

THE PUBLIC AND LEGAL ASPECTS OF THE FUNCTIONING OF FUNDS FOR PROMOTING AGRICULTURAL AND FOOD PRODUCTS IN POLAND

ASPECTOS DE DERECHO PÚBLICO DEL FUNCIONAMIENTO DE LOS FONDOS DE PROMOCIÓN DE LOS PRODUCTOS AGRÍCOLAS Y ALIMENTARIOS EN POLONIA

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Recibido: 13/09/2016

Aceptado: 01/10/2016

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SUMMARY: I. INTRODUCTION. II. FUNDS FOR PROMOTING AGRICULTURAL AND FOOD PRODUCTS – THE RATIONALE AND FUNCTIONS. III. THE FUNDS FOR PROMOTION OF AGRICULTURAL AND FOOD PRODUCTS – A REVIEW OF THE POLISH REGULATIONS. IV. THE FUNDS FOR PROMOTION OF AGRICULTURAL AND FOOD PRODUCTS IN FINANCIAL TERMS. V. CONCLUSIONS.

RESUMEN: El objetivo de este trabajo es presentar qué tipo de posibilidades de promoción ofrece la Unión Europea a sus estados miembros con el fin de promover los productos agrícolas y alimentarios. El artículo describe el marco jurídico europeo en relación con este tipo de fondos, poniendo énfasis en la normativa polaca. Los fondos para la promoción en Polonia están muy diversificados (fondos para la promoción de la leche, la carne de cerdo, carne vacuna, carne de caballo, etc.) En el último apartado el autor presenta su potencial financiero.

PALABRAS CLAVE: productos agrícolas, productos alimentarios, fondos, promoción.

ABSTRACT: The aim of this paper is to present what kind of promotional possibilities the European Union provides its member states in order to promote agricultural and food products. As the main option shall be considered funds for promoting agricultural and food products. Article describes the European legal framework concerning this kind of funds, putting an emphasis on Polish regulation. The promotion funds in Poland are very diversified (the funds for the promotion of milk, pork, beef, horse meat etc.). In the last paragraph author presents their financial potential.

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KEY WORDS: agricultural products, food products, funds, promotion.

I. INTRODUCTION

Poland is a medium-sized, Central-European country that occupies 6th place in the EU-28, both in terms of population and area. Currently the global value of agricultural holdings' production places Polish agriculture at 7th place in the European Union with the greatest share in the commodity structure of cow milk, pork livestock, poultry livestock and cereals. Poland is also a leading European producer of apples, triticale, rye, black currants, champignons, potatoes and blueberries and an important producer of rapeseed, sugar beets, poultry meat, wheat, butter and milk powder.

Following the EU accession in 2004, almost 75% of Polish agri-food trade has taken place within the single market. Incorporation of Poland into the common market revealed competitive advantages of Polish producers, leading to a fast increase in the exports of agri-food products, and to significant improvement in the balance of international trade. The verification of Polish results in trade in these products is definitely positive, as confirmed, first of all, by a fast growing surplus of agri-food exports over imports. This is due to the opening of absorptive markets combined with clear cost advantages of Polish agriculture and processing sectors, as well as the increased flow of funds and investment in the sector.

The aim of the paper is to discuss promotional possibilities the European Union provides its member states in order to promote agricultural and food products. The European legal framework concerning promotional funds was presented, putting an emphasis on Polish regulation. The analysis is based on a review of European and Polish regulation on agri-food promotion support.

II. FUNDS FOR PROMOTING AGRICULTURAL AND FOOD PRODUCTS – THE RATIONALE AND FUNCTIONS

One of the challenges nowadays is to ensure the competitiveness of the national economy in the conditions of the global market. Allocating expressly for this purpose funds derived directly from the state budget, however, could be interpreted by the European Commission as public intervention affecting the trade results of the Member States, and thus, as an action contrary to the Treaty on the European Union¹ and the

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¹ Consolidated version of the Treaty on the European Union, Art. 3, paragraph 3 http://oide.sejm.gov.pl/oide/index.php?option=com_content&view=article&id=14803&Itemid=945 uploaded 29 January, 2015.

Treaty on the Functioning of the EU². It should be noted that within the European Union it is legally allowed to promote food and agriculture by the Regulation of the European Parliament and of the Council (EU) No 1144/2014³ and by the Council Regulation (EC) No 3/2008⁴.

Experience of Western EU Member States indicates that a statutory creation of a system of collecting funds originating from the given industry is the compromise solution. This means that the role of the state is limited to establishing a mechanism for the promotion of an industry, financed on the basis of contributions from members of the branch and providing institutional service of the funds collected.⁵

Modelled on the experience of Western countries it has been decided in Poland to initiate institutionalized action aimed at supporting producers of the agri-food sector. The dispersion of Polish food producers and the ensuing difficulties in finding markets for the Polish agricultural sector products with the ongoing liberalization of the world trade has become the reason for seeking an effective tool to promote the industry. Among the expected outcome of the introduction of such a tool, the following results It have been mentioned: an increase in sales of Polish agricultural products effecting securing stable markets (including export markets – increasing the competitiveness of the Polish agricultural sector), improving the quality of the products on offer, as well as vertical and horizontal consolidation of industries, which is necessary in view of the dispersion of Polish producers.

A growth in demand for agricultural and food products, a positive impact on enterprises – by boosting their production and, due to their location, a positive impact on the socio-economic situation in the regions, as well as increased employment in the processing sector in high unemployment areas – all have been mentioned as indirect expected outcomes of the introduction of the trade promoting instrument. At the same time, it was emphasized that the application of the principle of financing promotional funds from the industry's contributions and providing resources for the cost of administering the funds (flexibly adapted to the size of the revenues) will provide no encumbrance to the public finance sector with the costs of promoting the industry.

The introduction in 2009 of the Act on Funds for promoting agricultural and food products was the response to meet these needs and expectations. On the basis of this

² Consolidated version of the Treaty on the Functioning of the European Union Art. 43 and 44 http://oide.sejm.gov.pl/oide/index.php?option=com_content&view=article&id=14804&Itemid=946 uploaded 29 January, 2015.

³ <http://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:32014R1144&from=EN>
Art. 30 Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from 1 December 2015.

Art. 29 Transitional provisions

1. Regulation (EC) No 3/2008 shall continue to apply to the information and publicity measures, the financing of which the Commission made its decision before 1 December 2015.

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2008R0003:20090303:PL:PDF>.

⁵ <http://orka.sejm.gov.pl/Druki6ka.nsf/form1806-justification>

law, the Agency of Agricultural Market⁶ deals with nine promotional funds for: milk, pork, beef, horse meat, sheep meat, poultry, whole grains and grain products, fruit and vegetables as well as fish.

Establishing and using the promotional funds are to stimulate growth in consumption and promotion of agricultural and food products, primarily through information and promotional campaigns. However, the campaigns are not to be limited only to providing information about the quality, benefits and agricultural features of their products, or to promote the consumption of these items, but they are also to facilitate the development of industry market, development and scientific research and, promote the training of producers and processors, encourage international contacts, whether through offering subsidies to the industry representatives to enable them to attend trade fairs and exhibitions, or by allowing them to participate in working meetings of international organizations dealing with individual products' markets.

Although each of the funds has its own industry specificity, it is viable to reach a joint agreement among the Managing Commissions of all nine funds regarding the chosen direction of the support provided. One of the long-term directions of measures selected by the Commission is subsidizing information and promotional campaigns of food products aimed at children. This is based on the assumption that applying a pattern of consumption use from an early age will lead to forming sustainable nutritional habits in children and adolescents that will entail a formed model of consumption in adulthood. Examples of such projects are campaigns "Kids' milk teeth" and "I am crazy about milk." Another direction of the firm, the current responses of the Managing Commissions is to defend the image of Polish food (e.g. in case of libel regarding the presence of E. coli bacteria in Polish vegetables, the African swine fever or black PR attack against Polish food in the Czech Republic and Slovakia).

It should be noted that it is possible to combine funds for promotion with measures available from the EU budget (CAP). The funds for promotion in such cases serve to finance the own contribution of industry organizations, which allows the amounts spent on promotional activities to be considerably augmented, relative to the resources which the industry could accumulate in the promotion fund account.

III. THE FUNDS FOR PROMOTION OF AGRICULTURAL AND FOOD PRODUCTS – A REVIEW OF THE POLISH REGULATIONS

The activities of funds for promotion agricultural and food products is regulated by the

⁶ Agricultural Market Agency (ARR) is a state institution supervised by the Ministry of Agriculture and Rural Development as well as the Ministry of Finance within the scope of the Common Agricultural Policy (CAP) of the EU and related tasks. Since 1990 the ARR has been carrying out activities aimed at supporting and maintaining economic balance in the Polish agri-food sector. Since 2004 the Agency is an accredited EU Paying Agency distributing financial support and performing controls relative to manufacturing of agricultural products under the CAP.

Act of 22 May, 2009 on funds for promotion of agricultural and food products (Journal of Laws 2009, No 97, item 799, as later amended) and by four implementing acts:

- The Regulation of the Minister of Agriculture and Rural Development of 25 June, 2009 on the detailed list of goods, which are considered for contributions to the promotion funds for agricultural and food products (Journal of Laws 2009, No. 102, item 844);
- The Regulation of the Minister of Agriculture and Rural Development of 11 March, 2010 on specified conditions and procedures for the allocation of financial support from the funds for the promotion of agricultural and food products (Journal of Laws 2010, No. 54, item 327, as later amended);
- The Regulation of the Minister of Agriculture and Rural Development of 18 September, 2009 on the course of putting forward candidates for the members of the commissions managing the funds for promoting agricultural and food products and the method of their choice (Journal of Laws 2009, No. 159, item 1259);
- The Regulation of the Minister of Agriculture and Rural Development of 1 April, 2010 on the categories of costs associated with the implementation by the Agency of Agricultural Market of efforts covered by the funds for the promotion of agricultural and food products and the manner and conditions of transferring of and accounting for these funds (Journal of Laws 2010, No. 76, item 498).

The Act came into force on 1 July, 2009 thus amending the Act of 11 March, 2004 on the Agency of Agricultural Market and the organization of certain agricultural markets (Journal of Laws 2007, No. 231, item 1702, 2008, No. 227, item 1505 and 2009, No. 19, item 100, No. 95, item 792) and the Act of 20 April, 2004 on the organization of the milk and milk products market (Journal of Laws 2009, No. 11 item 65). The act establishes nine separate funds for promotion:

The Fund for the Promotion of Milk,
The Fund for the Promotion of Pork,
The Fund for the Promotion of Beef,
The Fund for the Promotion of Horse Meat,
The Fund for the Promotion of Sheep Meat,
The Fund for the Promotion of Cereal Grains and Cereal Products,
The Fund for the Promotion of Fruit and Vegetables,
The Fund for the Promotion of Poultry Meat,
The Fund for the Promotion of Fish.

The Act sets the scope of activities covered by the possibility of being financed by the funds and the list of entities eligible to use them, as well as the rules of managing the fund, including elements of financial management. Moreover, the Act defines the role of the Minister of Agriculture and that of the President of the Agency of Agricultural Market in the process of institutional support for activities of funds for promotion.

For each fund, due to its product specificity, separate actions have been defined. In all funds the directions of action relate to information and promotional efforts, market and scientific research, as well as professional training. Entities eligible to apply for this support are nationwide organizations of agricultural producers or processors of agricultural food products (as well as other industry and inter-professional

organizations, provided that their statutory objectives are consistent with the objectives of the funds), declared at the level of individual funds with the type of products, e.g. in the case of the Fund for the Promotion Poultry Meat organizations associating entities that produce or market poultry, poultry meat or its processed products may apply.

In order to manage the funds, managing committees are established for four-year terms, separate for each individual fund; the committees' decisions are in the form of resolutions. Each commission is made up of nine members, including four members representing producers, four members representing processors 4 members representing (broadly defined, i.e. with regard to entities other than processors, but running e.g. the slaughter of animals) and one member representing the chambers of agriculture; selected from among candidates put forward by the organizations. The tasks of the committee include representing the interests of the sectors, establishing the rules of managing the financial resources, establishing a financial plan and preparing a factual report, as well as adopting the rules of procedure for the committee.

The revenues of the funds come from mandatory dues contributed by the entrepreneurs, bank interest on funds held in accounts as well as donations and bequests. These resources are not public funds under the provisions on the Public Finance. The following entities are obligated to make payments to individual funds: bulk purchasers (The Fund for the Promotion of Milk, The Fund for the Promotion of Fruit and Vegetables, The Fund for the Promotion of Fish); entrepreneurs operating in the business of slaughtering of animals (The Fund for the Promotion of: Pork, Beef, Horse Meat, Sheep Meat, Poultry Meat); producers, including entities engaged in fishing, breeding and farming fish (The Fund for the Promotion of: Fruit and Vegetables; Fish); grain processors for consumption (The Fund for the Promotion Grain Cereals and Cereal Products), as well as VAT payers operating in the business of transporting outside the territory of the Republic of Poland live animals (pigs, cattle and calves, horses, sheep and lambs, poultry). The amount of the contributions is PLN 0.001 per each kilogram of purchased milk or 0.1% of the net value of other goods purchased. The entities that are obligated to make payments to the funds for promotion also calculate and collect the appropriate amounts from sellers of goods and confirm these activities in writing. The payments and entities required to make such payments are subject to the provisions of tax law - the Act of 29 August, 1997. Tax (Journal of Laws 2005, No. 8, item 60, as later amended).

The financial management of each fund for promotion is conducted on the basis of the principles of resource management (also including the amount of support for each individual task expressed in a percentage value), and a financial plan devised for the financial year (that is the calendar year) which is closed with a financial and factual report.

Administrative and formal service of the funds for promotion lies in the area of operations of the Agency of Agricultural Market (ARR). The president of the Agency of Agricultural Market administers the funds pursuant to resolutions passed by the managing committees, but refuses as well to implement the resolutions inconsistent

with the law. Moreover, provides legal, technical and office services and draws up reports on the implementation of the financial plan of the funds. It is an important authority of the President to determine, by decision, the amount of payments to the Fund for the Promotion of Milk. Also, by way of administrative decisions, the president of the Agency of Agricultural Market adjudicates proceedings in individual cases. The costs resulting from the implementation of these tasks by the Agency of Agricultural Market are covered by the funds and may not exceed 3.5% of annual revenues for individual fund. The president of the Agency of Agricultural Market also holds the powers of the tax authorities as the body of the first instance.

The role of the Minister for agricultural markets has been defined primarily in the form of a duty to indicate the specific provisions by means of regulations, which include:

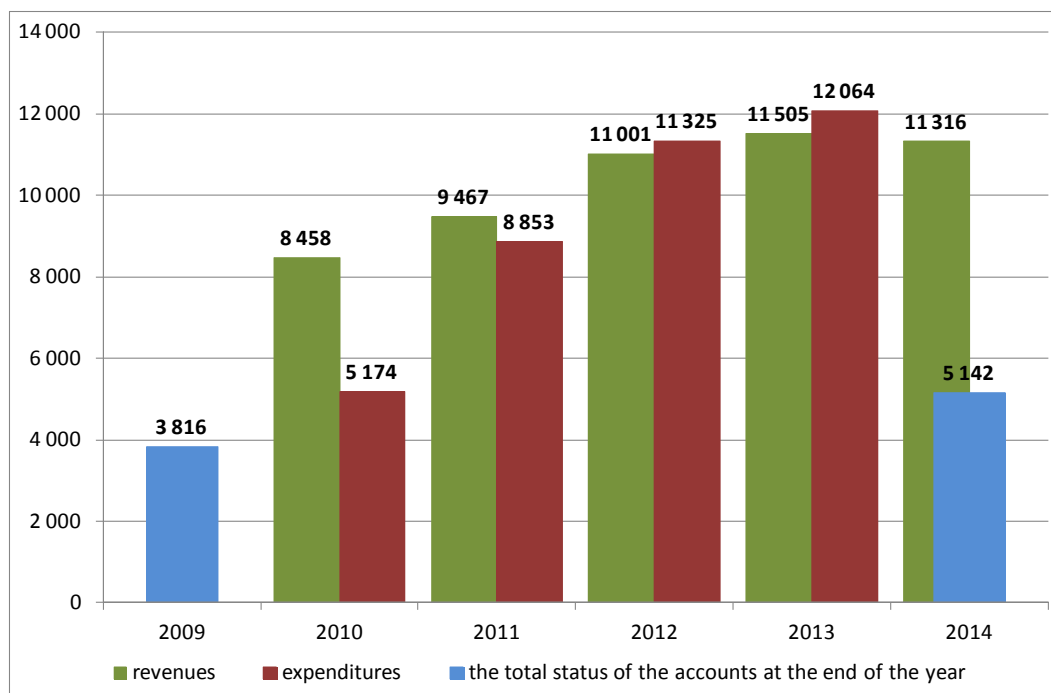
- the specific conditions and procedures for the provision of financial support from the funds for promotion, ensuring effective implementation of the objectives – the provisions of the regulation adopted determine the path of allocating support, the form of support in the form of reimbursement of costs and a list of the categories of costs;
- a detailed list of goods on which the contributions are calculated, collected, transferred and paid to the funds for promotion – the adopted regulation contains a list of the goods along with the CPA symbols;
- the types of costs associated with the implementation of the tasks of the Agency of Agricultural Market covered by the funds for promotion and the manner and conditions of transferring and accounting for these resources – the adopted regulation contains a generic list of eligible costs and the method of accounting for them;
- the procedures for putting forward candidates by nationwide organizations as members of the managing committee and the course of selecting them – the adopted regulation defines the procedure for the selection ensuring the representativeness of the committees and the appointing to them people with relevant experience.

Other tasks and powers of the Minister include the appointment and dismissal of members of the managing committee, as well as the performance of the body of appeal against the decision of the President of the Agency of Agricultural Market (the second instance) in tax matters and on the support within the framework of the funds.

IV. THE FUNDS FOR PROMOTION OF AGRICULTURAL AND FOOD PRODUCTS IN FINANCIAL TERMS

The first year of functioning of the funds was a year of collecting financial resources; therefore, at the time there were no contributions toward financing activities (except milk). Subsequent years brought an increase in available funds, which allowed for the intensification of activity.

Figure 1. The total status of the accounts at the end of 2009 and 2014. and the amount of revenues and expenditures under the Funds for Promotion in 2010-2014 *, in € thousands **.



* as of the end of the year; in 2014. lack of comparable data in relation to expenditures.

** according to the official NBP exchange rate of 31.12.2014: €1 = PLN 4.2623.

Source: SAEPR FAPA based on the "Report on the activities of the Agency of Agricultural Market in 2013," and releases from previous years; http://www.arr.gov.pl/data/01852/fundusze_promocji_12_2014.pdf - download of 26.01.2015

In 2009 the Agency of Agricultural Market received 256 applications for funding from the Fund for the Promotion of Milk (formerly the Dairy Promotion Fund), and the amount of the subsidies, which was allocated from the FPM was €1 515 thousand⁷. The Agency, accounting in 2009 for the FPM's financial plans of 2007, 2008 and 2009, paid out to the Fund for the Promotion of Milk financial resources to the amount of €3 610 thousand, including:

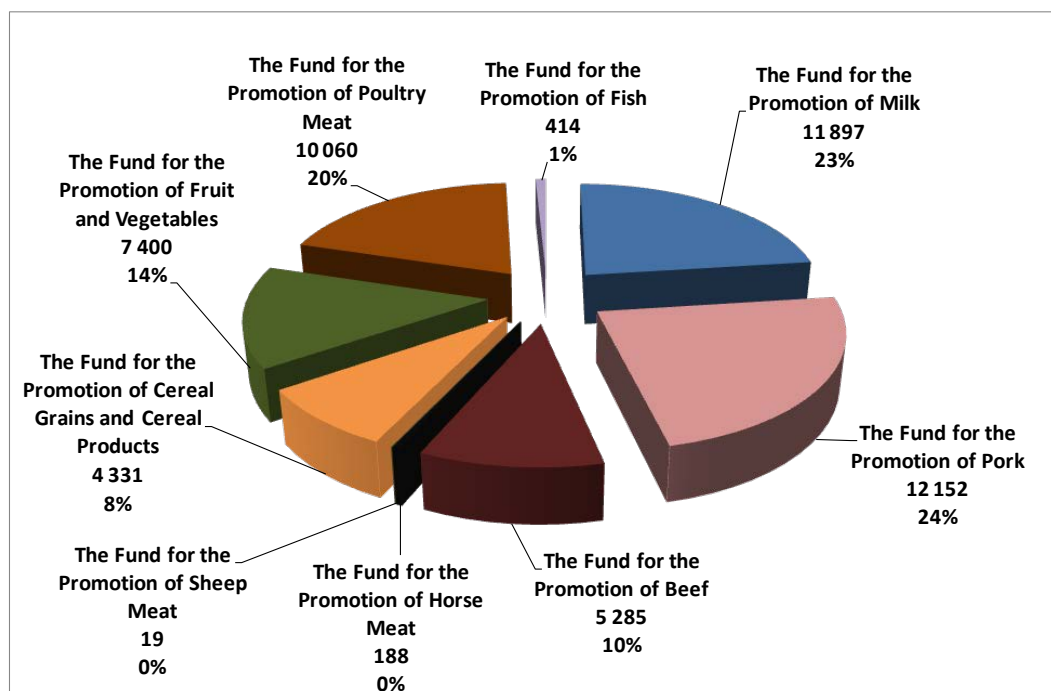
- €1 097 thousand per project resulting from the FPM financial plan for 2007,
- €303 thousand per project resulting from the FPM financial plan for 2008,
- €1 206 thousand per project completed and paid in 2009,
- €322 thousand in subsidies to the consumption of milk and milk products in educational institutions in 2008,
- €634 thousand in subsidies to the consumption of milk and milk products in educational institutions in 2009,
- €47 thousand for servicing the fund for promotion, i.e. 3.5% of annual revenues

⁷ According to the official NBP exchange rate of 31.12.2014: €1 = PLN 4.2623.

for each individual fund for promotion in accordance with Article 5 paragraph 1. of the Act on Funds for promotion of agricultural and food products (Journal of Laws 2009, No. 97, item 799)

- nearly €0.7 thousand in additional expenses, i.e. commissions, bank interest, cost of reminders, as well as the transferred interest on resources in the auxiliary account for financing the consumption of milk and milk products in educational institutions.

Figure 2. The total revenues to the accounts of each fund for promotion in 2010-2014 in €* thousands and their structure, in%.



* according to the official NBP exchange rate of 31.12.2014: €1 = PLN 4.2623.

Source: SAEPR FAPA based on the "Report on the activities of the Agency of Agricultural Market in 2013," and releases from previous years; http://www.arr.gov.pl/data/01852/fundusze_promocji_12_2014.pdf - download of 26.01.2015

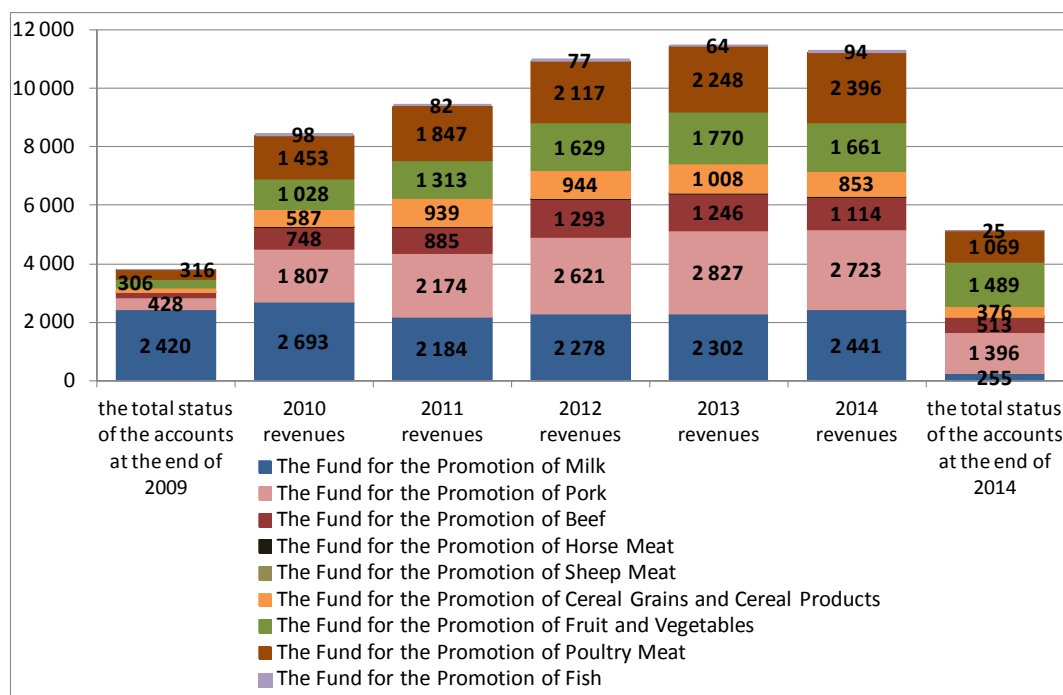
The total revenues in 2010-2014 amounted to almost €52 million⁸ and affected most pork, milk, poultry meat and fruit and vegetables.

The size of the contributions to the funds depends on the size of the purchase (milk, in this case) or its net value (in the case of other goods). As a result, the revenues toward the Fund for the Promotion of Milk in 2010-2014 were virtually at a similar high level. However, the change in the volume of payments to the other funds was the derivative of the prices received for goods and the volume of production. The amount from payments

⁸ According to the official NBP exchange rate of 31.12.2014: €1 = PLN 4.2623.

which increased most, by 65%, was in the case of poultry, but amount from payments for horse meat, low already, decreased by further 25%. The levels of payments were negligible in respect of sheep meat and, to a relatively small extent, of fish.

Figure3. The status of the accounts at the end of 2009 and 2014 and revenues toward funds for promotion in 2010-2014, in €thousands*.



* according to the official NBP exchange rate of 31.12.2014: €1 = PLN 4.2623.

Source: SAEPR FAPA based on the "Report on the activities of the Agency of Agricultural Market in 2013," and releases from previous years; http://www.arr.gov.pl/data/01852/fundusze_promocji_12_2014.pdf - download of 26.01.2015

V. CONCLUSIONES

In the framework of the European Common Agricultural Policy, the support to promotion of agricultural products has been evolving significantly since the early 1980s. Starting with a specific support to some agricultural sectors under individual regulations, the current policy is one of horizontal promotion, common to the internal market and to third countries. Currently, the promotion policy includes a large number of eligible agricultural products and food products, the latter at the first processing stage. The main objective of the promotion policy is to improve consumers' image and knowledge of EU agricultural products and their production methods in order to reverse static or declining consumption (i.e. fruit and vegetables, milk), expand the demand in the EU (i.e. olive oil, organic products) or open new markets in third countries.

There are nine promotion funds in Poland that operate for the following agri-food products: milk, pigmeat, beef, horsemeat, sheepmeat, grains of cereals and processed cereal products, fruit and vegetables, poultry and fish. The funds have been created in order to ensure the relevant financial resources for branch contribution to promotion, supporting agricultural marketing and consumption growth of agricultural and food products. The manner of allotting the financial means from the promotion funds is solely determined by the representatives of branch organisations representing agricultural producers and processors operating in the sector. The value of expenditure from agri-food products promotion funds from 2004 to 2014 amounted to EUR 62.4 million.