

Los registros públicos a la luz de la legislación alimentaria

The public registers in the light of the food law

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Resumen: El objetivo de este estudio es tratar de indicar las características de los registros en derecho alimentario, así como evaluar la regulación legal en términos de adecuación a los fines de este derecho. Una característica de los registros en el derecho alimentario es su carácter público y la regulación del acceso a la información pública, y por tanto su universalidad y apertura. Todos estos registros tienen una función informativa, probatoria y registral. Son un instrumento para alcanzar los objetivos de la legislación alimentaria, principalmente en el marco del sistema de control alimentario oficial de la UE. Gracias a los registros también es posible clasificar los acontecimientos en las categorías de las estadísticas públicas, necesarias en la planificación y gestión de la economía.

Palabras clave: Legislación alimentaria; registros públicos; administración pública.

Abstract: The aim of the paper is an attempt to indicate the features of registers in food law, as well as to assess the legal regulation in terms of adequacy for the purposes of food law.

A feature of registers in food law is their public nature and regulation of access to public information, and therefore their universality and openness. All these registers have an information, evidence and record function. They are an instrument used to achieve the objectives of food law, mainly within the framework of the EU's official food control system. It is thanks to the registers that it is also possible to classify events in the categories of public statistics, necessary in planning and managing the economy.

Keywords: Food law; public registers; public administration.

INTRODUCCIÓN

Building a coherent and uniform information system of the state, serving on the one hand the implementation of public tasks, and on the other hand - satisfying the needs of citizens, requires in particular ensuring the proper keeping of public registers. Due to the presence of member states in the EU, this statement should also be applied to the EU information system.

In Polish regulations, the definition of a public register is included in Art. 3 point 5 of the act on computerization of the activities of entities performing public tasks.¹ According to this legal act, the public register means "register, records, list, list inventory or other form of records, used for the implementation of public tasks, kept by a public entity on the basis of separate statutory provisions".

By their nature, public registers should be public and open to the public. Therefore, this category of public registers includes all registers, lists and lists provided for by law for the implementation of the objectives of the food law.

There are numerous such public registers in the area of food production and processing. They are also based on various legal acts. The basic legal act regulating these issues is the Food and Nutrition Safety Act.² These issues are also regulated by other legal acts, e.g. the Act on organic farming and agricultural production³, the act on animal products.⁴

The group of entities subject to this regulation, as a rule, includes entities included in the category „food business operators”. The Polish legislator used the term "establishment", which does not appear in EU law.

The term "establishment", in accordance with the Food and Nutrition Safety Act, means a "food business" within the meaning of Art. 3 point 2 of Regulation No 178/2002 ("Food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of

¹ Act of February 17, 2005 on computerization of the activities of entities performing public tasks, Journal Of Laws 2021, item 2070.

² Food and Nutrition Safety Act of August 26, 2006, i.e. Journal Of Laws of 2020, item 2021, hereinafter referred to as the Food and Nutrition Safety Act.

³ Act on organic farming and agricultural production of June 23, 2022, i.e. Journal Of Laws of 2022, item 1370, hereinafter referred to as the Act on Organic Agriculture.

⁴ Act on products of animal origin of December 16, 2005, i.e. Journal Of Laws of 2020, item 1753, hereinafter referred to as the Act on Animal Products.

the activities related to any stage of production, processing and distribution of food).⁵ Whereas "food business operator" means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control (art. 3 point 3 or Regulation No 178/2002).

The subject of the article was the subject of references in the legal literature⁶, but it has not been exhausted.⁷ Publications on certain procedural aspects related to registers can be noted⁸, however, since their publication, the legal status has changed. It has been noticed in the literature that with a huge number of registers, in legislation there is a variety of terms defining registers, records, lists, and at the same time there is no definition of these concepts in the legal terminology.⁹

There are cognitive and practical reasons for developing the subject matter specified in the article. As for the former, research into the law regulating these aspects may serve to deepen the knowledge and assess the functionality of legal solutions.

Taking up the subject of registers in food law may also be useful for the practice of applying the law. Sometimes difficulties are caused by the mere dispersion of regulations in various legal acts and determination of the legal status, and other times by material and procedural aspects. By listing only examples of registers, e.g. „register of entrepreneurs engaged in the production or bottling of wine products”¹⁰; “register of traders active in the marketing of fruit or vegetables covered by commercial

⁵ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, Official Journal L 031, 01/02/2002 P. 0001 – 0024, hereinafter Regulation No 178/2002.

⁶ Esther Muñoz Espada, *Hacia unas nuevas relaciones entre el registro mercantil y la actividad agraria*, Madrid 2020.

⁷ Beata Jeżyńska, *Producent rolny jako przedsiębiorca*, Lublin 2008, p. 225; Patryk Kalinowski, Małgorzata Korzycka, *Rejestry działalności na rynku spożywczym – uwagi porównawcze i de lege ferenda*, *Studia Iuridica* 2020, Volume 86, pp. 91-111.

⁸ See Łukasz M. Sokołowski, *Procedura dokonywania zmian w rejestrze zakładów żywnościowych – aspekty prawne*, „Przegląd Prawa Rolnego” 2014, nr 1 (14), p. 244.

⁹ Patryk Kalinowski, Małgorzata Korzycka, *Rejestry działalności na rynku spożywczym ...*, p. 94.

¹⁰ See: The act on wine products of December 2, 2021, *Journal Of Laws* 2022, item 24;

quality standards”¹¹; “register of agricultural producer groups”¹², one can see how extensive and numerous are the legal regulations relating to these aspects. In Poland, there was even an idea to create one central register of entrepreneurs operating in the agri-food market, but it has not been finalized.¹³ It was to be conducted by the Chief Inspector of Commercial Quality of Agricultural and Food Products in electronic form.

The aim of the paper is an attempt to indicate the features of registers in food law, as well as to assess the legal regulation in terms of adequacy for the purposes of food law. The framework of the article does not allow for exhaustive and complete research, but only to signal a few aspects.

1. FOOD LAW GOALS AS JUSTIFICATION FOR CREATING REGISTERS.

The Treaty on the Functioning of the European Union (TFEU)¹⁴ requires a high level of protection of human and animal health and of the environment to be ensured in the definition and implementation of Union policies and activities. Union legislation provides for a set of harmonised rules to ensure that food and feed are safe. All activities which might have an impact on the safety of the agri-food chain or on the protection of consumers’ interests in relation to food and food information must be performed in accordance with specific requirements of the food law.

Pursuant to the provisions of the basic legal act, Regulation No 178/2002, the aspiration of the EU legislator was to ensure that:

the free movement of safe and wholesome food and it’s contribute to the health and well-being of citizens, and to their social and economic interests,

assurance of a high level of protection of human life and health in the policies,

food and feed safety requirements do not differ significantly from Member State to Member State,

¹¹ Act of December 19, 2003 on the organization of the fruit and vegetable markets and the hop market, i.e. Journal of Laws of 2021, item 618.

¹² Act of September 15, 2000 on agricultural producer groups and their associations and amending other acts, i.e. Journal of Laws of 2022, item 395.

¹³ A government bill amending the act on the commercial quality of agri-food products and certain other acts, 9-020-809-2022.pdf (sejm.gov.pl), access 15.10.2022.

¹⁴ Consolidated version of the Treaty on the Functioning of the European Union, Official Journal C 326, 26.10.2012, p. 47–390.

reduction of the differences in relation to concepts, principles and procedures between the food laws of the Member States.

That is why it was so necessary to approximate all concepts (i.e. food notion), principles and procedures so as to form a common basis for measures governing food and feed taken in the Member States and at EU level. It was necessary to provide for sufficient time for the adaptation of any conflicting provisions in existing legislation, both at national and EU level.

In addition to the main goals of food law, the principles of food law containing standards requiring action in accordance with specific values are also of key importance¹⁵. From the point of view of the subject of these considerations, the principle of transparency should in particular be taken into account¹⁶ and the principle of traceability. From these principles, one can derive a justification for recording all those aspects that affect the protection of human and animal health, as well as the interests of food business operators. Animal production is a special area of risk, hence all registers, lists and records related to it in practice are the basic tool in the risk management process.¹⁷

The objectives of food law can be achieved thanks to the institutions and legal solutions serving the proper performance of the obligations of food producers. These include the EU system of official food control, as well as sanctions for violations of the law regulated by the national law of the Member States. Sanctions for violations of the requirements of food law in Polish national law are regulated by various acts, the main of which

¹⁵ MUÑIZ ESPADA, E., “Las llamadas donaciones de alimentos en la proyectada normativa de seguridad alimentaria”, en *Seguridad alimentaria y medioambiente*, Valencia, 2022, ps. 65 y ss.

¹⁶ Nicola Conte-Salinas, Rochus Wallau, (2016), *The Concepts of Transparency and Openness in European Food Law*. In: Steier, G., Patel, K. (eds) *International Food Law and Policy*. Springer, Cham. https://doi.org/10.1007/978-3-319-07542-6_25; *Transparency in European Union food law in Food System Transparency Law, Science and Policy of Food and Agriculture* (2021) edited by Gabriela Steier, Adam Friedlander, 2021; Peter Olsen, Melania Borit, *The components of a food traceability system*, *Trends in Food Science & Technology* Volume 77, July 2018, p. 143-149.

¹⁷ Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin, *Official Journal L* 139, 30.4.2004, p. 55–205.

is the Safety and Nutrition Act (Articles 96-104). The official food control system is currently based on the provisions of Regulation 2017/625.¹⁸

In the light of these goals and the regulations subordinate to them, one can judge the legitimacy of establishing numerous and various registers. Many of them result from the need to implement EU law or to ensure the effectiveness of EU law in national legal orders, e.g. Regulation No 2018/848¹⁹, Regulation No 852/2004.²⁰

1. 1. Notification and entry in the register as a basic requirement for production and food production activities.

Basically, the determination of whether a given entity will be subject to registration and / or registration requirements is related to whether the entity produces food within the meaning of Regulation No 178/2002 or performs other food-related activities. For these reasons, it is legally important how the legislator understands the concept of food. Pursuant to Regulation No 178/2002, "food" (or "foodstuff") means any substance or product, processed, partially processed or unprocessed, intended for human consumption or expected to be consumed by humans. In addition, it includes beverages, chewing gum and any substance, including water,

¹⁸ Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation)Text with EEA relevance, Official Journal L 95, 7.4.2017, p. 1–142, hereinafter Regulation No 2017/625.

¹⁹ Art. 34 point 6 of the Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 PE/62/2017/REV/1, Official Journal L 150, 14.6.2018, p. 1–92.

²⁰ Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs, Official Journal L 139, 30.4.2004, p. 1–54, hereinafter Regulation No 852/2004.

intentionally added to a food during its production, preparation or processing. This definition includes water that complies with the standards set out in accordance with Art. 6 of Directive 98/83 / EC and without prejudice to the requirements of Directives 80/778 / EEC and 98/83 / EC. As can be seen, the wording of the concept of food covers primary production, which means "the production, cultivation or breeding of primary products, including harvesting, milking and breeding farm animals prior to slaughter", as well as "hunting and fishing, and undergrowth harvesting" (Art. 3 point 17 of Regulation No 178/2002).

On the other hand, processed products are required by the legislator to understand: "foodstuffs obtained as a result of the processing of unprocessed products. These products may contain ingredients that are necessary for their production or to give them a specific character" (Article 2 (1) (b) of Regulation No. 852/2004), and by unprocessed products - "foodstuffs that are not processed, and include products that have been separated, broken up into pieces, cut, sliced, deboned, shredded, skinned, crushed, incised, cleaned, trimmed, de-shelled, ground, chilled, frozen, quick-frozen or thawed "(Article 2 (1) (n) of Regulation No 852/2004). As a rule, unprocessed products will be agricultural products in their unchanged form, i.e. immediately after harvest.

Regulation No 178/2002 also determines which products (or substances) do not constitute food. This does not mean that all the other non-exempt foods are. This list is not exhaustive. "Foodstuff" does not include feed; live animals unless they are intended to be placed on the market for human consumption; plants before harvesting; medicinal products as defined in Directives 65/65 / EEC and 92/73 / EEC; cosmetics as defined in Directive 76/768 / EEC; tobacco and tobacco products within the meaning of Directive 89/622 / EEC; drugs or psychotropic substances as defined in the Single Convention on Narcotic Drugs, 1961 and the Convention on Psychotropic Substances, 1971; residues and impurities; medical devices within the meaning of Regulation No 2017/745.

The Polish Safety and Nutrition Act also uses the expression "production of foodstuffs", which means activities involving the preparation of raw materials for processing, their storage, technological processes, packaging and labeling and all other activities related to preparation for the market, as well as storage of ready-made products. the time they are placed on the market. As one can see, this definition goes far beyond purely manufacturing activities and covers related activities, such as packaging or labeling, as well as activities related to preparation for the

market, or even storage of finished products. The definition of food production does not include primary production within the meaning of Regulation No 178/2002 (i.e. cultivation or breeding of basic products, including harvesting, milking and breeding of farm animals before slaughter, hunting and fishing, and collection of undergrowth). This definition does not fully correspond to the expression "stages of production, processing and distribution", defined in Regulation No. 178/2002, which also covers primary production.²¹

The Food Safety Act requires food business operators to make entries or approval of the plant before starting operations. These obligations must be fulfilled by entities that:

- 1) they produce or place on the market food of non-animal origin,
- 2) place products of animal origin on the market that are not under official control of the Veterinary Inspection Authority,
- 3) produce or place on the market food containing both foodstuffs of non-animal origin and products of animal origin referred to in art. 1 clause 2 of Regulation No 853/2004, with the exception of agricultural retail establishments, subject to statutory exceptions,
- 4) operate on the market of materials and articles intended to come into contact with food, including plants operated by recycling entities
- in the manner and on the terms specified in Regulation No 852/2004 and Regulation No 2017/625.

Approval is made on the basis of a request from the food business operator operating the establishment. Approval is not required for:

- 1) activities in the field of direct supplies;
- 2) food distribution equipment;
- 3) movable or temporary objects or devices, previously authorized to conduct business in the production or trade of food in another Member State of the European Union;
- 4) agritourism farms;
- 5) entities that are small producers of wine from their own crops within the meaning of art. 2 point 24 of the Act of 2 December 2021 on wine products (Journal of Laws of 2022, item 24) in an amount less than 1000 hectoliters in a wine year;
- 5a) entrepreneurs referred to in article 1. 9 sec. 1 of the Act of December 2, 2021 on wine products;

²¹ See more, Katarzyna Leśkiewicz, *Ustawa o bezpieczeństwie żywności i żywienia. Komentarz*, Warszawa 2022, Legalis.

- 6) pharmacies, pharmacy outlets and pharmaceutical wholesalers specified by the provisions of the pharmaceutical law;
- 7) herbal shops;
- 8) entrepreneurs conducting retail sale of products other than foodstuffs and placing on the market packaged, microbiologically stable foodstuffs;
- 9) producers of technical gases for the needs of entities operating in the food market;
- 10) establishments conducting economic activity in the field of intermediation in the sale of food "at a distance" (mail order sale), including sales via the Internet;
- 11) plants operating on the market of materials and products intended to come into contact with food, including plants operated by recycling entities;
- 12) food business operators engaged in primary production;
- 13) entities conducting agricultural retail trade in food of non-animal origin;
- 14) food business operators preparing food in premises used mainly as private living quarters, but where food is regularly prepared for placing on the market, as referred to in Chapter III of Annex II to Regulation No 852/2004.

Therefore, the obligation to obtain approval applies only to entities that meet the above-mentioned requirements and have not been excluded from this obligation by the legislator directly in the provisions of the Act on Food and Nutrition Safety.

However, entities exempted from the approval requirement are subject to registration. In these cases, the entity - the establishment (food business) or the entity operating on the market of materials and products intended to come into contact with food - is obliged to submit an application for entry in the register of establishments. The registration and approval of establishments is provided for in Regulation No. 853/2004. According to this act, the principle is that food business operators place on the market products of animal origin manufactured in the EU only if they have been prepared and processed in plants that meet the relevant requirements of Regulation No. 852/2004, the requirements set out in Annexes II and III to Regulation No. 853/2004 and the relevant requirements of food law and establishments registered by the competent authority or, if required in accordance with the following requirements, approved. Without prejudice to Art. 6 sec. 3 of Regulation No. 852/2004, plants treating products of

animal origin, for which the requirements are set out in Annex III to Regulation No. 853/2004, may not undertake activities until approval of the competent authority, except for plants dealing only with primary production and transport; the storage of products that do not need to be stored in temperature-controlled rooms; or activities related to retail trade, other than those falling within the scope of Regulation No. 853/2004 pursuant to its Art. 1 clause 5 lit. b.

At the same time, an establishment subject to approval may not resume operations, unless the competent authority has authorized the establishment (food business) following an on-site visit or has granted the establishment conditional approval.

Entry in the register of establishments (food business) is made on the basis of an application from the entity obliged by law, and then an administrative decision on approval or conditional approval of establishments, if the requirements set out in Regulation 2017/625 are met. On the basis of Polish regulations, there is therefore a legal prohibition on undertaking activities subject to the requirement of obtaining approval without obtaining such approval. At the same time, approval may be conditional.

In matters of registration and approval, conditional approval, extension of conditional approval, suspension and revocation of approval of establishments, the competent public authorities are the state district sanitary inspector or the state border sanitary inspector.

1.2. Proceedings in cases for entry and approval of establishments

In accordance with the provisions of the Safety and Nutrition Act, food business operators or on the market of materials and products intended for contact with food must apply for entry in the register of establishments or for approval of the establishment and entry in the register of establishments, at least 14 days before the date of commencement of the planned activity. The application is submitted in writing, according to the patterns specified in the regulations. Similarly, in the event of a change in data, the food business operators or on the market of materials and products intended for contact with food must apply for registration of the changes within 30 days from the date of the change.

Entry in the register of establishments is therefore based on the application of the obliged entity and requires a decision of the public

administration authority keeping the register. The authority's powers include:

1) issuing a decision approving the plant

(2) issuing a decision on conditional approval of establishments, if the requirements set out in the provisions of Regulation No 2017/625 are met.

The Polish Safety and Nutrition Act sanctions in art. 103 paragraph 1 point 4 failure to comply with the obligation to obtain an entry or approval of establishments. The act provides for a fine of up to thirty times the average monthly salary in the national economy for the preceding year, announced by the President of the Central Statistical Office, pursuant to the provisions on pensions from the Social Insurance Fund, in the Official Journal of the Republic of Poland "Monitor Polski".

Also, deletion from the register of establishments takes place on the basis of an application from an entity operating in the food market or on the market of materials and products intended for contact with food, as well as a decision of the competent state poviát sanitary inspector or state border sanitary inspector, if the establishment has ceased to operate in the field of production or trade in food or materials and articles intended to come into contact with food, and the operator of the food market or the market of materials and articles intended to come into contact with food has not submitted an appropriate application; no data update.

In the aforementioned cases, the provisions of administrative procedure apply. In particular, pursuant to Art. 104 § 1 of the Polish Code of Administrative Procedure, the public administration authority shall deal with the matter by issuing a decision, unless the provisions of the code provide otherwise. In turn, according to art. 104 § 2 of the above-mentioned act, decisions settle the matter as to its essence in whole or in part, or otherwise end the case in a given instance.

Administrative decisions according to the Code of Administrative Procedure constitute acts of an imperative nature, indicating the legal situation of the addressee in a specific case. It is the withdrawal or suspension of plant approval that must take the form of an administrative decision in Poland, and what is more, these decisions must be immediately enforceable. In the Polish regulation, the rule is that the authority has the right, not the obligation, to impose the order of immediate enforceability, and in the above-mentioned cases, the authority is exceptionally obliged to give this clause to decisions. The discussed cases relate to the risk of a threat to human health or life, therefore it is fully justified to include a clause enabling quick preventive proceedings. Such solutions can be

assessed as corresponding to the precautionary principle applied in food law. The plant register includes various data such as:

1) name, surname, place of residence and address or name, seat and address of the applicant;

2) in the case of a natural person - the registration number of the universal electronic population registration system (PESEL)²², if such a number has been assigned;

3) tax identification number (NIP)²³;

4) specification of the type and scope of activity to be carried out in the establishment, including the type of food to be produced or traded;

5) the date of commencement of the activity covered by the entry in the register;

6) information on official plant controls carried out;

7) decisions on deletion from the register.

2. THE OFFICIAL FOOD CONTROL IN POLAND.

The official food control in Poland covers, in particular, aspects of food safety that are mainly subject to Regulation 2017/625, as well as aspects of the commercial quality of agri-food products.²⁴

According to the preamble of Regulation 2017/625, EU legislation on the agri-food chain is based on the principle that operators at all stages of production, processing and distribution under their control are responsible for ensuring that the requirements relevant to their activities are met, as laid down in Union legislation on the agri-food chain. After all, the purpose of Regulation 2017/625 is to establish a harmonized framework for the organization of official controls and official activities other than official controls throughout the agri-food chain, taking into account the provisions on official controls set out in Regulation (EC) No 882/2004 and in the relevant legislation. sector as well as the experience gained from the application of these rules. Regulation 2017/625 applies to official controls performed to verify compliance with provisions adopted at Union level or by Member States for the application of Union legislation in the areas of,

²² It is a polish statistical individual's number.

²³ Tax identification number.

²⁴ Act on the commercial quality of agri-food products of December 21, 2000, i.e. Journal Of Laws of 2022, item 1688, hereinafter Act on the commercial quality of agri-food products.

inter alia, food and food safety, its integrity and health quality at all stages of production, processing and distribution of food, including rules aimed at ensuring fair commercial practices and protecting the interests of consumers and ensuring their right to information, as well as regarding the production and use of materials and products intended to come into contact with food.

In Poland, the official food safety control system includes: the State Plant Health and Seed Inspection Service, the Veterinary Inspectorate and the State Sanitary Inspection, and in terms of commercial quality control - the Agricultural and Food Quality Inspection. These inspections are subject to various bodies: the Minister of Health, the Minister of Agriculture and Rural Development, the President of the Office of Competition and Consumer Protection. Overall, therefore, there is a fragmentation and plurality of competences of different public authorities, sometimes overlapping and making the situation of the auditee difficult.

In addition, in Poland, the legislator distinguished the commercial quality of food, which is also the area of official food control carried out by the Commercial Quality Inspection of Agricultural and Food Products. Commercial quality means the characteristics of an agri-food product related to its organoleptic, physicochemical and microbiological properties in terms of production technology, size or weight, and requirements resulting from the method of production, packaging, presentation and labeling, not covered by sanitary, veterinary or phytosanitary requirements.

And agri-food products are agricultural products, undergrowth, game, marine and freshwater organisms in the form of raw materials, semi-finished products and finished products obtained from these raw materials and semi-finished products, including foodstuffs. According to the Act on the commercial quality of agri-food products, the Agricultural and Food Products' Commercial Quality Inspection supervises the commercial quality of agri-food products in production and trade, including those exported abroad, and controls the commercial quality of agricultural and food products imported from abroad, including border control of these products, evaluation and certification of the commercial quality of agri-food products. Supervision of the commercial quality, as defined by European Union regulations, concerns poultry meat, eggs; pork carcasses; beef carcasses; carcasses of other animals; meat from bovine animals aged less than 12 months.

According to the Safety and Nutrition Act, the food safety official bodies are:

- 1) bodies of the State Sanitary Inspection²⁵, in relation to:
 - (a) food of non-animal origin produced and placed on the market, imported from, and exported and re-exported to, third countries,
 - b) products of animal origin in retail trade within the meaning of Art. 3 point 7 of Regulation No 178/2002, with the exception of products of animal origin found in agricultural retail trade,
 - (c) food containing both foodstuffs of non-animal origin and products of animal origin referred to in Art. 1 clause 2 of Regulation No 853/2004, produced and marketed or exported to third countries, imported from these countries to the extent not covered by Commission Decision 2007/275 / EC of 17 April 2007 on the list of animals and products to be inspected at control points under Council Directives 91/496 / EEC and 97/78 / EC (Official Journal EU L 116 of 04.05.2007, p. 9, as amended) and re-exported to these countries, excluding food found in in agricultural retail trade,
 - d) the correct application of the principles of the HACCP system in plants under the supervision of the State Sanitary Inspection;
- 2) the bodies of the Military Sanitary Inspection, in accordance with the property specified in the regulations issued on the basis of art. 20a Act on the State Sanitary Inspection;
- 3) bodies of the Veterinary Inspection, in accordance with the competence specified in the provisions of the Veterinary Inspection Act²⁶;
- 4) the bodies of the Military Veterinary Inspection, in accordance with the property specified in the regulations issued on the basis of art. 3 sec. 7 of the Veterinary Inspection Act;
- 5) other authorities within the scope of their competences.

As one can see, the provisions of the Safety and Nutrition Act do not exhaust the regulations of competent authorities in the field of applying food law. The finding of a violation of the law by these authorities as part of official food control may indirectly lead to the amendment or revocation of the establishment's approval decision, i.e. even the revocation of the approval and the prevention of further operation of the infringed entity.

²⁵ Act on the State Sanitary Inspection of March 14, 1985, Journal Of Laws of 2021, item 195.

²⁶ Act of 29 January 2004 on the Veterinary Inspection, Journal of Laws of 2021, item 306.

3. REGISTERS AND LISTS REQUIRED BY SPECIAL PROVISIONS.

In addition to the basic requirements of food law regulated in the Food Safety Act, the applicable regulations contain numerous and various requirements related to the recording and registration of activities or entities. It is impossible to describe them all.

In particular, the records and inventories related to food production under food quality schemes should be indicated²⁷, including regional and traditional food or organic products. As part of the food quality systems in Poland, the Act on Registration and Protection of Names and Markings of Agricultural Products and Foodstuffs and Traditional Products requires that:²⁸

an internal register of applications for registration of designations of origin, geographical indications and traditional specialties guaranteed for agricultural products and foodstuffs, and in addition,

a list of agricultural products and foodstuffs under temporary national protection, this list is kept by the minister responsible for agricultural markets. The aforementioned list includes the names of agricultural products and foodstuffs, from the date of the decision on compliance with the requirements of Regulation 1151/2012, on the territory of the Republic of Poland, they are subject to temporary protection, hereinafter referred to as "temporary national protection",

a list of traditional products.

The minister responsible for agricultural markets keeps the list of agricultural products and foodstuffs under temporary national protection. The list is posted on the website of the office supporting the minister responsible for agricultural markets.²⁹

²⁷ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, Official Journal L 343, 14.12.2012, p. 1–29, hereinafter Regulation No 1151/2012.

²⁸ Act on registration and protection of names and designations of agricultural products and foodstuffs and on traditional products of 17.12.2004, i.e. Journal Of Laws of 2021, item 224, hereinafter Act on registration and protection of names and designation of agricultural products.

²⁹ See more: www.gov.pl/web/rolnictwo/rejstry, [access 14.10.2022].

In turn, the Act on Organic Agriculture specifies obligations, for example:

keeping a **list of producers who meet the requirements for organic production** - the certification body submits to the Chief Inspector and the President of the Agency for Restructuring and Modernization of Agriculture, the list of producers referred to in the Act of 18 December 2003 on the national system for recording producers, farm records and records of payment applications (Journal of Laws of 2022, r. items 203, 219 and 1270) who met certain requirements for organic production. This list contains the information necessary to provide organic producers with financial aid with the participation of the European Agricultural Fund for Rural Development or with the participation of the European Agricultural Guarantee Fund, in particular the identification number assigned to an organic producer in accordance with the provisions of the Act on the national producer registration system, records farms and records of payment applications;

acceptance by the certification body of the activity **notification** referred to in Art. 34 sec. 1 of Regulation 2018/848, to the provincial inspector of commercial quality of agri-food products;

keeping a **database to collect data on the availability on the market of organic plant reproductive material and plant reproductive material in conversion**, organic animals and organic juveniles of aquaculture animals referred to in article 1. 26 sec. 1 of Regulation No 2018/848 - in Poland - it is carried out by the Chief Inspector of Plant Health and Seed Inspection, performing the obligations of a Member State.

In fact, the legal regulation of organic farming requires many different registers. In addition to the above-mentioned, in Poland, in accordance with Art. 3 sec. 1 point 3 lit. a) third tiret of the Act on organic farming and organic production the Main Inspector of Agricultural and Food Products keeps and makes available on its website an updated list of entities and groups of entities that reported their activity in organic farming.³⁰

Moreover, pursuant to Art. 3 sec. 1 point 3 lit. a) second indent of the Act on organic agriculture and production the Main Inspector of Commercial Quality of Agricultural and Food Products performs the

³⁰ According to the information prepared by the Commercial Quality Inspection of Agricultural and Food Products on December 31, 2021, there were 21 795 organic producers in Poland.

duties and powers of the European Union Member State specified in Regulation No 2018/848 and provisions issued on the basis of the mentioned Regulation, in the scope of running the system referred to in Art. 26 sec. 2 of Regulation No 2018/848 and in the scope of information indicated in art. 26 sec. 2 lit. b) and c) of this regulation.

As part of the system, the Main Inspector of Commercial Quality of Agricultural and Food Products keeps other registers:

- 1) Register of organic animals and
- 2) Register of ecological juvenile aquaculture animals - organic producers who have organic animals intended for marketing may apply for entry in both of these first two above mentioned registers;
- 3) Register of organic farming certification bodies containing information on the detailed scope of authorization of each certification body in Poland³¹;
- 4) Register of ecological inspectors - pursuant to art. 14 sec. 1 of the Act on organic farming and organic production and in connection with Art. 35 sec. 7 of Regulation No 2018/848, from 7 July 2022, the following types of specialization of organic farming inspectors were adopted:
 - (a) unprocessed plants and plant products, including seeds and other plant reproductive material;
 - (b) livestock and unprocessed animal products;
 - (c) algae and unprocessed aquaculture products;
 - (d) processed agricultural products, including aquaculture products, for use as food;
 - e) feed;
 - f) wine;
 - (g) other products listed in Annex I to Regulation No 2018/848 or not covered by the product categories listed above.

Only mentioned above as a sample registers serve to fulfill the obligations imposed by the EU food law on the member states and they are extremely numerous and varied.

Another example of another register is **the register of false agri-food products** kept by the Commercial Quality Inspection of agri-food products. This register includes decisions on adulteration of agri-food

³¹ According to the information prepared by the Commercial Quality Inspection of Agricultural and Food Products on December 31, 2021, there were 21 795 organic producers in Poland.

³¹ As of 7.7.2022 - 12 authorized certification bodies.

products issued pursuant to Art. 29 and art. 40a paragraph. 1 point 4 of the Act on the commercial quality of agri-food products. These are decisions that may be issued by the voivodeship inspector of agri-food products they concern:

1) prohibiting the placing on the market of agri-food products that do not meet the commercial quality requirements or the requirements for transport or storage;

2) an order to subject the agri-food product to specific treatments;

3) prohibiting the storage of agri-food products in inappropriate conditions or its transport by means of transport unsuitable for this purpose;

4) reclassification of an agri-food product to a lower class, if this product does not meet the quality requirements for a given commercial quality class;

5) an order to destroy an agri-food item at the expense of its holder;

6) ordering at points of sale belonging to the controlled entity to withdraw from the market the entire batch of adulterated agri-food products, if the identified type of irregularity relates to the entire production batch of the agri-food product;

7) on a fine for placing adulterated agri-food products on the market (a fine of no more than 10% of the revenue earned in the accounting year preceding the year in which the fine was imposed, but no less than PLN 1000, i.e. approximately EUR 250.

4. THE OFFICIAL FOOD CONTROL BODIES

According to Polish Constitution Act³² governmental food control bodies (public administration) are bound by the principle of legality, ie "public authorities operate on the basis and within the limits of the law" (Article 7). The law in force in Poland since May 1, 2004, are provisions of EU law and national law. In matters relating to the official control of food, the provisions of the Code of Administrative Procedure shall apply, unless the provisions provide otherwise. It can be added that public administration bodies - in accordance with the code of administrative procedure should be understood as ministers, central government administration bodies, voivodes, other local government administration

³² The Constitution of the Republic of Poland of 2.4.1997, Journal Of Laws No. 78, item 483.

bodies acting on their own or on their own behalf (combined and non-aggregated), local government units and bodies and entities established by operation of law or on the basis of agreements to deal with specific matters³³.

In Poland, the Supreme Audit Office is the constitutional body of state control and protection of law. Its task is, among others control of the activities of government administration bodies, state legal entities and other state organizational units from the point of view of legality, thrift, purposefulness and reliability. The Supreme Audit Office is therefore also competent to audit the operation of institutions maintaining registers regulated by food law. In one of the reports, the Supreme Audit Office raised objections to the division of responsibilities between several institutions in the field of food safety. According to the Supreme Audit Office, this condition is not conducive to their efficient operation. Staff shortages caused by too low wages are also a problem.³⁴

The Supreme Audit Office of Control in 2017-2018 covered a period of activities such as:

- 1) Chief Sanitary Inspectorate,
- 2) Chief Veterinary Inspectorate,
- 3) Chief Inspectorate of Commercial Quality of Agricultural and Food Products,
- 4) Office of Competition and Consumer Protection,
- 5) 4 Provincial Sanitary and Epidemiological Stations,
- 6) 4 Provincial Veterinary Inspectorates,
- 7) 4 Voivodship Inspectorates of the Commercial Quality of Agricultural and Food Products, 4 Voivodship Inspectorates of the Trade Inspection.

EU Member States, in accordance with EU law, are obliged to designate authorities competent for official food controls at the national level. Among the EU countries, the dominant solution in the field of food safety is the appointment at the national level of one food safety authority or several institutions, one of which has a dominant position. Such an

³³ Art. 5 of the code of administrative procedure in: Barbara Adamiak, Janusz Borkowski, Kodeks postępowania administracyjnego. Komentarz. Wyd. 18, Warszawa 2022, Legalis.

³⁴ Informacja o wynikach kontroli Delegatura w Łodzi Bezpieczeństwo żywności, LLO.430.005.2019 Nr ewid. 176/2019/P/19/084/LLO, Warszawa 9.1.2020, id,21927,vp,24594.pdf (nik.gov.pl), dostęp: 20.10.2022.

organized system was implemented in 23 out of 28 member states (82.1%).³⁵ However, such institutional changes were not carried out in 5 countries, including Poland. The Polish model of food safety supervision stands out on a European scale. In particular, in Poland, competences in the field of food safety have been divided among several institutions without specifying the leading institution. Meanwhile, in the opinion of the Supreme Audit Office, the implementation of the above systemic conclusions would be favored by entrusting comprehensive supervision over food to a uniform, specialized food safety service. This idea had been analyzed before, but in the end no such solution was adopted.

Institutions that carry out official food control in Poland are subordinate to three supreme authorities. These authorities in Poland are four inspections (Chief Sanitary Inspector, Chief Veterinary Inspector, Chief Inspector of Commercial Quality of Agricultural and Food Products) and the State Plant Health and Seed Inspection Authority. The structure of these institutions is heterogeneous and situated in the structures of combined administration - IJHARS has a two-tier structure - the central and voivodship authorities, while the VI and PIS have three tiers - the central authority, voivodship and poviast authorities. Health quality is the responsibility of the State Sanitary Inspection, which is subordinate to the Minister of Health, and the Veterinary Inspection, which is subordinate to the Minister of Agriculture and Rural Development. In the case of commercial quality, the Minister of Agriculture is responsible for the Commercial Quality Inspection of Agricultural and Food Products and the State Plant Health and Seed Inspection Service, and for the Prime Minister - the Trade Inspection (the Trade Inspection operated during the period covered by the control of the Supreme Audit Office, currently no longer present). The Customs and Tax Service is indirectly involved in the official control of food. It operates in the field of import and export of food products. Due to the multitude of services competent in the field of food safety and its commercial quality, for the proper implementation of tasks in the field of food safety, individual Inspections concluded agreements establishing the principles of cooperation. In the opinion of the Supreme Audit Office, the decline in employment or significant fluctuation of staff recorded in all inspections over the past few years also had an impact on

³⁵ The Supreme Audit Office refers to: "National food safety systems in the European Union: A comparative survey" published in *International Journal of Food Studies*, April 2013, Volume 2, pp. 105–117.

the quality of performed tasks. The Supreme Audit Office claims that the complicated division of competences between the Food Safety Inspections affects the effectiveness of the system. The aforementioned solutions, based on a complex division of competences, prevented the coherent operation of the authorities within the food safety system.

CONCLUSIONES

The common point between operators subject to different registration obligations is the concept of food. This is because if entities perform any activity related to the production of food, processing or at least only market it as a food business, they are subject to the requirements requiring entry or registration. The concept of food has become universal for many acts in the field of food law.

A feature of registers in food law is their public nature and regulation of access to public information, and therefore their universality and openness. All these registers have an information, evidence and record function. They are an instrument used to achieve the objectives of food law, mainly within the framework of the EU's official food control system. It is thanks to the registers that it is also possible to classify events in the categories of public statistics, necessary in planning and managing the economy.

In Poland, the problem of numerous registers regulated by food law is also related to the complex, numerous structure and level of competence of the authorities operating in the system of official food control. The problem is noticed by control institutions. For years, the postulate of creating one efficient institution that would concentrate all competences in the field of official food control, including public registers, has not been implemented.

In the official food control system, the registers are still kept by various bodies of four inspections: Chief Sanitary Inspector, Chief Veterinary Inspector, Chief Inspector of Commercial Quality of Agricultural and Food Products and the State Plant Health and Seed Inspection Authority. The structure of these institutions is heterogeneous and situated within the structures of administration.

All institutions keeping registers in Poland as part of official food control are obliged to operate within the limits and on the basis of the law. Basically, all authorities keeping public registers regulated by food law have the status of a public administration body within the meaning of

Polish administrative law and apply the provisions of the Code of Administrative Procedure by issuing administrative decisions and other acts.

BIBLIOGRAFÍA

- Barbara Adamiak, Janusz Borkowski (2022), Kodeks postępowania administracyjnego. Komentarz. Wyd. 18, Warszawa
- beata Jeżyńska, (2008), Producent rolny jako przedsiębiorca, Lublin
- Patryk Kalinowski, Małgorzata Korzycka (2020), Rejestry działalności na rynku spożywczym – uwagi porównawcze i de lege ferenda, *Studia Iuridica* 2020, Volume 86, pp. 91-111
- Katarzyna Leśkiewicz (2022), Ustawa o bezpieczeństwie żywności i żywienia. Komentarz, Warszawa 2022
- Esther Muñiz Espada (2020), Hacia unas nuevas relaciones entre el registro mercantil y la actividad agraria, Madrid.
- Łukasz M. Sokołowski (2014), Procedura dokonywania zmian w rejestrze zakładów żywnościowych – aspekty prawne, „Przegląd Prawa Rolnego” 2014, nr 1 (14), p. 244.
- Nicola Conte-Salinas, Rochus Wallau, (2016), The Concepts of Transparency and Openness in European Food Law. in: Steier, G., Patel, K. (eds) *International Food Law and Policy*. Springer, Cham. https://doi.org/10.1007/978-3-319-07542-6_25
- Peter Olsen, Melania Borit (2018), The components of a food traceability system, *Trends in Food Science & Technology* Volume 77, July 2018, p. 143-149
- Gabriela Steier, Adam Friedlander Boca Raton (edited by) (2021), *Transparency in European Union food law in Food System Transparency Law, Science and Policy of Food and Agriculture* edited by Gabriela Steier, Adam Friedlander Boca Raton.