

ASPECTOS JURÍDICOS DEL APOYO A LA ACTIVIDAD DE LA APICULTURA A LA LUZ DEL DERECHO DE LA UNIÓN EUROPEA Y DE DETERMINADOS ESTADOS MIEMBROS*

LEGAL ASPECTS OF SUPPORTING APICULTURAL ACTIVITY IN LIGHT OF EUROPEAN UNION LAW AND SELECTED MEMBER STATES

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Resumen

Además de proporcionar valiosos productos a la sociedad, las abejas melíferas europeas constituyen una de las especies capaces de polinizar las plantas entomófilas. Sin embargo, están gravemente amenazadas por diversos factores que contribuyen a la reducción sistemática de sus colonias. Para evitar que este escenario se materialice, la Comisión Europea, así como la Autoridad Europea de Seguridad Alimentaria (EFSA) junto con otras instituciones de la UE, han tomado numerosas medidas para prevenir este curso de los acontecimientos. Además, teniendo en cuenta los costes crecientes de la apicultura y los ingresos relativamente bajos, cada vez más apicultores deciden renunciar a su actividad. Por lo tanto, la necesidad de proporcionar una ayuda adecuada a los apicultores parece ser una de las medidas más urgentes que debería adoptar el legislador de la UE. Por esta razón, el siguiente artículo intenta esbozar las vías legales de apoyo a la actividad apícola desde la perspectiva de la UE y sus Estados miembros seleccionados.

Palabras clave: Actividad apícola, Ayudas al sector de la apicultura, Derecho de la Unión Europea, Derecho agrario

Abstract

Apart from providing valuable products to the society, European honeybees are one of the species which are capable of pollinating entomophilic plants. However, they are seriously threatened with the diverse factors which contribute to the systematic reduction of their colonies. In order to prevent that scenario from happening the European Commission as well as The European Food Safety Agency and other EU institutions have taken numerous measures to prevent such a course of events. Furthermore, in view of the growing costs of beekeeping and the relatively low income, more and more beekeepers are deciding not to continue to carry on their activity. Therefore, the need to provide adequate aid for beekeepers appears to be one of the most urgent actions that the EU legislator should take. For this reason, the following article attempts to outline the legal ways of supporting apicultural activity from the perspective of the EU and its selected Member States.

Keywords: Beekeeping activity, Aid to the beekeeping sector, European Union Law, Agricultural Law

SUMARIO: I. Introducción; II. Aspectos jurídicos de las ayudas al sector de la apicultura en la normativa de la UE y en determinados Estados miembros; III. Conclusiones; IV. Bibliografía.

SUMMARY: I. Introduction; II. Legal aspects of supporting apicultural activity in EU legislation and in selected Member States; III. Conclusions; IV. Bibliography.

I. INTRODUCTION

Apart from threats which endanger further survival of European honeybees, there are serious problems facing the process of carrying out apicultural activity in the European Union. The first issue concerns a necessity of introducing the legal terms for basic expressions connected with beekeeping.¹ Thanks to that, it would be possible to differentiate the legal status of apicultural activity which shall contribute to qualify beekeeping as an agricultural or economic activity.² Nowadays, it is very difficult because of the fact that the concept of agricultural activity has not been defined sufficiently adequate in Polish law.

The second problem is related to with the question: does the legislator sufficiently protects the apicultural activity? In this regard, it should be noted that, both in EU law and in national law, there is no legislation which protects apicultural activity as such. Protected are only the individual elements of this activity, such as honeybees and apicultural products.³ However, neither apicultural holdings nor apicultural producers carrying out these activities are included in its scope. It is vital to cite a part of the Supreme Chamber of Control Report prepared the Ministry of Agriculture and Rural Development which states that 'there is a lack of coordinated action to combat bee diseases and to use plant protection products in such a way that bees are not endangered'.⁴

The third problem concerns answering to the question as to whether the legislator sufficiently supports beekeeping activities. Currently, financial assistance for apicultural activity in Poland can be obtained, among others, from the funds coming from the implementation of the Rural Development Programme for 2014-2020 and the National Beekeeping Programme for 2020-2022. It is relevant to mention, that receiving one of the form of aid, excludes benefiting from the other one. In addition, due to the dispersion of regulations, entities carrying out apicultural activities in Poland experience in practice problems connected with obtaining comprehensive knowledge on the possibilities of support for their activities. Financial assistance also depends on

the size of the apicultural holding, thus favouring owners of larger apicultural holdings at the expense of medium-sized and smaller ones.

Though assessing the legal status of apicultural activity, as well as issues concerning its protection, the aim of this paper is to outline the ways of supporting the apiculture and presenting the legal ways of achieving that goal.

II. LEGAL ASPECTS OF SUPPORTING APICULTURAL ACTIVITY IN EU LEGISLATION AND IN SELECTED MEMBER STATES

The first reference concerning an aid for the apicultural have been included in the objectives of the Common Agricultural Policy (CAP) from 1997.⁵ Nevertheless, the forms of support for apicultural sector of agriculture have changed and are currently regulated by Regulation (EU) N° 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization of agricultural products and repealing the Council Regulations EEC N° 922/72, (EEC) N° 234/79, (EC) N° 1037/2001 and (EC) N° 1234/2007.⁶ This regulation as well as the implementation regulations⁷ have established system of support for apicultural sector in form of national apiculture programmes, which are co-funded by the European Union and run for three-year periods.⁸ The budgets for the national apiculture programmes are only provisional and need to be approved by the European Commission. Following its approval, the programmes will be adjusted to the bas of the allocation granted to each EU country. Every EU state which decided to implement them, is obliged to prepare annual implementation reports which concern the use of funds coming from national apiculture programmes during the previous year.

It is important to emphasize that regulation (EU) N° 1308/2013 replaced Council Regulation (EC) N° 1234/2007⁹ and lays down new rules regarding aid in the apiculture sector. The number of beehives in each participating Member State is an indicator of the size of the Member States' apiculture sector. The share of each participating Member State in the total number of beehives in the Union represents a simple basis on which to allocate the Union contribution to the apiculture programmes. In order to ensure a sound distribution of the Union funds, participating Member States should have a reliable method to determine the number of beehives in their territory. As the number of beehives vary during the seasons of the year, it is necessary to fix the period when the number of beehives is determined. It is necessary for the Commission to know the number of beehives in the Member States not only in order to allocate the Union contribution to the apiculture programmes but also in order

to follow the trend in the number of beehives in the Member States in order to evaluate the impact of support measures on the beekeeping sector and to inform European citizens. Therefore, each of participating Member States shall report to the Commission on a yearly basis the number of beehives determined in accordance with this Regulation.¹⁰

Each EU country may draw up a national apiculture programme, this is then supported by the EU. These programmes cover a three-year period. Apiculture programmes for 2020-22, were approved by EU implementing decision 2019/974 in all EU countries.¹¹ In accordance with the programmes eight specific, following measures are eligible for funding: technical assistance: for example, training for beekeepers and groups of beekeepers on topics such as breeding or disease prevention, extraction, storage, packaging of honey etc.; combating beehive invaders and diseases, particularly *varroasis* (varroa is an endemic parasite, which weakens bee immune systems and, when untreated, leads to the loss of bee colonies);¹² rationalization of transhumance which is important for pollination but also for bee nutrition; analyses of apiculture products: honey, royal jelly, propolis, pollen and beeswax; restocking of hives; applied research; market monitoring; enhancement of product quality with a view to exploiting the potential of apiculture products on the market.¹³

In accordance with the abovementioned provisions, co-financing from EU budget may account up to 50% of the funds spent. Total or partial (depending on the direction of support) net costs incurred for the implementation of actions specified in the EC implementing decision by authorized entities *i.e.* beekeeping associations, beekeeping clubs, beekeeping incorporations, apicultural cooperatives, groups of apicultural producers (in the beekeeping activities), and producers organizations are subject to refund.¹⁴ In Poland for example, the final recipients of the support are beekeeping farms with a veterinary identification number of apiaries entered into registers kept by district veterinarians.¹⁵

Every third year the European Commission presents a report to the European Parliament and the Council on the implementation of the measures concerning the apiculture sector.¹⁶ Although the apiculture programmes have remained voluntary under the CMO, all Member States continue to introduce the programmes, developed in cooperation with the sector. The programmes vary between Member States, depending on the needs of that particular Member State, but the measures receiving most of the support - technical assistance and combating beehive invaders – have remained unchanged since the last report in 2016.¹⁷ The funding to the sector has continued to increase over the last

programming periods, and the uptake of the funding remains high, showing the relevance of the chosen measures.

The number of beehives is one indicator of the impact of the support measure and this number continues to increase. However, looking at the overall profitability of the sector, EU average prices have not increased, while production costs are increasing and import prices decreasing.¹⁸ This poses challenges for the sector and indicates a continued need for support, also considering the important role of bees for the environment and agriculture. It is vital to mention that for example the measure supporting the rationalization of transhumance was found to be highly valued in the case studies carried out in Greece and Spain.¹⁹ It was rarely used elsewhere in the EU as the measure is more suitable for professional beekeepers with large numbers of hives. The measures have generally not had a substantial impact on the national composition of marketing channels for honey. For example, as was the case before the evaluation period, all the honey produced in Germany continued to be sold locally and through direct sale, while around 50% of the honey produced in Spain is still sold to wholesalers.²⁰

In spite of the ways of supporting beekeeping provided by the national apiculture programmes, it is important to mention forms of aid to bees connected with environmental law. Agricultural intensification and associated loss of high-quality habitats are key drivers of insect pollinator declines.²¹ With the aim of decreasing the environmental impact of agriculture, the 2014 EU Common Agricultural Policy defined a set of habitat and landscape features (the Ecological Focus Areas: the EFAs) farmers could select from as a requirement to receive basic farm payments.²² Still, in order to conserve pollinators and help protect pollination services, existing literature on the subject highlights the need to create a variety of interconnected, well-managed habitats that complement each other in the resources they offer. According to these experts *the Common Agricultural Policy post-2020 should take a holistic view to implementation that integrates the different delivery vehicles aimed at protecting biodiversity (e.g., enhanced conditionality, eco-scheme and agri-environment and climate measures).*²³ To improve habitat quality, *we recommend an effective monitoring framework with target-orientated indicators and to facilitate the spatial targeting of options collaboration between land managers should be incentivized.*²⁴

As it was mentioned in the European Parliament resolution of 1 March 2018 on prospects and challenges for the EU apiculture sector,²⁵ it shall be emphasized, that the Commission and the Member States should consider

using bees as an indicator of environmental quality and as an instrument for assessing the effectiveness of the implementation of the CAP objectives, specifically via residue analysis and the botanical diversity of environmental matrices sampled in beehives.²⁶ The CAP has to be coherent and consistent between the declared objectives of the CAP and its real consequences. According to the experts from 'Bee Life' that is why it is essential to adopt indicators in order to know if we walk in the desired direction: pollinators can be part of such indicators.²⁷

An apicultural activity can be also supported from the funds of the European Agricultural Fund for Rural Development (EAFRD).²⁸ EU countries implement EAFRD funding through rural development programmes (RDPs). RDPs are co-financed by national budgets and may be prepared on either a national or regional basis.²⁹ It is essential to mention that Member States shall ensure that there is no double funding of apiculture programmes under aid in the apiculture sector pursuant to Article 55 of Regulation (EU) N° 1308/2013 and rural development support pursuant to Regulation (EU) N° 1305/2013.³⁰ While the European Commission approves and monitors RDPs, decisions regarding the selection of projects and the granting of payments are handled by national and regional managing authorities. For example in Italian legal system,³¹ the issue of aid for beekeeping activities is regulated mainly in the Italian legal system by law: *Legge n. 313 del 24 dicembre 2004 # Disciplina dell'apicoltura*.³²

In terms of Polish legal system, it is vital to mention that aid for an apicultural activity was provided within the scope of regulations implementing individual measures of the Rural Development Programme 2014-2020, such as: 'restructuring of small farms', 'modernization of agricultural holdings', or 'support for investments in processing, marketing or development of agricultural products'.³³ Applications in that regard should have been submitted to the Agency for Restructuring and Modernization of Agriculture (ARMA).³⁴ A chance for financial aid was for example provided for so-called producer groups. According to the ARMA, a producer group may be considered a group which unites producers of one or several products, carries out its activities as a micro, small or medium-sized enterprise, *i.e.*, employs fewer than 250 people, and its annual business transactions do not exceed 50 million EUR. In addition, a group receiving support must commit to implementing a business plan, which must take place within five years of the support. Preferential conditions for granting aid can be used, among others, by honey producer groups. The amount of aid is strictly dependent on the net

revenue generated from the sale of specific products. In the first year of the group's existence, it is 10 percent, in the following years 8, 6, 5 and 4 percent respectively (aid is granted for a maximum of five years).

It is vital to add, that the aid provided in the Polish Rural Development Programme for 2014-2020 is almost twice as high as in the previous financial plan.³⁵ In addition, the Act of 13 June 2019 amending the Act on promotion funds for agri-food products includes provisions on the possibility of granting funds to those beekeepers who have decided to carry out promotional and marketing activities to, *inter alia*, increase the production and consumption of beekeeping products.³⁶ This opportunity has given beekeepers, on the one hand a chance to obtain funds for the promotion and marketing of their own beekeeping products. On the other hand, it helps them to be more competitive in comparison to the beekeepers from Western Europe.

In respect of other countries of the European Union, it is essential to mention the support for apicultural activity provided in mentioned earlier *Legge n. 313 del 24 dicembre 2004 # Disciplina dell'apicoltura*.³⁷ Notwithstanding aid provided in the EU law, the Italian legislator regulated these issues *i. a.* in art. 4 and 5 of this act. Consequently, in order to support the environment and agroforestry production activities, a so-called programming document on measures to be taken to protect and support of the beekeeping sector. The paper is valid for a three-year cycle and is adopted in the form of an agreement reached during a permanent conference concerning relations between the State, the regions and the autonomous provinces of Trident and Bolzano. As part of support for beekeeping activities, programme documents provide financial support for the protection and promotion of Italian beekeeping products, by using such a measures as protected geographical indications and protected designations of origin, offering support for different ways of association and professional agreements between beekeepers, undertaking crop pollination and transhumance activities relating to crop pollination and transhumance, preservation of bee varieties native to Italy, attempts to mobilize the younger generation of farmers to work in the beekeeping sector, and the introduction of limits and prohibitions on the use of plant protection products harmful to *Apis mellifera*.³⁸ It should be noted that, while in Italy and Poland, in addition to the EU support, certain measures to help beekeeping sector have also been adopted at national level. In contrast, the German and French legal systems are based almost exclusively on the EU law, without having its own regulations concerning a possibility of granting support from national funds.³⁹

III. CONCLUSIONS

The European Union law offers specific legal tools of support to apicultural activity. The aid for the apicultural sector is generally rendered through national apiculture programmes or rural development programmes. Although the support for beekeeping have remained voluntary under the Common Market Organization, all Member States continue to introduce the programmes, developed in cooperation with the sector. The programmes vary between Member States, depending on the needs of that particular Member State, but the measures receiving most of the support - technical assistance and combating beehive invaders –as it was mentioned earlier - have not been modified since the Report from 2016. It is also possible to obtain support for apicultural activity from various research projects, carried out or financed by EU's institutions.⁴⁰ It is therefore mostly up to the Member States to decide to what extent they use the EU funds provided to support beekeeping.

Still, having into consideration the current threats for beekeeping sector,⁴¹ it is important to try to answer to the question if due to the specific nature of beekeeping and the functions it performs for agriculture and the environment, this activity should not be protected and supported by the legislator in an even more advanced way. In author's opinion, given the numerous threats to beekeeping's continued existence, it is necessary to introduce more diverse ways of aid for apiculture. It is advisable to analyze the provisions of the countries which have adopted quite complex legislature concerning apiculture (e. g. Italy). In terms of Polish legal system, it is worth to emphasize that Polish legislation does not recognize so-called pollination contracts,⁴² under which beekeepers could receive remuneration in exchange for pollination performed by bees of farmer's plants and crops. Such agreements have operated successfully in the western hemisphere and represent a form of strengthening the beekeeper's position on a market, including both increasing income opportunities and influencing the size and structure of crops in agriculture.

In conclusion, it is important to bear in mind, that while the ways of support at the EU level shall be assessed relatively positively, although measures implemented at the national level are not so advanced in comparison the EU regulation. In the future, the amendments of legislation in regard to the discussed field shall be considered.

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NOTAS

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- 31 The author of this article has outlined the legal aspects of support for beekeeping in Italy in an article: RÓŻAŃSKI, K. (2018), "Działalność pszczelarska we włoskim systemie prawnym", *Przegląd Prawa Rolnego*, n° 2, pp. 171-181, which is also funded by the National Science Centre, Poland as part of carrying out the research project N° 2017/25/N/HS5/02213 entitled "Legal status and protection and support of beekeeping activities in Poland in light of European Union law".
- 32 *Legge n. 313 del 24 dicembre 2004 # Disciplina dell'apicoltura*, "Gazzetta Ufficiale Italiana", n° 306, 2004 with modifications.
- 33 Polish regulation: Ustawa z dnia 20 lutego 2015 r.o wspieraniu rozwoju obszarów wiejskich z udziałem środków Europejskiego Funduszu Rolnego na rzecz Rozwoju Obszarów Wiejskich w ramach Programu Rozwoju Obszarów Wiejskich na lata 2014–2020, JL P 2015, pos. 349, as well as many reglamentations, for example: Rozporządzenie Ministra Rozwoju i Wsi z dnia

- 12 października 2015 r. w sprawie wysokości limitów środków dostępnych w poszczególnych województwach lub latach w ramach określonych działań lub poddziałań Programu Rozwoju Obszarów Wiejskich na lata 2014–2020, JL P. 2015, pos. 1755 with modifications.
- 34 See: Official website of the ARMA: [access: 01.12.2020: <https://www.arimr.gov.pl/o-arimr/information-about-the-agency.html>] as well as the art. 6 p. 4 of Ustawa z dnia 20 lutego 2015 r. o wspieraniu rozwoju obszarów wiejskich z udziałem środków Europejskiego Funduszu Rolnego na rzecz Rozwoju Obszarów Wiejskich w ramach Programu Rozwoju Obszarów Wiejskich na lata 2014–2020.
- 35 See: Ustawa z dnia 20 lutego 2015 r. o wspieraniu rozwoju obszarów wiejskich z udziałem środków Europejskiego Funduszu Rolnego na rzecz Rozwoju Obszarów Wiejskich w ramach Programu Rozwoju Obszarów Wiejskich na lata 2014–2020, JL P. 2015, pos. 349.
- 36 Polish law: Ustawa z dnia 13 czerwca 2019 r. o zmianie ustawy o funduszach promocji produktów rolno-spożywczych, JL P. 2019, pos. 1318.
- 37 Apart from author's article mentioned in the footnote n° 31, the issues concerning legal aspects of agricultural have been also addressed by COSTATO, L. (2005), "La disciplina dell'apicoltura", *Rivista di Diritto Agrario*, n° 1, pp. 116 and the following ones.
- 38 See: art. 4, 5 and other provisions included in: *Legge n. 313 del 24 dicembre 2004 # Disciplina dell'apicoltura*, "Gazzetta Ufficiale Italiana", n° 306, 2004 with modifications.
- 39 See: LÜHN-IRRIGER, S. (1999), *Die Biene im deutschen Recht von den Anfängen bis zur Gegenwart*, Münster; COLSON, J. P. (2013), *L'abeille et le droit. Pour une évolution de la législation apicole*, Editions du Puits Fleuri, Héricy.
- 40 Short description of each of these research project can be found the website of the European Commission: [access: 02.12.2020: https://ec.europa.eu/food/animals/live_animals/bees/research_en].
- 41 CHAUZAUT, M. P., CAUQUIL, L., FRANCO, R. S., HENDRIX, P. & RIBIERE-CHABIERT, M. (2013), "Demographics of the European Apicultural Industry", *Plos ONE*, n° 8, p. 8; DELOITTE, (2013), p. 37-43.
- 42 RITTEN, C. J., PECK, D., EHMKE, M. & BUDDHIKA PATALEE, M. A. (2018), "Firm Efficiency and Returns-to-Scale in the Honey Bee Pollination Services Industry", *Journal of Economic Entomology*, vol. 11, n° 3, pp. 1014 and the following ones.