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## LEGAL INSTRUMENTS TO SUPPORT LOCAL FOOD SYSTEMS: CONCLUSIONS *DE LEGE FERENDA*<sup>1</sup>

### Abstract

Local food systems (LFS) is not a legal term, although it is used in EU documents, and legal instruments supporting their development can be indicated in EU, and national legal orders. Based on the analysis and comparison of these instruments, extracted from Italian, French, Polish, American, and EU legislation, this study aims to formulate proposals for possible and beneficial solutions to be introduced into national and EU legislation, aimed at supporting LFS. The proposal includes the introduction at the EU level, along with the local food labelling system, of the LFS definition supporting small farmers who run agricultural production with the use of environmentally friendly, sustainable methods. In the field of food law, it is necessary to articulate the LFS requirements more clearly so that they are better understood by farmers. In national legislation, the instruments to be implemented involve the possibility for the farmer to carry out the activity of processing and selling his products directly to consumers and local retailers as part of his privileged agricultural status, at the same time obliging municipalities to create farmers' markets, and supporting agriculture in the urban and peri-urban areas. Other necessary instruments include the requirement to offer local products in gastronomy by public institutions, hotels, restaurants and agritourism, and implementation of appropriate solutions in the public procurement law encouraging local food supplies.

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## KEYWORDS

local food systems, short food supply chains, direct sales, farmers' markets, EU legislation, food labelling, hygiene requirements

## SŁOWA KLUCZOWE

lokalne systemy żywnościowe, krótkie łańcuchy dostaw żywności, sprzedaż bezpośrednia, rynki rolne, prawodawstwo UE, etykietowanie żywności, wymogi higieniczne

## 1. INTRODUCTION

Local food systems (LFS) is not a legal term, although they are used in EU documents which define them as “systems where the production, processing, trade, and consumption of food take place in a relatively small geographical area”<sup>2</sup>. In the Farm to Fork Strategy, the European Commission declared that “with a view to enhance resilience of regional and local food systems (...), in order to create shorter supply chains [it] will support reducing dependence on long-haul transportation (...)”<sup>3</sup>. The EC also acknowledged that “even as societies become more urbanised, [people] want to feel closer to their food; they want food that is fresh, less processed and sustainably sourced. And the calls for shorter supply chains have intensified during the current outbreak [of pandemic]”<sup>4</sup>.

So far, the EU has legally recognized “short supply chains” by defining them under the rural policy in Art. 2 (1) (m) Regulation 1305/2013<sup>5</sup>. Short supply chain

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<sup>2</sup> European Commission Staff Working Document on various aspects of short food supply chains accompanying the document Report from the Commission to the European Parliament and the Council on the case for a local farming and direct sales labelling scheme COM (2013) 866 final, p. 5; European Commission Report from the Commission to the European Parliament and the Council on the case for a local farming and direct sales labelling scheme' COM (2013) 866, p. 4; M.-L. Augère-Granier, European Parliament Briefing. Short food supply chains and local food systems in the EU, European Parliamentary Research Service, 2016.

<sup>3</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system, Brussels, 20.5.2020, COM(2020) 381 final, p. 5.

<sup>4</sup> *Ibidem*, p. 4.

<sup>5</sup> Regulation (EU) 1305/2013 of the European Parliament and the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) 1698/2005 [2013], OJ, L 347/487.

“means a supply chain involving a limited number of economic operators, committed to co-operation, local economic development, and close geographical and social relations between producers, processors and consumers”. This definition is supplemented by Art. 11 (1) of the Commission Delegated Regulation (EU) No. 807/2014, stating that “support for the establishment and development of short supply chains, as referred to in Article 35(2)(d) of Regulation (EU) No. 1305/2013, shall cover only supply chains involving no more than one intermediary between farmer and consumer”<sup>6</sup>. The EU definition of short supply chains, therefore, includes the criterion of social and geographical proximity and a maximum of one intermediary between the consumer and the producer. It has been noted in the literature that the two concepts, of local food systems and short supply chains, “obviously overlap”<sup>7</sup>. The characteristic feature of LFS is “the distribution of products through short food supply chains”<sup>8</sup>, or in other words, that they are based on short supply chains<sup>9</sup>.

However, there are several terminological ambiguities related to the term “geographical proximity”. Also the concept of “local markets” is not explained, although regulation 1305/2013 under Priority 3 provides for support for “the promotion of local markets and short supply circuits”. According to Regulation (EU) No. 807/2014, Art. 11 (2) the definition of local markets will be defined by the Member States in their rural development programmes as “a kilometric radius from the farm of origin of the product, within which the activities of processing and sale to the final consumer have to take place”, or they will set out “a convincing alternative definition”. Although various sources confirm that the term denotes a relatively small geographical area, there is no consensus as to its range from the place of production, which may be 20–100 km<sup>10</sup>. However, in the Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014–2020, the EU expressed a limit of 75 km radius between the local market and the farm<sup>11</sup>.

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<sup>6</sup> Commission Delegated Regulation (EU) No. 807/2014 of 11 March 2014 supplementing Regulation (EU) No. 1305/2013 of the European Parliament and the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions, OJ L 227.

<sup>7</sup> F. Santini, S. Gomez y Paloma (eds.), *Short food supply chains and local food systems in the EU. A state of play of their socio-economic characteristics*, Report of the European Commission, Joint Research Centre, 2013, p. 13.

<sup>8</sup> R. Matysik-Pejas, J. Cieřlik, A. Borecka, E. Sowula-Skrzyńska, *Lokalne systemy żywnościowe i ich znaczenie dla obszarów wiejskich*, “Roczniki Naukowe Stowarzyszenia Ekonomistów Rolnictwa i Agrobiznesu” 2017, Vol. 19, issue 5, pp. 143–148.

<sup>9</sup> J. Gołębiewski, *Systemy żywnościowe w warunkach gospodarki cyrkularnej*, Warszawa 2019, p. 27; C. Blouin, J.F. Lemay, K. Ashraf, J. Imai, L. Konforti, *Local food systems and public policy: A review of the literature*, Ottawa 2009.

<sup>10</sup> European Commission Report from the Commission to the European Parliament and the Council on the case for a local farming..., p. 4.

<sup>11</sup> OJ C 204, 1.7.2014, see para 2.4 “Definitions”, point 60.

The problem, consequently, also concerns the understanding of the terms “local food” and “local farming” that are associated with the concepts of local food systems. “Local farming” appears in Art. 55 of Regulation (EU) No. 1151/2012 in the context of the introduction of a new labelling scheme for local farming and direct sales<sup>12</sup>. In the EU documents, local farming is described as agriculture aimed at supplying consumers in a nearby area<sup>13</sup>. Typically, it is distinguished by specific characteristics, such as: “artisan – instead of industrialised production methods; use of traditional recipes and production techniques; and sales locally with fewer intermediaries; such ‘local’ farming is often linked to direct sales; these are the simplest food supply systems: products go straight from producers to consumers”<sup>14</sup>. Direct sales mean short food supply chains without an intermediary<sup>15</sup>. Whereas the notion of “local food”, according to EU Parliament researcher, is “subjective and depends on the context of the local area: the density of population, accessibility, and urban or rural character; the term ‘local’ can also refer to the closeness of the relationship between producers and consumers, based on mutual trust and cooperation”<sup>16</sup>. “Local” is often defined in terms of distance between the point of production and the point of sale. It can also be understood in relation to a recognised geographical area such as a county or a national park<sup>17</sup>. It is also worth adding that the EU food law does not use the term “short food supply chains” (SFSC). However, it refers to the activities being key forms of SFSC, such as direct supply, and marginal, localised and restricted activity<sup>18</sup>.

Taking into account the aforementioned EU definitions and views expressed in the EU documents, it can be assumed that the local food system consists of the following elements: production, including processing of local food through local agriculture, its distribution in short supply chains, and its consumption that takes place in a relatively small geographical area, understood as the distance from the farmer to the consumer.

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<sup>12</sup> 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, OJ, L 343/1.

<sup>13</sup> European Commission Staff Working Document on various aspects of short food supply chains..., p. 8.

<sup>14</sup> *Ibidem*.

<sup>15</sup> *Ibidem*, p. 5.

<sup>16</sup> M.-L. Augère-Granier, *op. cit.*, p. 3.

<sup>17</sup> *Ibidem*.

<sup>18</sup> See Regulation (EC) 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs [2004] OJ L 139/1, Article 1 (2) lit. c) and Regulation (EC) 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin [2004] OJ L 139/55, Art. 44 regulation 1169/2011. See more on the subject A. Kapała, *Food safety requirements for short supply chains in the legislation of the European Union, selected EU Member States and the USA, a comparative study*, “European Food and Feed Law Review” 2021, No. 4, pp. 286–295; A. Kapała, P. Lattanzi, *Mandatory food information in case of short food supply chains and local food systems in EU and US legislation, a comparative study*, “Przegląd Prawa Rolnego” 2021, No. 1, pp. 217–236.

LFS and SFSC have been the subject of numerous studies worldwide, but mainly in the field of rural sociology and the rural economy<sup>19</sup>. In the literature, there is no broader analysis of legal instruments of local food systems or attempts to formulate their legal concept including different aspects of this phenomenon. Currently, the need to develop LFS is a social phenomenon, increasingly desired by both consumers and producers, in opposition to globalisation, standardisation, and industrialisation of food production. Awareness of the negative effects of the industrial model of production and consumption, and the increasing demand for food in the growing world population cause the need to seek alternative and sustainable models, among which particular importance is assigned to local food systems.

The choice of the subject has many reasons, both theoretical and practical, as LFS and SFSC are related to economic, social, and environmental benefits<sup>20</sup>. They represent an alternative to the global system<sup>21</sup> that distorts the balance of power in the food supply chain and brings negative effects to the environment, rural landscape, soil condition, biodiversity, quality and product safety, profitability and the future of small farms<sup>22</sup>. LFS are deemed to be able to contribute to improving standards of safety, quality and taste of food (less processed, fresher, with more nutrients), environmental protection (reduction in fuel consumption and emissions from transport, less packaging), biodiversity, support of territorial and economic systems, to maintain social ties and unique culture of the countryside<sup>23</sup>.

When it comes to economic and social opportunities, farmers receive the full price paid for the product, without sharing it with any kind of intermediary that would charge the final price of the product. Consumers, on the other hand, have both the opportunity to buy at a lower price and to meet the producers,

<sup>19</sup> See L. Enthoven, G. Van den Broeck, *Local food systems: Reviewing two decades of research*, "Agricultural Systems" 2021, Vol. 193, 103226 and the literature cited there.

<sup>20</sup> Described in more detail in the Opinion of the Committee of the Regions on "Local food systems" (outlook opinion) [2011] (2011/C 104/01) OJ C 104/1, as well as in F. Santini, S. Gomez y Paloma (eds.), *op. cit.*, p. 27.

<sup>21</sup> C. Certomà, *Being locally global: Power-geometries in post-global space*, Draft version of the presentation for the Conference "Challenging Globalisation", Royal Holloway University of London, 2–4 September 2009; F. Galli, G. Brunori (eds.), *Short food supply chains as drivers of sustainable development: Evidence Document*. Document developed in the framework of the FP7 project "FOODLINKS" (GA No. 265287). Laboratorio di studi rurali Sismondi, 2013; F. Santini, S. Gomez y Paloma (eds.), *op. cit.*, p. 34.

<sup>22</sup> See e.g. G. Brunori, *Pandemie e sistemi agro-alimentari nel rapporto tra locale e globale: Nuove sfide e nuovi dilemmi*, (in:) E. Cristiani, E. Sirsi, G. Strambi, (eds.), *Regole delle produzioni locali e mercato globale*, III Giornata sulla sicurezza alimentare, Pisa 2010, p. 15.

<sup>23</sup> E. Sirsi, *Regole e implicazioni giuridiche della produzione e del consumo di cibo locale*, (in:) *Studi in onore di Luigi Costato*, Vol. 3, Napoli 2014, p. 500. See also G. Lipovetski, *Una felicità paradossale. Sulla società dell'iperconsumo*, Milano 2007; I. Canfora, *Is the short food supply chain an efficient solution for sustainability in food market?*, "Agriculture and Agricultural Science Procedia" 2016, Vol. 8, p. 402.

rediscovering in this way “a human connection with producers that could be considered also as quality assurance”<sup>24</sup>. The possibility of access to good, fresh, typical, and fairly cheaper food in rural areas attracts tourists, which has a positive effect on rural areas, agritourism, and gastronomic tourism. Therefore, SFSC and LFS can help revitalise European farms and maintain the profitability of small and medium-sized farms<sup>25</sup>.

Having said all this, it seems clear that LFS is a significant phenomenon that deserves to be examined not only in economic and sociological terms but also in legal ones<sup>26</sup>. As pointed out by the Committee of the Regions: “in the plural model, the local food system is a key issue that has so far not been sufficiently addressed and that should be supported in a professional, structural, innovative way”<sup>27</sup>. Nevertheless, the EU, although in its many documents has recognised the social, economic, and environmental benefits of short food supply chains (SFSC) and LSF, has never provided the legal framework for LFS, its definition nor its labelling scheme. Therefore, the initiative to provide the legal instruments for the implementation and development of LFS and SFSC has been left to the Member States. As a consequence, as the European Parliament researcher noted, there is a great diversity within and between countries in terms of defining LFS and SFSC, “which can result in a lack of comparability”<sup>28</sup>.

Detailed research into the instruments for LFS development, implemented in the UE<sup>29</sup> and the selected EU countries, i.e. Poland<sup>30</sup>, France<sup>31</sup>, Italy<sup>32</sup>, and also in the United States<sup>33</sup> (as a platform to compare and draw possible conclusions for the EU or the Member States) was reported in the previous articles. The instruments

<sup>24</sup> Euractiv, Special Report of 19–27 Dec. 2018, “Short food supply chains in Europe’s South”, p. 8, <https://en.euractiv.eu/wp-content/uploads/sites/2/special-report/EURACTIV-Special-Report-Short-food-supply-chains-in-Europe%E2%80%99s-south.pdf> (accessed 27.06.2021).

<sup>25</sup> *Ibidem*, p. 11. More on socio-economic importance of local farming and direct sales see European Commission Report from the Commission to the European Parliament and the Council on the case for a local farming...

<sup>26</sup> E. Sirsi, *op. cit.*, p. 500.

<sup>27</sup> Committee of the Regions Opinion on Local food systems (outlook opinion)...

<sup>28</sup> M.-L. Augère-Granier, *op. cit.*, p. 2.

<sup>29</sup> A. Kapała, *EU legal instruments supporting short food supply chains and local food systems*, “Revista General de Derecho Europeo” 2020, No. 52, [https://www.iustel.com/v2/revistas/detalle\\_revista.asp?numero=52&id=13](https://www.iustel.com/v2/revistas/detalle_revista.asp?numero=52&id=13) (accessed 7.12.2021).

<sup>30</sup> A. Kapała, *Agricultural retail trade regulation as a legal instrument to support local food systems*, “European Food and Feed Law Review” 2020, Vol. 15, issue 3, pp. 231–236.

<sup>31</sup> A. Kapała, *Legal instruments to support short food supply chains and local food systems in France*, “Laws” 2022, Vol. 11, issue 2, pp. 1–14.

<sup>32</sup> A. Kapała, *Legal instruments to support local food systems in Italian law*, “EU Agrarian Law” 2020, Vol. 9, issue 1, pp. 5–11; A. Kapała, *Sprzedaż wina w ramach lokalnych systemów żywnościowych na przykładzie prawa włoskiego*, “Przegląd Prawa Rolnego” 2019, Vol. 25, No. 2, pp. 203–214.

<sup>33</sup> A. Kapała, *Legal instruments to support local food systems in US law*, “Comparative Law Review” 2020, Vol. 26, pp. 9–50.

identified in the studies include encouraging farmers to take up direct sales under civil, commercial, tax, food, and hygiene law, creating and supporting various forms of SFSC, as well as implementing brands and labels that distinguish local food on the market. Some of these instruments are set up at the national level, but most of them are a result of bottom-up initiatives undertaken by local communities (farmers, consumers, businesses) in cooperation with local authorities, often to fill gaps in national or EU law. Due to the limited size of this article, a detailed analysis of these instruments will not be carried out here, as it has already been done. Based on a comparison of the identified legal instruments, this study aims to formulate a proposal of possible and beneficial solutions to be introduced into the national and EU legal system, aimed at supporting LFS.

The research hypothesis is a statement about the need to improve and harmonize legal instruments at the EU level to support LFS, including the introduction of local food systems definition and local food labelling system to help producers in placing their products on the local market and consumers to identify them and to make informed choices. It involves also the need to improve and harmonize these instruments at the national level, to enable farmers to participate in various forms of short supply chains.

## 2. LFS IN THE CONTEXT OF CURRENT CHALLENGES IN TERMS OF FOOD SECURITY, AND SUSTAINABILITY

Achieving food security<sup>34</sup> and elimination of hunger is a top priority for Food and Agriculture Organization<sup>35</sup> and United Nations<sup>36</sup>. The EU, already in the Treaty of Rome in Art. 39 established the goal of ensuring food security, which

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<sup>34</sup> See the World Conference on Nutrition organised by the FAO and the WHO, held in Rome on 19–21 November 2014: the final document reaffirms the right of all to have access to safe, sufficient, and nutritious food, consistent with the right to adequate food and the fundamental right of all to be free from hunger. A recent definition of food security can be found in the European Parliament Resolution of 19 December 2012. See more in L. Russo, *Food sovereignty and food security*, “Rivista di Diritto Agrario” 2019, No. 4, pp. 729–735; M. Alabrese, *Il regime della food security nel commercio agricolo internazionale. Dall’Havana Charter al processo di riforma dell’Accordo agricolo WTO*, Torino 2018; A. Jannarelli, *Il diritto agrario del nuovo millennio tra food safety, food security e sustainable agriculture*, “Rivista di Diritto Agrario” 2018, Vol. 1, p. 511.

<sup>35</sup> [www.fao.org/hunger/](http://www.fao.org/hunger/) (accessed 7.12.2021).

<sup>36</sup> See The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, that determines 17 Sustainable Development Goals. Goals related to food security are: Goal 2: End hunger, achieve food security and improved nutrition, and promote sustainable agriculture; Goal 12: Ensure sustainable consumption and production patterns; Goal 15: Protect, restore, and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.



was repeated unchanged in Art. 39 TFEU<sup>37</sup>. Intensive agricultural production in the EU in the conditions of progressive trade liberalisation and the development of long food supply chains led to overproduction of food and many negative effects for the environment, biodiversity, and food safety<sup>38</sup>. Therefore, the EU in the Farm to Fork Strategy aims to accelerate the transition to a sustainable food system. Such systems should ensure multiple aims, such as food security, nutrition and public health, making sure that everyone has access to sufficient, safe, nutritious, sustainable food, preserve the affordability of food while generating fairer economic returns, and at the same time to have a neutral or positive environmental impact<sup>39</sup>.

The literature points out that in the context of ensuring the physical availability of food in the EU, understood in terms of maintaining local production, the development and promotion of local food supplies seem to be particularly important<sup>40</sup>. Production and sale of food under LFS may also contribute to the mitigation of the conflict between the first two elements of food security, i.e. physical and economic availability, and those focusing on health adequacy. This conflict is due to the difficulties in reconciling practices aimed at intensifying food production with actions protecting the natural environment and ensuring high-quality products<sup>41</sup>.

Donkers argues that food sovereignty<sup>42</sup> is an answer to the challenges related to food security and the right to food<sup>43</sup>. He states that “regions or nations should have the right to food, the right to food production and the right to protect their borders against undesirable imports”. Under food sovereignty, local food systems that are shaped by small farmers and family farms, extensive animal husbandry and sustainable food production, distribution and consumption, are taken as a pri-

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<sup>37</sup> Treaty on the Functioning of the European Union, OJ C 326.

<sup>38</sup> J. Michalczyk, *Bezpieczeństwo żywnościowe z perspektywy państw Unii Europejskiej*, “Ekonomia Międzynarodowa” 2019, Vol. 25, p. 22. About the global adverse effect of the current food systems see FAO, <https://www.fao.org/3/ca2079en/CA2079EN.pdf> (accessed 15.01.2022).

<sup>39</sup> European Commission, Communication A Farm to Fork Strategy..., p. 4.

<sup>40</sup> J. Michalczyk, *op. cit.*, p. 24.

<sup>41</sup> *Ibidem*, p. 29.

<sup>42</sup> “Food sovereignty” has its roots in the II International Conference of La Via Campesina held in Tlaxcala, Mexico, in 1996. Its definition is provided by the International Nyeleni Forum for Food Sovereignty which was held in 2007 in Mali. It is also referred to in Art. 15, paras 4 and 5 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.

<sup>43</sup> The right to food is addressed by Art. 11 of International Covenant on Economic, Social and Cultural Rights, 19 December 1966, 993, United Nations. See more on the subject L. Costato, *Diritto al cibo*, “Digesto Discipline Privatistiche, Sezione Civile”, *aggiornamento XI* 2018, p. 165 *et seqq*; *Idem*, *Il “Dio mercato” e l’agricoltura*, “Rivista di Diritto Agrario” 2018, Vol. 1, p. 71 *et seqq*.



ority<sup>44</sup>. When farmers are growing products to be sold on the other side of the world instead to their local communities, this setup creates an unsustainable system for both the grower and consumer, and may threaten food security<sup>45</sup>. Indeed, some states, especially those most affected by the contraction of their autonomy decision with regard to the food system, have introduced the right to food or food sovereignty in their constitutions<sup>46</sup>.

The EC recognized that the current outbreak of the COVID-19 pandemic has intensified the calls for shorter supply chains and for building a sustainable and resilient food system “that functions in all circumstances, and is capable of ensuring access to a sufficient supply of affordable food for citizens”<sup>47</sup>. In the context of the resilience of food systems to crises, Gioia in her research stated that during the lock-down caused by COVID-19, the search for “territoriality” and local products became a central element of spending by Italians who opted for typical local products, preferably from the SFSC and small farms<sup>48</sup>.

A sustainable food system lies at the heart of the United Nations’ Sustainable Development Goals (SDGs)<sup>49</sup>, as well as is in the centre of the EU Farm to Fork Strategy<sup>50</sup>. No single definition of Sustainable Agricultural and Food Systems (SAFS) exists in the scientific literature nor is there a consensus as to which criteria should be used to judge whether a food system is sustainable<sup>51</sup>. Generally, a SAFS must produce a quality product and be economically viable, ecologically

<sup>44</sup> H. Donkers, *Sustainable food security: A paradigm for local and regional food systems*, “International Journal of Humanities and Social Science” 2014, Vol. 4, issue 12, p. 95

<sup>45</sup> E. Folk, *Local food and global food security*, “The Ecologist”, 19 August 2020.

<sup>46</sup> For example, Ecuador, Venezuela, Mali, Bolivia, Senegal, and Egypt have incorporated the concept of food sovereignty into either their reformed constitutions or food security sectoral policies. See more on the subject S. Beauregard, R. Gottlieb, *Food policy for people: Incorporating food sovereignty principles into state governance. Case studies of Venezuela, Mali, Ecuador, and Bolivia*, 2009, <https://www.oxy.edu/sites/default/files/assets/UEP/Comps/2009/Beauregard%20Food%20Policy%20for%20People.pdf> (accessed 7.12.2021).

<sup>47</sup> European Commission, Communication A Farm to Fork Strategy..., p. 2.

<sup>48</sup> M. Gioia, *Abitudini alimentari e filiere resilienti nel lockdown da Covid-19*, “Rivista di Diritto Agroalimentare”, 2021, No. 1, p. 81.

<sup>49</sup> According to FAO “A sustainable food system (SFS) is a food system that delivers food security and nutrition for all in such a way that the economic, social, and environmental bases to generate food security and nutrition for future generations are not compromised. This means that: it is profitable throughout (economic sustainability); it has broad-based benefits for society (social sustainability); and it has a positive or neutral impact on the natural environment (environmental sustainability)”. FAO, *Sustainable food systems concept and framework*, <https://www.fao.org/3/ca2079en/CA2079EN.pdf> (accessed 7.12.2021).

<sup>50</sup> According to FAO “[to] realize the SDGs the global food system needs to be reshaped to be more productive, more inclusive of poor and marginalized populations, environmentally sustainable and resilient, and able to deliver healthy and nutritious diets to all”. *Ibidem*.

<sup>51</sup> C. Peano, P. Migliorini, F. Sottile, *A methodology for the sustainability assessment of agri-food systems: An application to the Slow Food Presidia project*, “Ecology and Society” 2014, Vol. 19, issue 4, p. 24.

feasible, socially just, and culturally acceptable<sup>52</sup>. In the Farm to Fork Strategy the EC declared that by the end of 2023 it would make a legislative proposal for a framework for a sustainable food system<sup>53</sup>.

However, it can be said that the LFS, in which local and seasonal products are sold close to the place of production, can be a response to the objectives expressed by the EC in terms of reducing the carbon footprint associated with transport, reducing greenhouse gas emissions related to storage, and packaging of food products, more often used in long supply chains than in short ones. In the Joint Research Centre research, the authors analysed different studies regarding the issue of whether the SFSC are sustainable. They concluded that SFSC, to have a minimum negative impact on the environment, “should include all of the following general characteristics: be local, seasonal, and use ecologically sound production methods; these terms (...) could be used as the basis for qualitative environmental indicators but need further definition”<sup>54</sup>. According to Folk, a more sustainable supply chain could be created by “building a food system that supports local producers”<sup>55</sup>.

Donkers points out that a local and regional food system focused on small-scale local and regional resources is the best way to achieve the paradigm of sustainable food security. In LFS, “agriculture and food are re-coupled with the social and environmental system”<sup>56</sup>. Some authors argue that food democracy and food sovereignty play an important role in achieving a sustainable agri-food system<sup>57</sup> that “equitably balances concerns for environmental soundness, economic viability, and social justice among all sectors of society”<sup>58</sup>. In a food democracy, society can participate in its food systems and decide how they develop<sup>59</sup>.

Taking into account the challenges in the field of food security and environment, in order for LFSs to play the significant positive role to which they are predisposed, it would be necessary to define their legal definition. Therefore, the first conclusion is that the LFS should be defined by EU law as systems primarily involving small farmers, not using industrial production methods, but

<sup>52</sup> T. Christensen, S. B. Olsen, A. Dubgaard, N. Kaergård, *Organic farming and multi-criteria decisions: An economic survey*, (in:) *Producing and reproducing farming systems: New models of organisation for sustainable food systems of tomorrow*. 10<sup>th</sup> European IFSA Symposium. International Farming Systems Association – Europe Group, Vienna, Austria, 2012, [http://ifsa.boku.ac.at/cms/fileadmin/Proceeding2012/IFSA2012\\_WS6.1\\_Christensen.pdf](http://ifsa.boku.ac.at/cms/fileadmin/Proceeding2012/IFSA2012_WS6.1_Christensen.pdf) (accessed 7.12.2021).

<sup>53</sup> European Commission, Communication A Farm to Fork Strategy..., p. 8.

<sup>54</sup> F. Santini, S. Gomez y Paloma (eds.), *op. cit.*, pp. 34–35.

<sup>55</sup> E. Folk, *op. cit.*

<sup>56</sup> H. Donkers, *op. cit.*, p. 10.

<sup>57</sup> L. Petetin, *Food democracy in food systems*, (in:) P.B. Thompson, D.M. Kaplan (eds.), *Encyclopedia of food and agricultural ethics*, Berlin 2016, 2<sup>nd</sup> ed., p. 1123.

<sup>58</sup> P. Allen, D. Van Dusen, L. Lundy, S.R. Gliessman, *Integrating social, environmental, and economic issues in sustainable agriculture*, “American Journal of Alternative Agriculture” 1991, Vol. 6, issue 1, pp. 34–39.

<sup>59</sup> L. Petetin, *op. cit.*, p. 1123.

environmentally friendly. Such criteria are already implemented as a bottom-up initiative for regional and local product brands, for example, “connection with the region, tradition, environmental friendliness, uniqueness, quality, cooperation” as in the case of “Barycz Valley” mark<sup>60</sup> or “the product recipe inspired by local history, natural and cultural heritage, produced on an ecological, integrated or extensive farm, using a non-mass production method, and from natural raw materials from a given region, excluding GMO” as in the case of “Local Product System from Małopolska”<sup>61</sup>. In Italy, there are examples of regional regulations that express the concept of “zero kilometres products” by referring to a limit of CO<sub>2</sub> production during the transport of the products from the place of production to the place intended for consumption. In the case of the Umbria region, it is less than 25 kg of CO<sub>2</sub> equivalent per ton, and in any case, the products cannot be transported outside the regional territory<sup>62</sup>.

Strengthening small farmers with traditional and sustainable production methods would counterbalance the expansion of the food industry, excessive growth of the market for processed products, moving away from their “agricultural characteristics”<sup>63</sup>. Adornato points to the need to assure various models of agriculture, also “small-scale” ones, as they provide employment, as well as diversification of the quality of food, local products and food crafts throughout Europe<sup>64</sup>.

### 3. THE LEGAL STATUS OF A FARMER AND ITS ACTIVITY IN THE LFS AND SFSC

The legal status of a farmer involved in food marketing is not determined by the EU legislator, however, as mentioned, EU policy encourages farmers’ participation in the short food supply chains under Regulation (EU) 1305/2013. Therefore, the initiative to make a farmer selling his products, both processed and unprocessed, subject to a legal regime favourable to the agricultural sector,

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<sup>60</sup> Regionalny System Promocji Dolina Baryczy poleca, <http://dbpoleca.barycz.pl/regionalny-system-promocji-dolina-baryczy-poleca-37#scroll-to> (accessed 7.12.2021).

<sup>61</sup> See more on <http://produktlokalny.pl/wp-content/uploads/2015/02/System-PLM-zasady-funkcjonowania.pdf> (accessed 8.08.2021).

<sup>62</sup> See for example Regione Umbria, Legge Regionale 10 febbraio 2011, n. 1. Norme per il sostegno dei gruppi d’acquisto solidale e popolare (GASP) e per la promozione dei prodotti agroalimentari a chilometri zero, da filiera corta e di qualità, Bollettino Ufficiale No. 8 of 16 February 2011.

<sup>63</sup> K. Leśkiewicz, *Bezpieczeństwo żywnościowe i bezpieczeństwo żywności – aspekty prawne*, “Przegląd Prawa Rolnego” 2012, Vol. 10, No. 1, p. 196.

<sup>64</sup> F. Adornato, *La politica agricola comune verso il 2020: Tra mercati e sistemi territoriali*, “Agricoltura, Istituzioni, Mercati” 2011, No. 2, p. 5.

instead of qualifying him as a commercial entrepreneur, has been left to the discretion of the Member States. Under Italian, French, and Polish law, the farmer involved in short food supply chains retains his privileged agricultural status<sup>65</sup>. In Italian and French law this is possible due to a broad definition of agricultural activity encompassing food processing and marketing carried out by a farmer jointly with the agricultural activity *par nature*, whose products originate in prevalence from his farm. In the Polish law, direct marketing and processing are not included in the agricultural activities definition, however, a farmer who conducts them does not become an entrepreneur due to an explicit exemption of these activities (named “agricultural retail trade”) from being subject to the business regime. The fact that farmers can benefit from a favourable treatment in terms of tax law, social security, and business law, certainly strengthens their market position in competition with food businesses and are an incentive to undertake and conduct the activity of food sales.

In turn, under American law, agricultural activity and direct marketing are economic activities that cause farmers to operate within a business as entrepreneurs<sup>66</sup>. The main tool to support the participation of US farmers in short food supply chains are financial programmes offering incentives to direct marketing. However, the systemic legal solutions, as in the presented legislation of the EU countries, in contrast to aid programmes, provides farmers with favourable conditions in the long run, without additional bureaucracy and the need to fill out documents and applications, thus giving them a sense of confidence and stability in engaging in food direct marketing<sup>67</sup>. Therefore, the special treatment of food sales by farmers and the privileged legal status granted to the farmer is an important tool in the Member states legislation encouraging a farmer to become involved in the SFSC, which should be definitely maintained.

#### 4. FORMS OF SFSC

In Italy, national and regional legislators provide for many instruments that are crucial in creating LFS, such as direct sales of agri-food products, farmers’ markets reserved only for the local farmers, the sale of meals consisting of the farmer’s and local products at the agritourism, wine routes, regional designation

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<sup>65</sup> See more on the subject A. Kapała, *Legal status of direct sales of agricultural and food products in the legislation of selected EU Member States*, “Przegląd Prawa Rolnego” 2020, Vol. 26, No. 1, pp. 65–77.

<sup>66</sup> See more in A. Kapała, *Legal status of direct marketing in US law*, “Diritto Agroalimentare” 2020, No. 3, pp. 547–561.

<sup>67</sup> A. Kapała, *Legal status of a farmer involved in short food supply chains: A comparative study*, “Review of European and Comparative Law” 2022, Vol. 48, issue 1, pp. 43–65.

of “products from zero kilometres”, as well as a support for the social initiatives such as Solidarity Purchasing Groups<sup>68</sup>. Also, immediate consumption of the products being sold by a farmer is allowed, using his premises and furnishings, with the exclusion of the waiter service and with the observance of the general hygienic-sanitary requirements<sup>69</sup>. In agritourism, the sale of local food (including wine) is not only encouraged by the law but is a requirement when conducting guest catering activities<sup>70</sup>. In this way, the Italian Republic supports and develops local production, high-quality production, and associated wine traditions<sup>71</sup>. Another form of implementation of local food systems are farmers’ markets. These are “public or private areas intended for direct sale of agricultural products only by agricultural entrepreneurs” who carry out agricultural activity in the territorial range of farmers’ markets<sup>72</sup>. The law provides farmers with the opportunity to sell their products locally, to establish direct social relations with consumers, and includes the discussed concept of geographical proximity between the place of production and the place of marketing.

An instrument for the implementation of local food systems is also the designation of “agricultural products within a 0-kilometre radius”. It is aimed to promote and distinguish the products by emphasizing that they come directly from the producer, and, in particular, that they were produced in close proximity to the place of sale and are sold without the participation of an intermediary. The designation was introduced in all regions of Italy by regional laws, with the purpose to support short supply chains and the sale of agricultural products manufactured not farther than, depending on the region, 30 to 80 km from where the sale takes place or where the farmers’ market is located. The national draft law aims to implement unified conditions of using the designation and to limit the distance to 70 km from the place of sale or place of consumption<sup>73</sup>.

The form of community-supported agriculture, which is the most developed and has the longest tradition in Italy, is the Solidarity Purchasing Groups (SPGs). They are an example of a consumer collective that participate in the LFS and

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<sup>68</sup> A. Kapała, *Legal instruments to support local food systems in Italian law...*, pp. 5–11.

<sup>69</sup> Article 4 (8bis) Decreto legislativo 18 maggio 2001, No. 228 Orientamento e modernizzazione del settore agricolo, a norma dell’articolo 7 della legge 5 marzo 2001, No. 57, Gazzetta Ufficiale No. 137 of 15 June 2001, Supplemento Ordinario No. 149.

<sup>70</sup> Article 2 (3b) of *Legge 20 febbraio 2006, n. 96. Disciplina dell’agriturismo*, Gazzetta Ufficiale No. 63 of 16 March 2006, as amended.

<sup>71</sup> This aim is included in Art. 1 letter f. of *Legge 20 February 2006, n. 96*.

<sup>72</sup> According to the ministerial decree of 20 November 2007: Decreto 20 novembre 2007 Attuazione dell’articolo 1, comma 1065, della legge 27 dicembre 2006, No. 296, sui mercati riservati all’esercizio della vendita diretta da parte degli imprenditori agricoli, Gazzetta Ufficiale, Serie Generale No. 301 of 29 December 2007.

<sup>73</sup> Il disegno di legge n. 1728 Disposizioni per la tutela e la valorizzazione della biodiversità agraria e alimentare, approvato dalla Camera dei deputati, adopted on 17 October 2018 by the Chamber of Deputies, see more <http://www.senato.it/leg/18/BGT/Schede/Ddliter/50789.htm> (accessed 7.12.2021).

contribute to their creation by making purchases from local producers. Although SPGs constitute a peculiar bottom-up social innovation and are not governed by any state or regional law or an institution, they are the addressee of financial grants from the regions. The law qualifies them not as business entities or intermediaries, but as final consumers, and as a consequence, they are not subject to income tax or VAT tax regulations<sup>74</sup>.

Also in France, there are many legal instruments supporting various forms of short food supply chains. These comprise direct marketing, producer stores, basket systems, community-supported agriculture (named AMAPs), farmers' markets, urban agriculture, including collective public gardens in cities and crops on terraces and balconies, and procurement of local products for public institutions. Overall, the French instruments are numerous, diverse, innovative, with social, environmental, and solidarity values, and can be a good example to follow. Most of them are created at the local level, thus expressing new models of local food governance that correspond to the values of a participatory economy and food democracy<sup>75</sup>.

Producers' stores are defined in Art. L 611-8 Code rural, under which groups of local agricultural producers market their products in their stores within the framework of a short circuit. They can offer only their products, whether raw or processed, which must represent in value at least 70% of the total turnover of this point of sale. A maximum of 30% of the products sold can come from local agricultural cooperatives, food artisans or producers who are not members of the store. Thus, this kind of collective sale by agricultural producers is officially recognised by the French law, which aims to ensure that products sold and presented as "local" are indeed such, although the term "local" is not clearly explained.

Basket systems are groups of producers or consumers who organize themselves to jointly sell or buy local products. They are based on the principles of supporting local agriculture that creates jobs and promotes economic dynamism by focusing on environmentally respectful production and supply systems<sup>76</sup>. A formal and networked result of the "baskets system", inspired by the Community Supported Agriculture model, are the AMAPs – French associations for the support of peasant agriculture (*Association pour le maintien de l'agriculture paysanne*). This model is based on a partnership agreement between consumers and producers, referred to as a solidarity contract<sup>77</sup>. Consumers contractually commit to purchase the farmers' production in advance and make a prepayment of the

<sup>74</sup> General Financial Law of 2007: Legge 24 dicembre 2007, No. 244 Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2008), Gazzetta Ufficiale, Serie Generale No. 300 of 28.12.2007, Supplemento Ordinario No. 285.

<sup>75</sup> A. Kapała, *Legal instruments to support short food supply chains and local food systems in France...*

<sup>76</sup> G. Maréchal, *Les circuits courts alimentaires: Bien manger dans les territoires*, Dijon 2008, p. 70.

<sup>77</sup> G. Rochdi, *Le développement des circuit alternatifs de distribution*, (in:) B. Grimonprez, D. Rochards (eds.), *Agriculture et ville, vers de nouvelles relations juridiques*, Poitiers 2016, p. 153.



costs of products that will be delivered to them, thus allowing these farmers to have working capital or sufficient cash to meet their expenses and investments. Through their activity, AMAPs allow producers not only to obtain outlets but also to provide them with an income. The box prices are fixed in the “fair manner” so that the farmer receives a fair revenue and the price is affordable for the consumer. The legal form of AMAPs are associations of the “1901 law” type, the purpose of which is to establish a direct link between the consumer and the farmer<sup>78</sup>.

Another important legal initiative to develop LFS in France is a law that requires from 2022 all municipalities or catering companies responsible for collective restaurants to source at least 50% of local produce or produce with an indication of origin and quality, including 20% from organic farming<sup>79</sup>. Also, French public procurement law supports supplies of local food to public institutions by introducing the criterion of “direct deliveries of agricultural products”<sup>80</sup>. Furthermore, there are interesting examples of local land use policy that supports local agriculture in urban and peri-urban areas.<sup>81</sup>

In the USA one of the most significant and visible components of local food systems are farmers’ markets. There are several federally-created programs to support farmers’ markets. The vast majority of states have farmers’ market associations that assist and facilitate the regulation of local food marketing. The definition of farmers’ market, provided for the purpose of a federal program<sup>82</sup>, includes the criteria of “local farmer” and “direct” sales of their products to consumers. To define “local farmers” the regulations of some markets list the counties from which producers are eligible<sup>83</sup>. Most of the US farmers’ markets are “producer-only”<sup>84</sup>.

<sup>78</sup> See more in C. Lamine, N. Perrot, *Les AMAP: Un nouveau pacte entre producteurs et consommateurs?*, Paris 2008.

<sup>79</sup> Art. 23 LOI No. 2018-938 du 30 octobre 2018 pour l’équilibre des relations commerciales dans le secteur agricole et alimentaire et une alimentation saine, durable et accessible à tous, Journal Officiel de la République Française No. 0253 du 1 novembre 2018.

<sup>80</sup> See Art. 18 of Decree No. 2011-1000 of 25 August 25 2011 amending certain provisions on markets and procurement covered by public procurement, Journal Officiel de la République Française n. 0197 du 26 août 2011.

<sup>81</sup> See more in A. Kapala, *Instruments to support short food supply chains and local food systems in France...*

<sup>82</sup> Senior Farmers’ Market Nutrition Program (SFMNP), Section 249.2 of title 7, Code of Federal Regulations.

<sup>83</sup> See e.g. 2020 Santa Fe Farmers’ Markets Rules and Regulations Approved by the SFFM Board of Directors 7.16.20 which states that “The local area refers to the counties of Santa Fe, Rio Arriba, Los Alamos, Taos, Mora, San Miguel, Sandoval, Torrance, McKinley, San Juan, Guadalupe, Harding, Colfax, Union, and De Baca”, [https://s3.amazonaws.com/media.santafefarmersmarket.com/wp-content/uploads/2020/07/17165801/Rules-Regulations\\_7.16.201.pdf](https://s3.amazonaws.com/media.santafefarmersmarket.com/wp-content/uploads/2020/07/17165801/Rules-Regulations_7.16.201.pdf) (accessed 7.12.2021).

<sup>84</sup> N.D. Hamilton, *Farmers’ markets rules, regulations and opportunities*, National Agricultural Law Center Publications, 2002, 2, p. 28, <https://nationalaglawcenter.org/> (accessed 15.01.22). For example, according to California law, only California farmers may sell their products to the



A very important and well developed form of LFS in the USA is Community-Supported Agriculture (CSA). It may be defined as a producer-consumer local production and marketing partnership that involves a subscription-based contract for the delivery of seasonal products from the farm<sup>85</sup>. The CSA appears to be an alternative food production model that supports consumer values of health and community. Many CSAs operate in the “informal contractual relationships between farmer and consumer”, based on a more personal relationship with their consumer<sup>86</sup>. As observed in the literature, the lack of more legalistic rules governing the CSA can, paradoxically, be the reason for its successful development. According to some views, unlike the organic movement, it is not burdened by political pressure or “hijacked by industrial agriculture”<sup>87</sup>. It also creates an opportunity for smaller farmers as it does not require economies of scale and long supply chains, unlike conventional food production and distribution systems, resulting in highly processed food<sup>88</sup>.

Urban farming is a growing part of LFS in the USA. Some states make their public land available to promote urban agriculture, for example, for community gardens<sup>89</sup>. Many cities have modified their zoning codes over the past few years to stimulate a variety of urban agriculture activities. San Francisco allowed for edible gardening and urban farming throughout the city<sup>90</sup>. The city requires that the newly constructed buildings have 15% of the roof space solar or 30% Living

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public on the farmer’s market. California Food and Agricultural Code § 47004(b), Division 17 enacted by Stats 1967, Ch 15. Heading of Article 1.5 added by Stat. 2008, Ch. 447, Sec 5.

<sup>85</sup> *Defining Community Supported Agriculture*, Community Supported Agriculture (CSA): An Annotated Bibliography and Resource Guide, National Agricultural Library, (1993), <https://pubs.nal.usda.gov/sites/pubs.nal.usda.gov/files/csadef.html> (accessed 8.08.2021).

<sup>86</sup> N.R. Johnson, R. Armstrong, A.B. Endres, *Community supported agriculture: An exploration of legal issues and risk-management strategies*, “Natural Resources & Environment” 2013, Vol. 28, issue 2, p. 1.

<sup>87</sup> M. Paul, *Supported agriculture: A model for the farmer and the community? Case study*, “Future Economy” 2015, Vol. 2, issue 2 notes that according to D. Buck [et al.], *From farm to table: The organic vegetable commodity chain of Northern California*, “Sociologia Ruralis” 1997, Vol. 37, issue1, p. 3, “Organic was no longer an alternative model for those who wanted their food to support their values”.

<sup>88</sup> N.R. Johnson, R. Armstrong, A.B. Endres, *op. cit.*, p. 1.

<sup>89</sup> As in the case of California, Massachusetts, and Tennessee, see *State statutes and programs concerning community gardens*, National Conference of State Legislatures, <https://www.ncsl.org/research/agriculture-and-rural-development/community-gardens-state-statutes-and-programs.aspx> (accessed 8.08.2020).

<sup>90</sup> San Francisco enacted the Urban Agriculture Ordinance to recognize and permit edible gardening and urban farming throughout San Francisco (Ordinance No. 162-12 amending the San Francisco Administrative Code by adding Sections 53.1 4 through 53.4 to 1), to establish an Urban Agriculture Program to oversee and coordinate 5 all of the City’s Urban Agriculture activities, and adopt goals for the City related to 6 Urban Agriculture.

Roof (i.e. green or vegetated roof), or a combination of both<sup>91</sup>. Seattle's Land Use Code recognizes five different urban agriculture uses: Animal Husbandry, Aquaculture, Community Gardens, Horticulture, and Urban Farms. Many states have a food sales tax exemption, although laws also vary by state and county, depending on the type of food being sold and the place of consumption.

Public procurement legislation is an important tool to promote the purchase of local food by institutions, which many states have addressed<sup>92</sup>. Numerous state laws require state and local agencies to give preference in their purchases to food grown or processed within the state<sup>93</sup>. There are also many federal programs administered by the USDA that contribute directly or indirectly to the development of local food systems through financial incentives<sup>94</sup>.

The described forms of SFSC and instruments supporting LFS can serve as examples to follow for countries where LFS is not yet sufficiently supported. Some of these forms are consumer initiatives, such as community-supported agriculture, but, nevertheless, there is room for legislative measures to encourage their development. Overall, the development of LFS depends on national and local policies, which should be aimed at prioritizing local food and helping local farmers sell their produce, offering tax incentives, issuing regulations to create farmers' markets and urban farming, and encouraging sales of local products to public institutions, local retailers or restaurants.

## 5. LOCAL FOOD LABELLING

Consumers are increasingly interested in buying locally produced food but often cannot recognise it on the market<sup>95</sup>. As the European Union has not introduced a local food labelling scheme, the question arises of how the countries selected for this study defined and labelled local food and whether the implemented brands are suitable for fulfilling their functions of identifying, promoting, and guaranteeing local products, avoiding misleading consumers. Important is

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<sup>91</sup> Pursuant to Section 149 Better Roofs; Living Roof Alternative of San Francisco Planning Code and Green Building Code, Zoning Administrator Bulletin No. 11.

<sup>92</sup> North Dakota House Bill 1543, 61st Leg Assem (ND 2009): <http://www.legis.nd.gov/assembly/61-2009/bill-text/JBKB0100.pdf> (accessed 8.08.2020) Montana Code Annotated § 18-4-132 (2007), SB 328, 60th Leg (Montana 2007).

<sup>93</sup> For instance, the Illinois bill sets a target that by 2020, 20% of all food products purchased by state agencies and state-owned facilities are local agricultural or food products HB 3990 (2009).

<sup>94</sup> See more in A. Kapła, *Legal instruments to support local food systems in US law...*

<sup>95</sup> European Commission Staff Working Document on various aspects of short food supply chains..., p. 5.

also the question of to what extent geographical indications can be used as a tool to identify locally produced food.

In Poland, France, and Italy, there is currently no local product labelling system at the national level. Instead, there are many local or regional, public and private brands for identifying the local origin that is the result of bottom-up initiatives and local self-governance. Most of the implemented brands appropriate to distinguish locally produced food are geographical collective marks established by local authorities (e.g. *Produit en Bretagne* in France, *Qualità Trentino* in Italy, the “Barycz Valley” mark in Poland), simple collective marks, issued privately, such as *Alliances locales* in France, or in collaboration with local public authorities, such as *Ici.C.Local* in France. An interesting example of an instrument in communicating the “localness” of food is the Italian *denominazioni locali d’origine De.Co*. These are guarantee marks introduced by municipalities, which indicate the product’s origin in the municipality<sup>96</sup>.

Simple collective marks do not directly relate to a specific territory, unlike geographic collective marks, also known as local and regional brands or territorial brands, which are mostly created by regions or municipalities. Collective marks are registered and protected under national intellectual property laws, and their use is specified in the regulations by their owner. As regards the qualified geographical indications, namely protected designation of origin (PDO) and protected geographical indications (PGI), which are subject to EU law<sup>97</sup>, the problem is that even though they have the merit of “localizing” a production, they do not necessarily express the geographical proximity between the place of production and the place of sale<sup>98</sup> when sold along long supply chains. The comparison with the American system does not give an example of national labelling because, like in the analysed European countries, there are many different local and regional brands<sup>99</sup>. The most appropriate for local food, indicating the mentioned proximity, is the Italian label “agricultural products within 0 km”, which currently operates at the regional level. The Italian draft law, aimed at its uniform implementation, represents a significant example of a national initiative in this regard<sup>100</sup>. The “zero kilometres products” are to be defined uniformly throughout the country as products coming from the place of production or processing of agricultural products located not farther than 70 km from the place of sale or place of consumption.

<sup>96</sup> See more in A. Kapała, *About the need for a harmonized labelling for locally produced food. A study of local food labels in selected EU Member States*, “European Journal of Comparative Law and Governance” 2022, issue 3, in course of publication.

<sup>97</sup> Regulation (EU) No. 1151/2012.

<sup>98</sup> G. Rochdi, *op. cit.*, p. 26.

<sup>99</sup> See A. Kapała, *Legal instruments to support local food systems in US law...*

<sup>100</sup> Draft law C. 183 “Norme per la valorizzazione e la promozione dei prodotti agricoli e alimentari provenienti da filiera corta, a chilometro zero o utile”.

The implemented instruments, although necessary and valuable, may, on the other hand, lead to the existence of multiple labels and markings, leaving open the question of which of them are the most appropriate, trustworthy, and recognizable by consumers. The proliferation, differences in legal nature, and the meaning of the messages conveyed by the implemented labels adversely affect their function and lead to “label fatigue”<sup>101</sup>. Therefore, the *de lege ferenda* conclusion is that harmonised labelling should be introduced at best at EU level or at least at national level, as a ready-made tool for promoting and distinguishing local products on the market, ensuring a uniform understanding of the label for all participants in the food chain, preventing fraud and unfair competition, and giving consumers confidence in its message. Instead, the EC is going to present a legislative proposal for a framework for a sustainable food system<sup>102</sup>. However, this system will not be used to indicate the “geographical proximity” of the product but will be available to all products that meet the sustainability standards, regardless of their origin and location. Thus, instead of rewarding small farmers for their traditional, environmentally friendly production methods, which could contribute to their preservation, the system will make them compete with other strong producers who meet the sustainability standards. This is already the case with organic farming, the costly certification of which is mainly available to large farmers<sup>103</sup>. Therefore, apart from the “sustainable food system” a tool is needed to support the products from local, small-scale producers, applying traditional and environmentally friendly production methods. The existing Union food quality system established by Regulation (EU) No. 1151/2012 is also not an appropriate labelling system for locally produced food, as it is aimed primarily at protecting agri-food products against duplication and reputational abuse at the European and international level. Moreover, it is associated with high costs related to registration processes, control, and protection activities. A large part of locally produced food only hold a reputation and marketability at the local level and would not suit or need a PDO or a PGI. Instead, they should be protected locally, as they usually suffer from unfair competition on their own territory.

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<sup>101</sup> M.-L. Augère-Granier, *op. cit.*, p. 9.

<sup>102</sup> European Commission, Communication A Farm to Fork Strategy..., p. 19.

<sup>103</sup> See e.g. W. Łuczka, S. Kalinowski, *Barriers to the development of organic farming: A Polish case study*, “Agriculture” 2020, Vol. 10, p. 536.

## 6. FOOD AND HYGIENE REQUIREMENTS FOR LFS AND SFSC

Food safety requirements are considered to be one of the main barriers to farmers' involvement in short supply chains<sup>104</sup>. The EU has not provided for them a separate, comprehensive set of food law regulations<sup>105</sup>. The obligation to put on the market only safe foods weighs on all operators of the agri-food sector, however, they do not apply to all products equally and do have some flexibility. Exemptions and derogations are foreseen not because of the geographical proximity of the producer and the consumer, which is a criterion that makes the food supply chains geographically "short", but rather they depend on the sales channel, i.e. without intermediaries (direct supply), the characteristics and volume of the foodstuff (i.e. processed or unprocessed, traditional, prepacked or non-prepacked, in small quantities)<sup>106</sup>, use of home kitchen, as well as implementation choices made at Member State level. Direct supplies, which are not potentially hazardous, as they involve raw materials, sold directly by the producer, without risky processing, are excluded from EU hygiene requirements<sup>107</sup>.

The "retail" is subject to Regulation (EC) 853/2004 with possible derogations concerning premises used as a private house, and flexibility in the application of the HACCP procedures. Retail of food of animal origin to a retail establishment may be exempted from Regulation (EC) 853/2004 if it is considered a marginal, local, and restricted activity under the laws of the Member States. The EU has also offered Member States the possibility to provide for registration, if approval is not required by EU law, and for exemptions for traditional products. Thus, the EU is considering these alternative sales channels and, as underlined by the European Commission, it is for the Member States to "take a more active role and adapt legislation where it is possible for the particular benefit of small farmers and direct sales"<sup>108</sup>. The Member States selected for this study made use of the option to provide for the registration procedure, derogations for traditional products, and to allow the retail of food of animal origin also to local retailers. Therefore, farmers have the opportunity to sell a variety of foods, including processed products,

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<sup>104</sup> See e.g. opinion of the National Council of Agricultural Chambers in Poland of 24 May 2013, No. KRIR/KP 601/2013; Commission Staff Working Document on various aspects of short food supply chains..., p. 17.

<sup>105</sup> See more in A. Kapała, *Food safety requirements...*

<sup>106</sup> M. Frian-Perrot, *La gouvernance sanitaire et alimentaire des filières courtes: Concept juridique*, (in:) B. Grimonprez, D. Rochards (eds.), *Agriculture et ville, vers de nouvelles relations juridiques*, Poitiers 2016, p. 176.

<sup>107</sup> See more in A. Kapała, *Food safety requirements...*

<sup>108</sup> European Commission Report from the Commission to the European Parliament and the Council on the case for a local farming..., p. 9.

based on simplified hygiene rules. However, the flexibility is not implemented at the same level by the EU Members<sup>109</sup>.

The Member States, which, in their legislation, for the purposes of civil, tax and social security law, provided for a broader concept of direct sales to offer the farmers an additional source of farm income, by enabling them to sell products throughout the country, both unprocessed and processed<sup>110</sup>, for hygiene reasons, had to divide this activity into different categories to fit different EU concepts. This multiplicity of sources, terms, and regulatory levels consequently affects the farmer, who has the difficult task of learning to navigate the rules for different types of sales and products, dispensed for diverse purposes. Likewise, as far as food information is concerned, a farmer must comply with the requirements set at the EU level for prepacked food and, in turn, for non-prepacked food offered for direct sale he is bound by national requirements<sup>111</sup>.

A comparison with US solutions shows that the US regulatory framework also lacks a separate piece of legislation specifically designed for local food systems, and it seems even more complex and confusing for farmers due to three levels of governance (federal, state and local) and rules that vary by state and product sold. It has been noted in the literature that food safety rules have been developed “with large-scale farming in mind” and may therefore constitute “significant barriers” for small farms that are a foundation of a successful local food system<sup>112</sup>. However, there are some facilities for direct marketing such as exemption from the “retail food establishments” registration, from the Produce Safety rule for the direct sale in a limited area, and food processor’s license for “cottage food”<sup>113</sup>. Similarly, as in the law of EU Members, direct sales are possible both to final consumers and local retailers. Considering that in the SFSC all production from the primary product to the final product and distribution is usually managed by the same person, it is difficult, due to the wide range of tasks, to specialize in food safety management<sup>114</sup>.

The hygienic requirements for processed food, especially the necessity to upgrade or even rebuild the facilities as well as the obligation to perform HACCP procedure and microbiological tests generate technical and economic obstacles that are difficult to overcome for many small operators. Therefore, measures to increase farmers’ capacity to comply with food hygiene requirements, such as training, guidance or networking to exchange information<sup>115</sup> or activities

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<sup>109</sup> A. Kapala, *Food safety requirements...*

<sup>110</sup> See more on the subject A. Kapala, *Legal status...*

<sup>111</sup> See more in A. Kapala, P. Lattanzi, *op. cit.*

<sup>112</sup> M. McGuffey, *The producer’s perspective: Examining the challenges of providing local food*, “Interdisciplinary Journal” 2016, Vol. 6, issue 3, p. 24.

<sup>113</sup> See more in A. Kapala, *Legal instruments to support local food systems in US law...*

<sup>114</sup> M. Uyttendaele [et al.], *Definition of the short food supply chain*. Presentation held at the Symposium SciCom “Food Safety of the Short Supply Chain”, Brussels, 9 November 2012, p. 16.

<sup>115</sup> *Ibidem*.

supporting their assembly into collective workshops to pool the resources of farmers involved in the SFSC<sup>116</sup>, should be provided in the Member States and supported by the EU. Therefore, a *de lege ferenda* conclusion is that a comprehensive and clearer set of rules for SFSC should be developed at the EU level in the field of food and hygiene together with other supportive measures that would provide consistent and structured support for these alternative sales channels (and more broadly, for LFS) and help farmers understand and fulfil their obligations.

## 7. CONCLUSIONS

Summing up, the *de lege ferenda* conclusions drawn from the study regarding the LFS support instruments concern EU and national legislation. The *de lege ferenda* conclusion with regard to EU law is that an LFS definition should be introduced, supporting small farmers who run agricultural production with the use of environmentally friendly, sustainable methods. The definition should also clarify the concept of local products, for which the EU should also implement an appropriate labelling system. At the same time, the EU should introduce in the new programming period of rural development policy measures supporting LFS and various forms of SFSC, including those aimed at helping farmers to meet hygiene requirements. In the field of food law, it is necessary to have a clearer articulation of the requirements for SFSC and LFS, which are currently fragmented and broken down into different activities and concepts, making it difficult for farmers to understand them. A coherent legal structure at the EU level should be established for the SFSC and LFS.

On the basis of the presented examples, it can be concluded that the legal instruments worth implementing in national legislations, in which they do not yet exist, relate to enabling the farmer to conduct the activity of processing and selling his agricultural products directly to consumers and to local retail establishments, under his privileged agricultural status. Preferential income tax treatment is also an important tool supporting LFS. There is also a need for regulations enabling the sale of local products, such as the imposition of an obligation on municipalities to create farmer's markets, or a clear separation of areas on existing markets for local farmers selling their own products with the obligation to indicate the place of origin of the product, preferably with a label established at the EU level. In the event that the EU legislator did not provide for a labelling system for local products, it would be necessary to introduce it at the national level, along with the concept of the "geographical proximity" by specifying the distance in kilometres between the farm and the place of sale or consumption. Important are also

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<sup>116</sup> M. Frian-Perrot, *op. cit.*, p. 178.



regulations encouraging farming in urban and peri-urban areas. In addition, solutions that require public institutions, agritourism, hotels and restaurants to offer local products in their gastronomy are worth implementing. Appropriate solutions in public procurement law are also needed to encourage local food supplies<sup>117</sup>.

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<sup>117</sup> See more on the public procurement for local food in A. Kapała, *Zamówienia publiczne na żywność lokalną w prawie Unii Europejskiej*, "Przegląd Prawa Rolnego" 2022, No. 1, in course of publication.

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