developed by the Institute of Plant Breeding and Acclimatization in 2005 as part of research funded by the UNEP/GEF.

<sup>64</sup> Regulation of the Minister of Environment of 8 July 2002 laying down Detailed Procedure to Assess Risks to Human Health and the Environment as a Result of Taking Measures Involving the Contained use of GMOs, the Deliberate Release of GMOs into the Environment, Including the Marketing of GM Products, and the Requirements to be met by a File Containing the Results of such Evaluation, Journal of Laws No. 107, item 944.

<sup>65</sup> Act of 9 November 2012 on Seed Production, Journal of Laws of 2012, item 1512.

<sup>66</sup> The Council of Ministers regulation of 2 January 2013 on the Prohibition of the Use of Seed Varieties of Maize MON 810, Journal of Laws of 2013, item 39, and the Council of Ministers regulation of 2 January 2013 on the Prohibition of Seed Potato Amflora, Journal of Laws of 2013, item 27.

<sup>67</sup> Regulation No 183/2005 of 12 January 2005 laying down Requirements for Feed Hygiene, OJ EU L 35, 02.08.2005, p.1.

Regulations No 2009/767<sup>68</sup>; in Polish act from 2006 on Feed<sup>69</sup> prohibitions on the manufacture, placing on the market or use for animal nutrition was introduced:

1) "prohibited substances" - in accordance with Annex III of Regulation No 2009/767;

2) "undesirable substances" - feed containing a substance or product that pose a potential threat to the health of humans, animals or the environment and may adversely affect livestock production, over and above the maximum level;

3) feed materials and compound feed containing pesticide residues of quantities exceeding the maximum level;

4) genetically modified feed and GMOs for feed use.

In order to protect human and animal health and the environment, and ensure the quality of products of animal origin, it is prohibited to manufacture compound feed from feed materials that contain undesirable substances of quantities exceeding the level laid down by implementing provisions.<sup>70</sup>

## **IX. Applicability of the Environmental Liability Directive 2000/35/CE**

The legal act which constitutes the way of the implementation of Directive 2000/35/CE in Poland is the Act of 2007 on the prevention of environmental damage and its repair. Under the Act the activities of the entity using the environment may pose a direct threat of injury or damage to the environment (art. 2. sec. 1 point 1 u.z.s.ś.). This Act for the first time defines environmental damage - by which a negative measurable change in state or function of the natural elements, assessed in relation to the initial state, which is caused directly or indirectly by the activities carried out by the user of the environment is meant. In accordance with art. 6 sec. 11 u.z.s.ś. damage can occur:

1) in the protected species or protected natural habitats, having an adverse effect on reaching or maintaining the favorable conservation status of these species or natural habitats, except the fact that the damage to protected species and protected natural habitats does not include:

a) the previously identified adverse effects the environment of the entity using the environment in accordance with art. 34 P.o.ś., or

b) in accordance with the decision of the environmental permit for the project within the meaning of the P.o.ś.;

2) in waters, having a significant negative impact on the ecological, chemical or the quantity of water,

3) on the surface of the earth, by which is meant the pollution of soil or ground, including in particular the pollution which might be hazardous to human health.

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<sup>68</sup> Regulation No 767/2009 of 13 July 2009 on the Placing on the Market and Use of Feed, OJ EU L 229, 01.09.2009, p. 1.

<sup>69</sup> Act of 22 July 2006 on the Feed, Journal of Laws No. 144, item 1045, with amendments.

<sup>70</sup> Regulation of the Minister of Agriculture and Rural Development of 6 February 2012 on the Level of Undesirable Substances in Animal Feed, Journal of Laws of 2012, item 203 with amendments.

Criteria for assessing environmental damage have been indicated in the provisions of the regulation implementing the Act of 2008<sup>71</sup>. The main purpose of the Act is to prevent damage to the environment and their possible repair. This instrument has two functions:<sup>72</sup>

**1. preventive function** - prevention responsibilities are charged to the user of the environment. This entity in the event of an imminent threat of injury to the environment must without delay take preventive action:

a) to take measures to reduce damage to the environment, to prevent any further damage and adverse effects on human health or further impairment of the function of natural elements, including immediate control, suppressing, eliminating or reducing in any way harmful contaminants or other factors. According to B. Rakoczy<sup>73</sup>, here we can see clearly relation to the principle of prevention, and even the precautionary principle.

b) take corrective action.

**2. restitution function** - if the user of the environment does not take the above actions, the public authority (governor or minister of the environment) may impose on him or her to take the action that takes place at the expense of the beneficiary of the environment.

Agricultural activity is in the meaning of the Act activity causing the risk of damage to the environment. B. Rakoczy<sup>74</sup>, stresses that the condition is formulated in very general terms and could be a case of any activity causing risk of damage to the environment. For the application of the provisions of the Act itself it is enough to create a risk of damage to the environment.

However, P. Korzeniowski emphasizes that the essence of risk in environmental protection lies in the fact that the process of economic entity doing business with the risk of damage to the environment, there is a constant danger of deviations, the effects cannot be predicted using methods known and available.<sup>75</sup>

Art. 3 sec. 1 and 2 u.z.s.ś. was exhaustive list of activities which may cause the greatest threat to the environment<sup>76</sup>. On the basis of Art. 3 sec. 2 point 1 b) and c) u.z.s.ś. the activities posing risk of damage to the environment include, among others the use, storage, disposal, release into the environment plant protection products<sup>77</sup> and biocides<sup>78</sup>. In principle, any type of agricultural activity in the field of agricultural crops, with the possible exception of organic agriculture, where the use of pesticides is strictly regulated, will be the activity causing environmental damage risks.

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<sup>71</sup> Minister of Environment Regulation of 30 April 2008 on Criteria for Assessing Environmental Damage, Journal of Laws No. 82, item 501.

<sup>72</sup> **Wierzbowski B., Rakoczy B.**, *Ochrona środowiska ...op.cit.*, p. 119.

<sup>73</sup> **Rakoczy B.**, 2008. *Komentarz do ustawy o zapobieganiu szkodom w środowisku i ich naprawie* (Commentary on the Law on prevention of environmental damage and its repair), Lexis Nexis, Warszawa, p. 20, [in Polish].

<sup>74</sup> *Ibid.*, p. 20.

<sup>75</sup> **Korzeniowski P.**, 2011. *Ryzyko szkody w środowisku (Risk of damage to the environment)*, "Law and the Environment", No 1, p. 90, [in Polish].

<sup>76</sup> *Ibid.*, p. 94 and **Rakoczy B.**, *Komentarz do ustawy ... op.cit.*, p. 28.

<sup>77</sup> Plant protection within the meaning of Art. 2 point 14 of the Act on the Protection of Crops.

<sup>78</sup> The biocidal agent within the meaning of Art. 3 point 1 of the Act of 13 September 2002 on Biocidal Products, Journal of Laws of 2007 No. 39, item 252, with amendments.

This Act does not apply however forest management in accordance with the principles of sustainable forest management (art. 5 sec. 2 u.z.s.ś.). In the literature<sup>79</sup>, the view was expressed that the exclusion of forest management from liability for damage to the environment, even if it only concerns activities consistent with the principles of sustainable forest management, is not justified by the provisions of Directive 2004/35/EC of 2004 on the Prevention and Removal of Environmental Damage<sup>80</sup>. This view should be shared, not only because of the admission to take prophylactic measures to prevent, detect and fight over appearance and spread of harmful organisms in order to ensure universal protection of forests, shaping a balance in forest ecosystems, improving the natural resistance of forests (art. 9 sec. 1 point 2 u.l.). In accordance with art. 2 point 4 u.o.r., as harmful organisms shall be considered any species, strain or biotype of plant, animal or pathogenic agents that are harmful to plants, plant products or other objects. Prevention and control of these organisms will involve the use of plant protection products and biocides, and the release of these products into the environment is always a danger of damage to the environment.

Therefore, it is unreasonable to exclude from sustainably managed forests from the impact of the law on prevention of environmental damage. In addition, the exclusion is justified also from the point of view of a significant area of forest land located in Nature 2000 sites.

In addition, the user of the environmental is responsible for the threat or damage caused by activities other than the one which poses a risk of injury (listed in art. 3 sec. 1 and 2 u.z.s.ś.). But only in respect of damage caused in relation to protected species or natural habitats, and provided that the danger or damage arose from the fault of the entity. This may apply to any activity carried out by the user of the environment, and therefore also the agricultural industry. The entity is responsible for the threat or damage to protected habitats or species only if the threat or injury, was the result of its fault<sup>81</sup>. The blame can be assigned only if, deliberately or by recklessness or negligence on its actions the user of the environment is beyond the scope permitted by law, making the possibility of causing damage to protected species and protected natural habitats. This will apply to such entity engaged in agriculture in Natura 2000 sites, deliberately making the destruction of habitats through activities generally legally allowed, such as by changing the agricultural use of agricultural land constituting permanent grassland into arable land. As pointed out by Regional Administrative Court in its judgment of 2011<sup>82</sup>, the potential liability based on fault for damage to habitats may occur as a consequence of conducting generally permitted activities such as the use of agricultural land for their intended purpose, however if you are really focused on depriving specific natural values.

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<sup>79</sup> **Sześciło D.**, 2011. Środowisko: leśnicy nie odpowiadają za szkody? (Environment: foresters are not responsible for the damage?), "Rzeczpospolita – Prawo Co Dnia", No. 5, p. 23, [in Polish].

<sup>80</sup> Directive 2004/35/EC of 21 April 2004 on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage, OJ L 143, p. 56.

<sup>81</sup> More on guilt as a condition of liability in the law of damages, see: **Korzeniowski P.**, Ryzyko szkody ...op.cit. , pp. 95 – 99.

<sup>82</sup> Regional Administrative Court Judgment of August 8, 2011, IV SA/Wa 1180/11, available in CBOSA.

## X. Conclusions

In conclusions it is important to underline the role of agriculture to the environment. Agriculture is based on the environment, it indisputable delivers environmental public goods but on the other hand agricultural production has its impact to the particular elements of the environment.

Including entities involved in agriculture production, into category of entities using the environment regardless of their legal form, is of unquestionable importance in view of the legal instruments of liability for environmental damage, as being guarantees for compliance with the rules in force in this area of the law.

The growing use of agri-environment schemes, codes of good agricultural practices, organic farming and financial support for farming in less favored areas have had a positive impact on farmland biodiversity and modern farming in Poland contributes to the conservation of genetic resources, species and habitats.

Improving the quality of life in rural areas and making effective use of their resources and potentials, including agriculture and fisheries for sustainable development of the country have been designated as the main objective of long-term measures for rural development, agriculture and fisheries in *the Strategy for sustainable rural development, agriculture and fisheries for the period from 2012 to 2020*<sup>83</sup>. Pursuit to achieve the main objective will be implemented through activities associated with five specific objectives, among which the fifth goal concerns environmental protection and adaptation to climate change in rural areas.

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<sup>83</sup> The strategy adopted by Resolution No. 163 of Ministers of 25 April 2012, M.P. in 2012, item 839, in the implementation of Act of 6 December 2006 on the principles of development policy, Journal of Laws of 2009 No. 84, item 712, with amendments.

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**Streszczenie:** W Polsce, zarówno w okresie międzywojennym, jak i w całym okresie PRL, polityka państwa odnosząca się do rolnictwa wyznaczała jako zasadniczy cel - zapewnienie społeczeństwu bezpieczeństwa żywności w aspekcie ilościowym. Pierwsze regulacje prawne odnoszące się do ochrony środowiska w działalności rolniczej pojawiły się w latach siedemdziesiątych i odnosiły się do problemu przeciwdziałania zmianie przeznaczenia gruntów rolnych na cele nierolnicze, zapobieganiu obniżania ich urodzajności oraz na przywracaniu wartości użytkowych gruntem rolnym zdegradowanym na skutek działalności nierolniczej. Po uzyskaniu członkostwa w UE promowania proekologicznych zachowań w działalności rolniczej służył Kodeks Dobrej Praktyki Rolniczej oraz zasady dobrej praktyki rolniczej, wprowadzone ze względu na uzależnienie wsparcia finansowego w ramach kilku środków objętych Programem Rozwoju Obszarów Wiejskich 2004-2006 od spełnienia wymagań środowiskowych. Standardy te dotyczyły przede wszystkim wymogów związanych z racjonalną gospodarką nawozami, środkami ochrony roślin, gospodarką na użytkach zielonych, ochroną wód i gleb, racjonalnym wykorzystaniem ścieków i komunalnych osadów ściekowych, zachowaniem cennych siedlisk i gatunków występujących na obszarach rolnych, a także zachowaniem czystości i porządku w gospodarstwie. Okres harmonizacji polskiego ustawodawstwa z prawem EU oraz pierwsze lata członkostwa Polski we Wspólnocie przyniosły bardzo dynamiczny rozwój regulacji prawnej odnoszącej się do ochrony środowiska w działalności rolniczej. Wezwanie do zintegrowania celów w zakresie ochrony środowiska, a zwłaszcza różnorodności biologicznej z działalnością rolniczą widoczne jest w wielu aktach prawnych m.in w prawie emisyjnym, w regulacji odnoszącej się do działalności uciążliwej i niebezpiecznej, czy przepisom dotyczącym ochrony i korzystania z zasobów biosfery.

W podsumowaniu należy podkreślić rosnące znaczenie rolnictwa w ochronie środowiska. Rolnictwo opiera się na środowisku, niezaprzeczalnie dostarcza środowiskowych dóbr publicznych, ale z drugiej strony produkcja rolna ma wpływ na poszczególne elementy środowiska. Zaliczenie podmiotów prowadzących działalność rolniczą do kategorii podmiotów korzystających ze środowiska, niezależnie od ich formy prawnej, ma niekwestionowane znaczenie w związku z instrumentami prawnymi odpowiedzialności za szkody w środowisku, jako gwarancja przestrzegania zasad obowiązujących w tej dziedzinie prawa. Rosnące wykorzystanie programów rolnośrodowiskowych, kodeksów dobrej praktyki rolniczej, zasad rolnictwa ekologicznego oraz wsparcie finansowe gospodarowania na obszarach o niekorzystnych warunkach wywarły pozytywny wpływ na różnorodność biologiczną użytków rolnych, w tym samym czasie działalność rolnicza przyczynia się do ochrony zasobów genetycznych, gatunków i siedlisk.

**Słowa kluczowe:** ochrona środowiska w działalności rolniczej, odpowiedzialność za szkody w środowisku, GMO, rolnictwo ekologiczne

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