



Composite Authors

# Contemporary Challenges of Agri-Environmental Law

Comparative Legal Aspects

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– COMPARATIVE LEGAL ASPECTS

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## CONTEMPORARY CHALLENGES OF AGRI-ENVIRONMENTAL LAW- COMPARATIVE LEGAL ASPECTS

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## TABLE OF CONTENTS

ABOUT THE AUTHORS .....	3
TABLE OF CONTENTS .....	6
LIST OF ABBREVIATIONS .....	8
INTRODUCTION ( <i>Izabela Lipińska</i> ).....	10
1. BACKGROUND OF THE STUDY .....	10
2. PURPOSE AND APPROACH OF THE STUDY .....	11
3. RESEARCH METHODS.....	12
4. SCOPE OF THE STUDY .....	13
CHAPTER 1 THE EU AGRI-ENVIRONMENTAL LAW-INTRODUCTORY ISSUES .....	15
1. THE CONCEPT OF THE AGRI-ENVIRONMENTAL LAW ( <i>Susana Almeida</i> ).....	15
2. AGRI-ENVIRONMENTAL POLICY COMPONENTS AND POLICY MECHANISMS ( <i>Cátia Marques Cebola</i> ).....	22
2.1. AGRI-ENVIRONMENTAL POLICY COMPONENTS.....	23
2.2. AGRI-ENVIRONMENTAL POLICY MECHANISMS .....	24
3. KEY ACTORS ( <i>Izabela Hasińska</i> ).....	25
4. CURRENT CHALLENGES OF EU AGRI-ENVIRONMENTAL LAW ( <i>Damian     Puślecki</i> ).....	32
CHAPTER 2 COMMON AGRICULTURAL POLICY 2022-2027 .....	39
1. HISTORICAL BACKGROUND ( <i>Loreta Schwarczová</i> ).....	39
2. THE AIMS AND TOOLS OF CAP ( <i>Loreta Schwarczová</i> ) .....	52
3. EUROPEAN STRATEGIES ACCOMPANYING THE CAP ( <i>Loreta Schwarczová</i> ) ...	57
CHAPTER 3 COMPARATIVE ANALYSIS OF EU REGULATIONS ASSOCIATED TO THE GREEN DEAL TARGETS .....	62
1. INTRODUCTION ( <i>Izabela Lipińska</i> ).....	62
2. USE OF PESTICIDES IN AGRICULTURE PRODUCTION ( <i>Krzysztof Różański</i> ).....	63
2.1 USE OF PESTICIDES IN THE EUROPEAN UNION LAW ( <i>Krzysztof Różański</i> ) .....	65
2.2 USE OF PESTICIDES IN THE NATIONAL LAWS .....	70
<i>Italy</i> ( <i>Andrea Saba</i> ) .....	70
<i>Poland</i> ( <i>Krzysztof Różański</i> ) .....	75
<i>Portugal</i> ( <i>Cátia Marques Cebola</i> ) .....	78
<i>Slovakia</i> ( <i>Jarmila Lazíková</i> ).....	83
3. ANTIBIOTIC USE IN AGRICULTURE ( <i>Izabela Lipińska</i> ) .....	88

3.1	ANTIBIOTICS USE IN EUROPEAN UNION LAW ( <i>Izabela Lipińska</i> ).....	91
3.2	ANTIBIOTICS USE IN NATIONAL LAWS .....	95
	<i>Italy (Francesca Coli)</i> .....	95
	<i>Poland (Izabela Lipińska)</i> .....	100
	<i>Portugal (Catarina Fernandes)</i> .....	103
	<i>Slovakia (Jarmila Laziková)</i> .....	107
4.	WATER QUALITY ( <i>Susana Almeida</i> ) .....	111
4.1	EUROPEAN UNION FRAMEWORK FOR WATER QUALITY ( <i>Susana Almeida</i> ) .....	115
4.2	WATER QUALITY IN DOMESTIC LAW .....	120
	<i>Italy (Enrico Mezzacapo)</i> .....	120
	<i>Poland (Damian Puślecki)</i> .....	123
	<i>Portugal (Mário Frota)</i> .....	127
	<i>Slovakia (Luboš Jurík)</i> .....	133
5.	ORGANIC FARMING ( <i>Izabela Hasińska</i> ).....	140
5.1	ORGANIC FARMING IN EUROPEAN UNION LAW ( <i>Mariagrazia Alabrese and Eloisa Cristiani</i> ).....	142
5.2	ORGANIC FARMING IN DOMESTIC LAW.....	152
	<i>Italy (Alabrese Mariagrazia and Eloisa Cristiani)</i> .....	152
	<i>Poland (Izabela Hasińska)</i> .....	157
	<i>Portugal (Rute Couto)</i> .....	162
	<i>Slovakia (Lucia Palšová)</i> .....	167
6.	ECOSYSTEM SERVICES ( <i>Krzysztof Róžański</i> ) .....	170
6.1	ECOSYSTEM SERVICES IN EUROPEAN UNION LAW ( <i>Krzysztof Róžański</i> ) ..	172
6.2	ECOSYSTEM SERVICES IN NATIONAL LAW .....	174
	<i>Italy (Antonio Manzoni)</i> .....	174
	<i>Poland (Krzysztof Róžański)</i> .....	179
	<i>Portugal (Júlio Moreira)</i> .....	183
	<i>Slovakia (Martin Prčík)</i> .....	190
	CONCLUSIONS ( <i>Izabela Lipińska</i> ).....	195
	REFERENCES.....	205

be seen the strengthening of consumer protection. It should be considered right to make the amount of the fine dependent on the size of the financial benefit that the entity in question has obtained or could obtain for products placed on the market contrary to the conditions of organic production. This significant increase in the amount of the monetary penalty means that the entity in question will not, "pay off" such action. The realization of the preventive function of the financial penalties provided for non-compliance with the conditions of organic production, will be able to properly assess only on the basis of their application in a specific factual situation. So far, the penalties applied have remained at the lower limit of the basis for their assessment, and their severity has been low.<sup>296</sup> Enforcing compliance with the requirements for organic farming and production can therefore be considered a challenge for both controlling and applying authorities.

*Portugal (Rute Couto)*

In Portugal there is currently a National Strategy for Organic Agriculture (ENAB) and an Action Plan (PA) for the production and promotion of organic products 2017-2027. The ENAB has 5 strategic objectives to fulfill in a 10-year time horizon: "1) To encourage the expansion of Organic Production areas in the Agriculture, Livestock and Aquaculture sectors, by improving their technical viability and strengthening their economic attractiveness; 2) To increase the supply of agricultural and agro-food products obtained in Organic Production, promoting their competitiveness and their commercial profitability in domestic and foreign markets; 3) To develop the demand for organic products, through the structuring of the sectors, the opening of new markets, the promotion of their notoriety, their availability and the reinforcement of trust and credibility with the consumer; 4) To promote the knowledge and raise the level of competence on Organic Agriculture and Production in the specific national edafo-climatic conditions; 5) To dynamize business innovation and the availability of statistical, market and technical support information to the organic agricultural, livestock and aquaculture production."<sup>297</sup>

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<sup>296</sup> See more extensively Izabela Hasińska, 'Unreliable organic marketing in the context of organic production conditions' (2022) No 2 *Review of Agricultural Law* 81-97 with the literature cited therein.

<sup>297</sup> See: <<https://files.dre.pt/1s/2017/07/14400/0420704231.pdf>>.

There are 10 strategic goals of the ENAB: "1) Doubling the area of Organic Agriculture, to about 12% of the national utilised agricultural area (SAU); 2) Tripling the areas of horticultural fruit, legumes, protein crops, nuts, cereals and other vegetable crops for direct consumption or transformation; 3) Doubling the livestock and aquaculture production in organic production (PB), with particular focus on the production of pigs, poultry, rabbits and beekeeping; 4) Doubling the internal processing capacity of organic products; 5) Increasing by 50% the consumption of organic products; 6) Tripling the availability of Portuguese organic products in the market; 7) Reinforcing the technical capacity in organic farming, doubling the number of certified technicians and reinforcing the State's specific technical capacity; 8) Increasing, by at least 20%, the capacity to offer training; 9) Creating an organic farming experimentation network, with the installation of at least one certified experimental unit in each of the country's agricultural regions; 10) Creating a "BIO" portal for the dissemination, promotion of innovation and diffusion of specific technical and scientific information."<sup>298</sup>

In addition to the European Union Regulations on organic production, directly applicable and binding in the Member States, Decree-Law No 256/2009 of 24 September (republished by Decree-Law No 37/2013 of 13 March) applies at national level, establishing the principles and guidelines for the practice of integrated protection and integrated production and the system of technical standards applicable to integrated protection, integrated production and organic production, in the context of primary agricultural production, and regulates the training of technicians and the access and exercise of the activity of the respective training entities. The law stipulates that only authorized plant protection products, veterinary medicines and products for veterinary use and authorized biocidal products for veterinary use may be used in organic production. It also refers to the technical standards published by the Directorate-General for Agriculture and Rural Development (DGADR).<sup>299</sup>

The DGADR also makes available an "Organic Producer Guide".<sup>300</sup> In this Guide are described:

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<sup>298</sup> Idem.

<sup>299</sup> See: <<https://www.dgadr.gov.pt/>>.

<sup>300</sup> See: <<https://www.dgadr.gov.pt/mediateca?task=download.send&id=388&catid=46&m=0>>.

1. Rules regarding the start of the organic production method (MPB) activity, namely the prior assessment and conversion period to MPB, notification of the activity to the DGADR, commitment to respect the applicable legal provisions and adherence to an organic production control system and submission to the control of the production process, including the obligation to access, provide information and present results, as well as the maintenance of documentary records;

2. General rules for parallel production and prohibition of the use of GMOs, ionizing radiation and landless production;

3. Rules relating to the Farm Management Plan, regarding plant production in MPB, animal production in MPB, management of effluents, by-products and farm waste, and collection, packaging, transport, and storage of products.

When in receipt of institutional support, the organic producer must also meet the eligibility criteria and commitments specific to each support.<sup>301</sup> Agricultural practices beneficial for the climate and environment (greening) are particularly supported. These include crop diversification (DC), maintenance of permanent grassland (PP) and holding ecological focus area (SIE).<sup>302</sup>

In Portugal there are funding opportunities available for those wishing to develop organic production projects, such as the Rural Development Programme (PDR-2020)<sup>303</sup> under the European Agricultural and Rural Development Fund (FEADER), support from the Agriculture and Fisheries Financing Institute (IFAP)<sup>304</sup> and support from the Portuguese Organic Agriculture Association (AGROBIO).<sup>305</sup>

The organic production process is subject to an official control, defined by a "Control Plan in Quality Regimes (Organic Production) – PNCP".<sup>306</sup> This Plan is coordinated by the DGADR and covers all stages of production, preparation, distribution, and import, until the organic products are made available to the final consumer.

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<sup>301</sup> See: <<https://www.ifap.pt/portal/mpb-regras>>.

<sup>302</sup> See: <<https://www.ifap.pt/greening-regras>>.

<sup>303</sup> See: <<http://www.pdr-2020.pt/>>.

<sup>304</sup> See: <<https://www.ifap.pt/portal/web/guest/ajudas-apoios>>.

<sup>305</sup> See: <<https://agrobio.pt/>>.

<sup>306</sup> See: <[https://www.dgadr.gov.pt/images/docs/val/mpb/plano\\_controlo\\_MPB\\_2020\\_2022.pdf](https://www.dgadr.gov.pt/images/docs/val/mpb/plano_controlo_MPB_2020_2022.pdf)>.

The control activities are delegated to control bodies (OC), which verify the conformity of agricultural products and foodstuffs produced according to the Organic Production Mode (MPB), according to specific control plans for each area of operation, with prior validation by the DGADR.

There are currently 10 control and certification bodies<sup>307</sup> in Portugal that are recognized and supervised by the DGADR. The OCs conduct control-visits at least once a year to organic operators. Additional controls can be performed depending on the annual assessment of the risk status of the operator. Depending on the risk of non-compliance with the organic production rules, samples are taken (the minimum number of analyses to be performed each year by the OC is 5% of the total number of operators under their control) to search for unauthorized products or to verify production techniques that do not comply with the organic production rules.

The DGADR also designates the official control laboratories for organic products<sup>308</sup>, accredited for the analysis of samples collected in the scope of official controls to be carried out by the OCs on organic operators. Producers, preparers, distributors, importers and exporters who produce, handle or market organic products and who comply with the EU organic production and labeling rules can be certified organic. After being placed on the market, the control of the commercialization of organic products is ensured by the Food and Economic Security Authority (ASAE)<sup>309</sup>, which develops proactive (verification of compliance with legislation, labeling analysis, and sampling) and reactive (following complaints) inspection actions.

In 2017, a National Observatory for Organic Production (ONPB)<sup>310</sup> was created, with the mission to collect, process and disseminate in a freely accessible portal on organic agriculture, the available information on production, processing, trading of organic products, including their consumption and the various existing markets.

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<sup>307</sup> See: ECOCERT (<https://www.ecocert.com/pt-PT/home>), Kiwa SATIVA (<https://www.kiwa.com/pt/pt/>), CERTIPLANET (<https://www.certiplanet.pt/>), CERTIS (<https://certis.pt/>), AGRICERT (<https://agricert.pt/>), TRADIÇÃO E QUALIDADE, CODIMACO (<http://www.codimaco.pt/>), SGS Portugal (<https://www.sgs.pt/>), NATURALFA (<https://naturalfa.pt/>) and IVDP (<https://www.ivdp.pt/>).

<sup>308</sup> See: [https://www.dgadr.gov.pt/images/docs/val/mpb/Labs\\_habilitados\\_RQ.pdf](https://www.dgadr.gov.pt/images/docs/val/mpb/Labs_habilitados_RQ.pdf).

<sup>309</sup> See: <https://www.asae.gov.pt/>.

<sup>310</sup> See: <https://producaobiologica.pt/>.

Organic Production is also encouraged in the following areas:

1. Research and Development, through a "Network of Experimentation and Research Projects". The "Innovation for Agriculture"<sup>311</sup> portal stands out, with relevant information about the Operational Groups and technical research documents in the scope of Agriculture and Organic Production;

2. Training and Education, either through the offer of higher education courses dedicated exclusively to organic agriculture, or through training and accreditation in Organic Production;<sup>312</sup>

3. Associativism and Representation, through organic producer organizations.<sup>313</sup>

In the framework of the mentioned ENAB 2017-2027, a SWOT analysis of the strengths, weaknesses, opportunities, and threats facing organic agriculture and production in Portugal was carried out and that motivated the 3 axes of the Action Plan (PA) for the production and promotion of organic products: Production; Promotion and markets; Innovation, Knowledge and Information Dissemination. Of the identified parameters, we perceive the most relevant challenges to be:

1. In the Production axis, strengthening the economic attractiveness of the MPB. Given the aging of the agricultural population and adverse economic environment, it is important to enhance technical knowledge, foster the organization of organic producers and streamline the certification procedures and investment support system, as well as legislative measures of positive discrimination of organic products;

2. In the axis Promotion and markets, the increase of consumption and strengthening of consumer confidence in these products. The economic recession combined with the price of organic products must be countered through innovative commercial strategies for the promotion of organic products supported by transparent information to consumers. Furthermore, it is important to integrate organic products in a generalized way in educational, health, leisure, etc. establishments;

3. In the Innovation, Knowledge and Information Dissemination axis, investment in R&D and in the technical training of the support structures for organic producers.

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<sup>311</sup> See: <<https://inovacao.rederural.gov.pt/>>.

<sup>312</sup> See: <<https://producaobiologica.pt/index.php/producao-biologica/investigacao-e-desenvolvimento-2>>.

<sup>313</sup> See: <<https://producaobiologica.pt/index.php/producao-biologica/associativismo-e-representacao>>.

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