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The Act on Counteracting Food Waste – an attempt of its evaluation

1. Introduction

Every year around 1.3 billion tonnes of food is wasted worldwide, which accounts for nearly one third of the total amount of food produced.[1] This amount would allow to feed an additional number of 2 billion people.[2] The European Union Member States waste about 89 million tonnes of food annually, and these estimate figures do not include agri-cultural or fish waste.[3] On average, each EU citizen wastes 180 kg of food each year.[4] Food losses occur at every stage of the food chain from farm to table,[5] but the greatest losses occur during production, distribution and consumption of food.[6] In consequence of this valuable resources are being wasted, such as energy or water needed for food production, transport and distribution,[7] the production area, time, labour,

[1] *Marnowanie żywności w UE: Miliony ton jedzenia do kosza [Infografika]*, http://www.europarl.europa.eu/news/pl/headlines/society/20170505STO73528/marnowanie-zywnosci-w-ue-miliony-ton-jedzenia-do-kosza-infografika (accessed on: 31 December 2019).

[2] M. Hajdas, *Innowacje marketingowe a problem marnowania żywności*, "Handel Wewnętrzny" 2018, No 2, p. 179.

[3] Z.W. Puślecki, *Unia Europejska wobec bezpieczeństwa żywnościowego*, "Przegląd Politologiczny" 2016, No 4, p. 17

[4] *Food waste: causes, impacts and proposals*, 2012, https://www.barillacfn.com/m/publications/food-waste-causes-impact-proposals.pdf (accessed on: 31 December 2019), p. 10.

[5] G. Maccioni, *Spreco alimentare e sviluppo sostenibile*, in: R. Budzinowski (ed.), *XV World Congress of Agricultural Law. Contemporary challenges of Agricultural Law: among Globalisation, Regionalisation and Locality*, Poznań 2018, p. 439.

[6] Ibidem, p. 439.

[7] A. Dąbrowska, M. Janoś-Kresło, *Marnowanie żywności jako problem społeczny*, "Handel Wewnętrzny" 2013, No 4, p. 11.

and capital, and, additionally, this is all this is connected with the production of greenhouse gases.

As part of measures aimed at preventing food waste, the need for organisational and educational measures is emphasised, especially at the level of production, logistics, consumption and waste management.[8] These actions ought to assume a hierarchy leading, as a last resort, to a total reduction of the dispersion of ingredients and energy accumulated in the food produced.[9] However, in spite of the growing public awareness, the visible effect of which manifests itself in local initiatives aimed at reducing food waste and its consequences as well as in entrepreneurs' measures intended at optimising their businesses, legislative intervention seems necessary to counteract food waste effectively.

In recent years there have been some attempts made to regulate this issue, leading to 22 July 2016 when a bill on counteracting food waste was tabled, and subsequently submitted to the Polish Sejm on 20 March 2018. A relevant law on counteracting food waste was adopted on 18 September 2010.[10] There is no doubt that the number of concerns, objections and amendments to the bill had influenced the length of the legislative process which lasted more than 3 years.

The article is a voice in the discussion on the legitimacy of the solutions adopted in this law and an attempt to evaluate them. In order to do so it appears necessary to assess both, the direction of the legislator's actions, and individual legal instruments provided by the legislator in the new provisions.

2. Separate regulations on combating food waste

The EU legislation lacks separate regulations on combating food waste. However, recognition its negative consequences and the need for change, prompted efforts aimed at reducing and counteracting wastage of food. On 28 June 2016, the Agriculture and Fisheries Council adopted conclusions on food waste and food losses,[11] in which it recommended a number of initiatives in this regard. It also called on the Member States and the Commission, *in-*

[8] M. Kopeć, K. Gondek, M. Mierzwa-Hersztek, *Gospodarka o obiegu zamkniętym w kontekście strat i marnowania żywności*, "Polish Journal for Sustainable Development" 2018, vol. 22(2), p. 51.

[9] Ibidem, p. 51.

[10] Act of 19 July 2019 Act on counteracting food waste (Journal of Laws, item 1680 as amended), hereinafter referred to as the Act.

[11] Conclusions of the European Council of 28 June 2016, "Food losses and food waste", http://data.consilium.europa.eu/doc/document/ST-10730-2016-INIT/pl/pdf (accessed on: 31 December 2019).

ter alia, to: monitor the situation more effectively and collect data in order to understand the problem better; place in future EU law particular emphasis on preventing food waste, food loss and an increased use of biomass; and facilitate the donation of unsold food to charities.[12]

In 2016, the European Commission established the EU Platform on Food Loss and Waste, which aims to support the EU in achieving its sustainable development objective. The Platform brings together Member States and all actors in the food chain to help identify the measures necessary to achieve sustainable development in the area of food waste and to enable the exchange of best practices and results obtained.[13] Its work resulted, *inter alia*, in the adoption of EU guidelines on food donations in 2017,[14] and on 16 April 2018 guidelines on the use as feed of food which is no longer intended for human consumption.[15] A three-year EU pilot project is currently underway to further study the legal and operational framework for food redistribution and support for the dissemination of EU guidelines on food donation in Member States. In addition to four sub-groups (i) a sub-group on food donation, (ii) a sub-group on the development of a uniform methodology for measuring food waste, (iii) a sub-group on removing barriers that prevent the safe use of food resources in the supply chain, and (iv) a sub-group on operations and implementation, operating under the EU Platform on Food Loss and Waste, a sub-group on date labelling was appointed in 2018.[16] The task of this last sub-group is, *inter alia*, to analyse and promote consumers' and food business operators' a more coherent understanding of the "use by" date and the date of minimum durability showing on food labels.[17] The reason behind this was that according to a study carried out by the Commission (Consumer Empowerment in the EU – SEC(2011)0469), 18% of EU citizens do not understand the phrase "best before."[18]

However, it should be noted that specific regulations on combating food waste are already contained in the national legislation of some Member States.

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[12] https://www.consilium.europa.eu/pl/policies/food-losses-waste/ (accessed on: 31 December 2019).

[13] http://europa.eu/rapid/press-release_MEMO-16-3989_pl.pdf, p. 2 (accessed on: 31 December 2019).

[14] Commission Notice – EU guidelines on food donation, O.J. EU C No 361, p. 1 et seq.

[15] Commission Notice – Guidelines for the feed use of food no longer intended for human consumption, O.J. EU C No 133, p. 2 et seq.

[16] The Government's position on the Senate's draft Act on counteracting food waste (print No 2431), p. 3.

[17] Ibidem.

[18] European Parliament resolution of 19 January 2012 on how to avoid food wastage: strategies for a more efficient food chain in the EU, O.J. EU C No 227E, p. 25 et seq, point 32.

The first country in the world to introduce specific legal instruments to reduce food waste is France.[19] In early 2016, the French legislator imposed an obligation on shops with an area of more than 400 m^2 to conclude agreements with charities, including food banks, for the transfer of unsold food. These agreements must be concluded within one year of the entry into force of the law, or the opening of the shop, or the extension of the sales area in the existing location. It is also prohibited to perform activities aimed at rendering unsold food unfit for consumption by, for example, pouring chlorine over foodstuffs.[20] A failure to fulfil the obligation to conclude a relevant agreement is punishable by a fee in the amount of at least 450 euro, and for intentional actions leading to the destruction of food there is a fee of 3750 euro.[21] In addition, under the French legislature, nutrition and prevention of food waste are taught in schools.[22] The goal of the French regulations is therefore to increase the possibilities of managing food which was previously in huge quantities considered to be waste.

Attempts have been made to introduce similar regulations, in some other countries, for example in Italy,[23] where tax reliefs are granted to entrepreneurs operating shops that donate food to food banks or charity organisations.[24] The level of the allowances depends on the volume of foodstuffs donated to charity.[25] Furthermore, it is possible to dispose of food that is after the date of minimum durability, poorly labelled (except for erroneous labelling of allergens) or in damaged packaging, provided that it does not present a risk to human health or life.[26] Compared to the French legislation, the Italian regulations do not provide for sanctions or additional charges in the event of non-distribution of food to charitable organisations. Moreover, they also provide for so-called "Good Samaritan's Law," according to which entities donating food to charities in good faith do not bear criminal or civil liability for this food against individual beneficiaries of a food bank.[27]

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[19] LOI n° 2016-138 du 11 février 2016 relative à la lutte contre le gaspillage alimentaire, JORF n° 0036 du 12 février 2016 texte n° 2.

[20] Rationale for the draft Act on counteracting food waste. Assessment of the effects of the regulation, print 263, p. 3, hereinafter referred to as Rationale for the draft Act.

[21] Ibidem, p. 3.

[22] Ibidem.

[23] K. Leśkiewicz, *Prawne aspekty przeciwdziałania marnowaniu żywności*, "Przegląd Prawa Rolnego" 2015, No 2, p. 127. See Legge 19 agosto 2016, n. 166. Disposizioni concernenti la donazione e la distribuzione di prodotti alimentari e farmaceutici a fini di solidarieta' sociale e per la limitazione degli sprechi, GU Serie Generale n. 202 del 30.08.2016.

[24] Rationale for the draft Act, p. 4.

[25] Ibidem.

[26] Ibidem.

[27] Ibidem.

Another example of a Member State where special arrangements have been introduced is Belgium. Belgian regulations allow the transfer of food to banks and other charities if the food has reached the minimum durability date, but where it does not pose a risk to human health and life.[28] The legislator has drawn up a list of products that may be transferred in this way, categorising foodstuffs from the most durable (e.g. salt, sugar, pasta) that may be consumed up to one year after the date of minimum durability, to products that may be safely consumed up to 2 months after the date of minimum durability (e.g. oil, frying fat, butter, preserved milk and milk products).[29] The list also sets out storage guidelines and characteristics that disqualify foodstuffs.[30]

Legal instruments for counteracting food loss have also been implemented in the Czech Republic.[31] As of January 2018, all shops with a sales area of over 400 m^2 are obliged to donate free of charge unsold food, which would otherwise be subject to utilisation, to charity organisations.[32] These organisations redistribute the food obtained to beneficiaries of social welfare, among whom there are the socially excluded, the disabled, single mothers, and orphanages.[33] This obligation concerns in particular foods which do not fully comply with certain requirements of food law, having e.g. wrongly, imprecisely or incorrectly labelled net weight or composition of the product, but which are safe for health.[34] Non-compliance with this obligation may result in penalties of up to 10 million Czech crowns.[35]

In Polish legislation, combating food waste has not yet been comprehensively regulated. Until very recently there was no regulation at all in Poland that would impose any obligation in this respect on food business operators and other actors in the food chain. The only measure undertaken was a change in tax regulations, but these do not really constitute a support systems, but eliminate the excessive and disproportionate restrictions that have been functioning so far. Since 1 January 2009, donations made by producers of foodstuffs have been exempt from value added tax, except for alcoholic beverages with an alcohol content of more than 1.2% and alcoholic beverages which are a mixture of beer and non-alcoholic drinks with an alcohol content of more than 0.5%, if

[28] Ibidem.

[29] Ibidem.

[30] Ibidem.

[31] Zákon č. 180/2016 Sb., kterým se mění zákon č. 110/1997 Sb., o potravinách a tabákových výrobcích a o změně a doplnění některých souvisejících zákonů, ve znění pozdějších předpisů, a další související zákony.

[32] Rationale for the draft Act, p. 4.

[33] Ibidem.

[34] Ibidem.

[35] Ibidem.

they are given to public benefit organisations,[36] to be spent on their charitable activities. As of 1 October 2013, this exemption has been extended to food distributors. However, these measures were an insufficient regulation to prevent food waste effectively. It should be noted that VAT is deductible also in the event of food utilisation.[37] The most recent development in this area is the Act on Counteracting Food Waste that has been in force since 18 September 2019, and which provides for a number of obligations for food business operators.

3. Assumptions of the Act on Counteracting Food Waste

The Act that has recently been adopted contains a legal definition of food waste. Pursuant to this definition food waste should be understood as a withdrawal of foods from the distribution stage and their subsequent disposal as waste, when such foods still meet the requirements of food law, but the reason for withdrawal is, in particular, their approaching expiry date or minimum durability date, or due to defects in the appearance of these foodstuffs or their packaging (article 2(1) of the Act).

Although the EU legislation lacks a harmonised definition of "food waste,"[38] this statutory definition is in line with the general perception of the phenomenon highlighted by the European Parliament in its resolution on how to avoid food wastage: strategies for a more efficient food chain in the EU.[39] While calling on the Commission to present a legislative proposal containing a definition of this concept,[40] the Parliament stressed that the term "food waste" itself could be understood in different ways, and that it generally refers to food products discarded from the food supply chain for economic or aesthetic reasons or because of the nearness of the "use-by" date, but which are still perfectly edible and fit for human consumption and which, in the absence of any alternative use, are intended to be disposed of and utilised, generating negative externalities from an environmental point of view, economic costs and a loss of revenue for businesses.[41]

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[36] In the understanding of the Act of 24 April 2003 on public benefit and volunteer work (Journal of Laws 2003, No 96, item 873 as amended).

[37] See Rationale for the draft Act, p. 2.

[38] G. Maccioni, *Spreco alimentare. Regole e limiti nella transizione verso modelli agroalimentari sostenibili*, Torino 2018, p. 1.

[39] European Parliament resolution of 19 January 2012 on how to avoid food wastage: strategies for a more efficient food chain in the EU, O.J. EU C No 227E, p. 25 et seq.

[40] Ibidem, point 15.

[41] Ibidem, point 14.

It should be stressed that the reasons for food waste occur at every stage of the food chain, from production planning to consumption, or rather the absence of consumption which determines the disposal of a given product. They arise from the inadequate implementation or even the impossibility of achieving all the objectives of the CAP properly, in particular in terms of ensuring food security.

The common understanding of food waste refers only to the disposal of consumable foodstuffs at the last few stages of the food chain, mainly distribution and consumption. However, when taking action to prevent such waste, it is necessary to take into account food waste in a broader sense, which also includes the planning of production, the use of by-products from food production or food processing, as well as foodstuffs which are unfit for human consumption or which have reached their "use by" or minimum durability, regardless of whether the product is actually unsafe or not, and which might be used for other economic purposes, such as energy or as feed.

Therefore, a broad approach to this concept should include reducing losses occurring throughout the entire food chain. "Food losses" are defined in the literature as a decrease in the edible weight of food resulting from mismanagement, errors and irregularities in the course of processes such as: agricultural production, harvesting, processing, transport or storage.[42] They happen in the early stages of the food chain, while at the end of the chain there occurs food wastage in the narrower sense. Food waste also means the wastage of resources used to produce food, such as raw materials, water, fertilisers and fuels. The broad picture of food waste is pointed out in the opinion of the European Economic and Social Committee on EU industrial policy in the food and drink sector, which expressly states that food waste includes waste of resources used in the production of foodstuffs.[43]

Only a broad approach to the reduction of food waste will enable effective elimination of its negative effects. These conclusions converge with the European Parliament's position that reducing food waste as much as possible requires involvement of all participants in the food supply chain and targeting the various causes of waste sector by sector.[44]

Such a considerable narrowing of the legal definition in the Act on Counteracting Food Waste has its consequences in the normative scope of the new

[42] A. Marszałek, *Czy możliwe jest przezwyciężenie problemu marnotrawstwa żywności?,* "Nierówności Społeczne a Wzrost Gospodarczy" 2018, No 2, p. 474.

[43] Opinion of the European Economic-Social Committee on EU industrial policy with regards the food and beverages sector, O.J. EU C No 332, p. 28 et seq, point 4.4.3.

[44] European Parliament resolution of 19 January 2012 on how to avoid food wastage: strategies for a more efficient food chain in the EU, O.J. EU C No 227E, p. 25 et seq., point 6.

regulation. Unfortunately, it is limited to the distribution sector only and defines the obligations of food sellers to counteract food waste. They are intended to apply only to entities operating food businesses in terms of sales of foodstuffs in a retail or wholesale unit or units with a sales area exceeding 250 m^2, whose revenues from sales of foodstuffs constitute at least 50% of sales revenues from all goods (article 2(3) of the Act). However, during the first two years from the date of entry into force of the Act, these obligations will apply only to food vendors operating a food business operators in at least one unit of retail or wholesale trade with a sales area exceeding 400 m^2 (article 17 of the Act).

The narrow definition of the normative scope of the Act raises a number of doubts both in the academic environment, including legal, and in the agri-food sector. The obligations set out in the Act are to be addressed only to entities from the distribution sector, whose share in food waste in the EU is only 5%[45] and do not extend to all participants of the food chain, among whom households have the largest share in food waste, accounting for 53% of total food waste.[46] They are followed by the processing industry (19%), catering services (12%) and production generating 11% of food wastage.[47] Distributors, who generate only 5% food wastage and therefore contribute to food wastage the least, are the only addressees of the obligations set out in the Act on counteracting food waste.

The first of the obligations imposed on distributors is to conclude an agreement (article 3(1)) with a non-governmental organisation (NGO) for a free of charge transfer of food for welfare purposes intended for the performance of their public tasks in the scope of: social support, including help to families and individuals in a difficult life situation and equalising opportunities of these families and individuals; a family support system and the system of foster care; charity activities, consisting in particular in transferring food to persons in need or operators of mass catering establishments for persons in need (article 2(2)).

The agreement is to be concluded for the transfer of food which meets the requirements of food law and is not intended for sale, in particular due to defects in its appearance or packaging, except for alcoholic beverages with alcohol content exceeding 1.2% and alcoholic beverages which are a mixture of beer and non-alcoholic beverages with alcohol content exceeding 0.5% (ar-

[45] *Fusions. Estimates of European food waste levels. Reducing food waste through social innovation*, Stockholm 2016, p. 4, https://www.eu-fusions.org/phocadownload/Publications/Estimates%20of%20European%20food%20waste%20levels.pdf (accessed on: 31 December 2019).

[46] http://www.europarl.europa.eu/news/pl/headlines/society/20170505STO73528/marnowanie-zywnosci-w-ue-miliony-ton-jedzenia-do-kosza-infografika (accessed on: 31 December 2019).

[47] *Fusions. Estimates of European food waste levels...*

ticle 3.1). Under pain of invalidity (article 3(1)) such an agreement must be in writing or have an electronic form.

The most important elements to be included in the agreement have been determined by the Act. And so it must contain, among other things, provisions regulating the time and manner of the food transfer and the type of the food transferred; the split of the costs of food collection and distribution between the parties to the agreement; instances in which the NGO may resign or refuse to collect the food; the duration of the agreement and the liability of the parties for non-compliance with its terms, including the terms of notice (article 3(2)). However, there are certain doubts, both of a practical and theoretical nature, regarding the food business operator's obligations formulated as above. In particular, it should be pointed out that the Act ignores completely the issue of the transfer of food for non-food purposes, or the transfer of food after the date of minimum durability, despite its being fit for consumption. It therefore leaves out the issue which was already widely discussed regarding the legitimacy of maintaining the labelling of the minimum durability date, or rather than maintaining the labelling, maintaining the absolute prohibition of placing food on the market after that date without any exception.[48]

It should also be stressed that the legislator obliges distributors to conclude agreements without obliging public benefit organisations to do so as well. This provision was questioned already at the consultation stage by a number of entities, including the Polish Red Cross, the Polish Organisation of Trade and Services, the Federation of Polish Food Banks, as well as individuals who argued that the splitting of costs between an NGO and a distributor might cause various problems.[49] It may also happen that NGOs may not be able to collect the food from the shop due to the lack of necessary resources. On the other hand, the lack of a guarantee from a shop that it will cover all the transport costs may discourage NGOs from signing an agreement for the collection of food, thus exposing the shop to penalties.[50]

The conclusion of a mandatory agreement may also be hindered when the scope of the agreement is defined in very general terms only and the issues that need to be regulated are merely pointed to, while the obligations imposed on NGOs remain vague. What is more, NGOs may not be interested in contracting additional obligations not specified in mandatory laws and may refuse to conclude agreements with food distributors.

Another obligation is to conduct in retail outlets, at least once a year for two consecutive weeks, on each day of the unit's commercial activity (article

[48] Compare K. Leśkiewicz, *Prawne aspekty przeciwdziałania*..., p. 123.

[49] See Rationale for the draft Act, p. 6.

[50] Ibidem.

4(1)) in retail outlets, educational and information campaigns on rational food management and counteracting food waste. The campaigns are to be conducted by food sellers together with an NGO, party to the agreement (article 4(2)).

This solution should be assessed positively. Food vendors have much greater possibilities to influence consumers, and NGOs may not have the possibility and experience in conducting such campaigns.[51] Unfortunately, without specifying the scope and minimum costs to be borne for this task, these campaigns may be illusory.

Food business operators indicated in the Act will be obliged to pay fees for wasting food (article 5(1)). Although the Act provides for an obligation to pay fees, this fee is in fact a kind of a financial sanction imposed on food vendors who waste food despite agreements concluded with NGOs. The fee is calculated as the product of the rate and the mass of wasted food (article 5(2)). The fee rate is PLN 0.1 per 1 kg of wasted food (article 5(3)). There is a rule of automatic calculation, according to which the obliged entity determines the amount of the fee and pays it to the bank account of the NGO that is a party to the concluded agreement for free transfer of food for welfare purposes (article 5(7)). The fee is calculated at the end of the calendar year and paid by 30 April of the following calendar year (article 5(6) and (7)). The funds originating from the fee are to be used by the NGO for carrying out specific public tasks.[52]

In the event of a failure to conclude an agreement with an NGO, the food vendor will pay the fee due to the bank account of the voivodship fund for environmental protection and water management in the territory of the voivodship in which it operates his business (article 5(8)). The funds originating from the fee are to be used for financing activities aimed at combating food waste (article 5(8)).

The basis for calculating the fee is 90% of the mass of wasted food (article 5(2)). In the first year of the new regulations in force, the basis for calculating the fee will be 80% of the mass of the wasted food (article 19). On the one hand, such a solution seems to be correct, as it takes into account cases which are impossible to eliminate entirely, in which even with the proper performance of the obligations imposed by the Act there is still a need to utilise food as waste.[53] On the other hand, it should be stressed that the Act does not specify how to deal with food that is no longer transferable or that will not be received by an NGO. Doubts may concern whether in such a case it still constitutes a basis for calculating fees.

[51] Ibidem, p. 7.

[52] In the scope determined in article 2(2) of the Act.

[53] Rationale for the draft Act, p. 6.

The fee is to be reduced by the costs incurred by the food vendor for the educational and information campaigns conducted, on which no more than 20% of the funds derived from the fee may be allocated, and by the costs incurred by the food vendor for the performance of an agreement for the free transfer of food, in particular the costs of its transport and distribution (article 5(4) and (5)). A distributor is not obliged to pay the fee not exceeding PLN 300,00 (article 5(9)). Information about the amount of the fee due or the value of food donated to NGOs for welfare purposes is to be included in the food vendor's financial statement and website (article 5(10)).

It should be noted that already during the legislative process, the level of the fee raised many controversies. Some of those who were asked to express their opinion on the draft law claimed that the rate was too high, others that it was too low.[54] It was also pointed out that the Act fails to specify the date by which the funds from fees paid were to be used.[55]

Additional reporting obligations are also foreseen in the legislation. The food vendor is obliged to submit annually, by 31 March, to the voivodeship fund for environmental protection and water management on the territory of the voivodeship in which it operates his food sales business, a written annual report on food wasted. The report must contain information on the total weight of food wasted in the previous calendar year and the amount of the fee due, indicating the amount of the fee to be paid to the fund (article 8(1)).

On the other hand, the voivodeship fund for environmental protection and water management is obliged to submit each year, by 30 June, to the Chief Inspector of Environmental Protection, a written collective annual report on food waste containing information on the total weight of food waste by food vendors in the previous calendar year and the total amount of the fee due and paid to the voivodeship fund for environmental protection and water management, together with a list of food vendors who submitted their report (article 8(2)).

NGOs also have additional information obligations. Every year, by 31 March of the year, the NGO is obliged to submit to the food vendor information in writing on the use of the fee income in the previous year, and in particular, information on how much money has been allocated to cover administrative costs (article 7(1) of the Act).

Every year, by 31 March, an NGO is also obliged to submit to the Chief Inspector of Environmental Protection a written report on the manner of management of the received food, including in particular the previous year data on the weight of food received from food vendors and the weight of food which

[54] Ibidem.
[55] Ibidem.

it has given to those in need. The report must be accompanied by a list of food vendors from whom the NGO received food (article 7(2)).

The introduction of reporting obligations by the legislator should be viewed positively. There is no reliable information on the actual level of food waste in Poland, and the data presented to the public are only estimates.[56] However, it is regrettable that the legislator did not take into account some of the comments raised during the consultation phase of the draft. It was suggested that a written report should take the form of a more detailed accounting report in an agreed format, and that these data be made public, e.g. on websites.[57] Such a solution would contribute to the transparency of accounts and raise public awareness.

The Act also envisages imposition of administrative fines for failure to comply with statutory obligations. These penalties are relatively low. A failure to conclude an agreement with an NGO for a free of charge transfer of food for welfare purposes is PLN 5,000 (article 10(1)), and a failure to pay or to pay the fee in full or on time ranges from PLN 500 to PLN 10,000 (article 11(1)). Such low fees may not be an effective measure of general prevention. Already during the legislative procedure it was pointed out that the amount of the fee should be determined on the basis of an economic analysis, and the penalty for non-compliance should not be lower than the costs of the fulfilment of the obligations set out in the Act.[58]

It should also be noted that a financial penalty for not concluding an agreement is not imposed if the vendor proves that it was not possible to conclude an agreement for a free of charge transfer of food with a local NGO within the territory of the *poviat* where it conducts food sales activities (article 10(2)). This solution seems to be right, taking into account the lack of obligation upon an NGO to conclude an agreement, however, doubts may be raised regarding effective proving that there was no possibility to conclude such an agreement. The legislator does not explain whether it is sufficient to determine that the food business operator proposed a draft contract whose terms, particularly with regard to the split of costs of food collection and distribution, were unacceptable.

Regretfully, during the legislative work, one of the most essential solutions proposed in the draft law,[59] i.e. an amendment to article 52 of the Act of 25 Au-

[56] Ibidem, p. 1.

[57] Ibidem, p. 6.

[58] Ibidem, p. 7.

[59] Compare Rationale for the draft Act on counteracting food waste in the wording of 22 July 2016, p. 6.

gust 2006 on food and nutrition safety was abandoned.[60] That article provided for a ban on foodstuffs remaining in circulation both after the minimum durability and the expiry of the ("use by") date. Food in circulation means food placed on the market. Placing on the market, on the other hand, means holding food or feed with a view to sale, including offering it for sale or any other form of disposal, whether free of charge or not, and selling, distributing and other forms of disposal.[61] Hence, the ban on placing food on the market after the date of minimum durability and use-by dates also applies to the distribution of food by NGOs. This ban is understandable as regards food labelled with an "use by" date, used for foodstuffs which, from a microbiological point of view, spoil very quickly and therefore, after a short period of time, may constitute an immediate danger to human health, [62] and be considered hazardous.[63] With regard to the date of minimum durability, such a rigour is sometimes questioned.[64] Indeed, the minimum durability date of a foodstuff means only the date until which the foodstuff retains its specific properties when properly stored but does not automatically determine the classification of the product as unsafe or hazardous. It appears that the requirement for labelling food with the date of minimum durability should be maintained. Having regard to one of the fundamental objectives of food law, which is the protection of consumers' interests,[65] it must be stressed that consumers should be able to obtain reliable information as to until when a product has the appropriate quality guaranteed by the manufacturer.

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[60] Act of 25 August 2006 on food and nutrition safety (Journal of Laws 2006, No 136, item 914 as amended).

[61] Pursuant to article 3(8) of 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, OJ L 31, 1.02.2002, p. 1 as amended, hereinafter referred to as Regulation No 178/2002.

[62] See article 24 of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, OJ L 304, 22.11.2011, p. 18 as amended, hereinafter referred to as Regulation No 1169/2011.

[63] Pursuant to article 14(2–5) of Regulation No 178/2002.

[64] Compare K. Leśkiewicz, *Prawne aspekty przeciwdziałania*..., p. 123.

[65] See article 5(1) to Regulation No 178/2002. Compare P. Wojciechowski, *Cele prawa żywnościowego*, "Studia Iuridica Agraria" 2014, vol. 12, p. 47.

However, in order to limit the amount of food wasted, it needs to be reconsidered whether in certain cases this ban should not be excluded, such as when giving food to charity. Certainly, this exemption would have to be an exception, to be interpreted restrictively and linked to additional legal requirements, such as the justification of the impossibility of earlier use or additional labelling.

4. Concluding remarks

Certainly, the numerous remarks and objections raised at the stage of the legislative procedure had an impact on the length of time of drafting the Act. This could not be avoided when such an important from the point of view of its economic and social impact matter was being regulated. Unfortunately, the adopted law continues to raise doubts, particularly as regards the narrow normative scope of this regulation, numerous problems with the interpretation of regulations and the efficacy of the instruments provided. What is more, resignation from very important provisions, including a limited ban on marketing food after the date of minimum durability, may justify terming this regulation the "a law of lost opportunities." The new Act provides no support instruments for entities which take actions aimed at limiting food waste, but only imposes on them certain obligations of a normative nature.

It should be stressed, however, that the very fact that a problem was noticed and that the existing, although only partial, regulation on counteracting food wastage has subsequently been adopted, should be assessed positively. The measures undertaken may constitute the first steps on the way to implementing comprehensive solutions, and at the same time they reflect the legislator's efforts to ensure food sovereignty, based, among other things, on a closed-circuit economy.

The current Polish regulation is similar to legislative acts adopted earlier in some Member States, and in particular is close to the French regulation, the application of which is already producing tangible results. Two years after its entry into force, there has been a decrease in the amount of food wasted by shops, and an increase in the amount of foodstuffs reaching those in need.[66] Also, representatives of French food banks note that there has been an improvement in the structure of the food distributed – food banks now receive more vegetables, fruit and meat and products with a longer shelf life and a longer minimum durability period than before.[67] It is reported that the measures taken to reduce food waste have made France the leader in the Food Sustainability Index 2017

[66] Rationale for the draft Act, p. 3.

[67] Ibidem.

ranking, as it came first the general classification and in the category "Food loss and waste."[68]

To sum up, it should be firmly stated that the problem of food waste should be solved comprehensively and the legal instruments adopted should not be limited only to the distribution stage and to products which are wholesome and fit for consumption. For this reason, further actions of the Polish legislator seem to be necessary.

THE ACT ON COUNTERACTING FOOD WASTE – AN ATTEMPT OF ITS EVALUATION

Summary

The article is a voice in the discussion on the legitimacy of the solutions adopted in the Act on Counteracting Food Waste. The author assesses both the direction of the legislator's actions as well as individual legal instruments provided for in the new regulations. Despite many critical comments and objections to the solutions adopted, adoption of separate legal regulations in this respect should be assessed positively. The measures taken may constitute the first steps on the way to the implementation of comprehensive solutions, being at the same time a manifestation of the legislator's efforts to ensure food sovereignty, based among other things on a closed-circuit economy.

LA LEGGE SULLA LOTTA AGLI SPRECHI ALIMENTARI: UN TENTATIVO DI VALUTAZIONE

Riassunto

L'articolo è una voce espressa in una discussione intorno alla fondatezza delle soluzioni adottate nella legge polacca sulla lotta allo spreco alimentare. L'autore valuta sia le politiche del legislatore sia i singoli strumenti giuridici previsti dalla legge in oggetto. Nonostante molte osservazioni critiche e obiezioni in merito alle soluzioni adottate, le regolazioni rinvenute a tal riguardo dovrebbe essere valutate positivamente. Le azioni intraprese possono costituire i primi passi fatti sulla strada che porta a introdurre soluzioni complessive, pur costituendo al tempo stesso una manifestazione degli sforzi del legislatore che cerca di garantire la sovranità alimentare, basata per di più sull'economia circolare.

[68] Compare https://foodsustainability.eiu.com/wp-content/uploads/sites/34/2016/09/FoodSustainabilityIndex2017GlobalExecutiveSummary.pdf (accessed on: 31 December 2019).