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Katarzyna Leśkiewicz
Adam Mickiewicz University in Poznań, Poland
ORCID: 0000-0001-5261-2752
kles@amu.edu.pl

Influence of the EU Climate and Energy Framework and Trade Policy on Implementation of Permanently Sustainable Forestry – Legal Aspects

Wpływ unijnej polityki klimatyczno-energetycznej oraz handlowej na realizację trwale zrównoważonej gospodarki leśnej – aspekty prawne

SUMMARY

The subject of considerations are the legal aspects of the influence of the EU climate and energy framework and trade policy on implementation of permanently sustainable forestry. Even though forestry belongs to the competences of Member States and there is no formal establishment of common forest policy in the TFEU, the new LULUCF Regulation and provisions of regulations regarding prevention of illegal timber trade prove that there is an ongoing process of subjecting forestry to the competencies of the European Union to a growing extent as well as reducing the area left to Member States. It must be stated that the platform for expansion of EU regulations on Member States' forestry in terms of land use and timber trade – acts adopted within the trade policy and climate and energy framework – is the principle of sustainable development that derives from international legislation and is also included in the Constitution of the Republic of Poland. This principle is also the foundation for development of the beginnings of common forest policy that emerges at the verge of EU policies.

Keywords: forestry; principle of sustainable development; climate change; forest law

I.

"Permanently sustainable forestry" is an expression defined in the Forest Act[1]. Legal regulations regarding forestry are established by Member States, but in re-

[1] Article 6 (1) (1) (a) of the Act of 28 September 1991 on Forest (consolidated text Journal of Laws 2018, item 2129).

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cent years EU legislation has been stepping into this area to a growing extent[2]. It can be observed, for example, in terms of provisions of the EU climate and energy framework[3] and trade policy[4]. When it comes to the former forest land use has been included in the scope of the Energy Union[5]. It should be a priority of the Energy Union management mechanism to achieve the goals of reduction of greenhouse gas emissions, energy from renewable sources, and energy efficiency[6]. The climate and energy framework includes the issues of emissions and removals from land use; they have been sorted out by LULUCF Regulation[7], as well as Effort Sharing Regulation (ESR)[8]. The LULUCF is based on the European Union's obligation for 2010–2030 to achieve zero net emissions from the sector under this regulation. This legislation regards all developed lands, including forests, agricultural land, grassland, and (by 2026) wetland, also it establishes a new EU management process for monitoring of Member States' calculations of emissions and removals from forestry.

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[2] For more legal aspects of forestry in the context of the EU law, see: J. Goździewicz-Biechońska, K. Leśkiewicz, *Prawnoeuropejskie uwarunkowania gospodarki leśnej*, [in:] *Integracja europejska jako determinanta polityki wiejskiej. Aspekty prawne*, red. P. Litwiniuk, Warszawa 2017, pp. 223–235.

[3] See K. Leśkiewicz, *Prawne aspekty włączenia w zakres polityki klimatyczno-energetycznej emisji i pochłaniania gazów cieplarnianych w wyniku działalności związanej z użytkowaniem gruntów, zmianą użytkowania gruntów i leśnictwem*, „Przegląd Prawa Rolnego" 2019, nr 1, p. 25 ff.

[4] Cf. eadem, *Realizacja zrównoważonej gospodarki leśnej w wymiarze lokalnym, regionalnym i globalnym – wybrane aspekty prawne*, „Przegląd Prawa Rolnego" 2018, nr 1, pp. 77–90.

[5] Article 1 (2) of the Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) 663/2009 and (EC) 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No. 525/2013 of the European Parliament and of the Council (OJ L 328/1, 21.12.2018, p. 1).

[6] Points 2, 3 and 18 of the preamble to Regulation (EU) 2018/1999.

[7] Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) 525/2013 and Decision 529/2013/EU (OJ L 156/1, 19.06.2018, p. 1). The abbreviation LULUCF comes from 'land use, land use change and forestry'. Cf. N. Forsell, A. Korosuo, S. Federici, M. Gusti, J.-J. Rincón-Cristóbal, …, J. Gardiner, *Guidance on developing and reporting the Forest Reference Levels in accordance with Regulation (EU) 2018/841*, https://op.europa.eu/en/publication-detail/-/publication/5ef89b70-8fba-11e8-8bc1-01aa75ed71a1/language-en [access: 10.10.2020]; H. Böttcher, C. Zell-Ziegler, A. Herold, A. Siemons, *EU LULUCF Regulation explained. Summary of core provisions and expected effects*, Berlin, 21.06.2019, www.oeko.de/fileadmin/oekodoc/Analysis-of-LULUCF-Regulation.pdf [access: 20.09.2019].

[8] Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement, and amending Regulation (EU) 525/2013 (OJ L 156/26, 19.06.2018, p. 26).

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However, as part of the EU trade policy, Union regulations include timber trade and due diligence systems referring to provision of sustainable forestry[9]. In particular, development of forest management regulations by Member States requires consideration of international conditions regarding implementation of forest management and timber trade[10].

Legal literature includes the issue of land management in the context of the LULUCF Regulation[11] and the issue of climate protection[12], but not from the perspective of forestry. Some issues are discussed in forestry science literature[13]. The issue of forestry actions undertaken within EU policies has also been raised[14]. Among arguments that justify elaboration of this issue, there are cognitive and theoretical aspects. When it comes to the former, forestry – as activity related to humans using forest resources – affects their preservation for future generations. Besides, their involvement in emission and reduction of greenhouse gases has an impact on the climate. The literature informs that in Poland, in the LULUCF sector, forests have the highest carbon dioxide removal per surface unit, amounting to 4.42 tons of CO_2 per hectare and forestry contributes to carbon dioxide removal to a much bigger extent than net afforestation (on average, in recent years the volume of forestry-related carbon dioxide removal in Poland amounted to almost 38 million tons per year and net afforestation removed slightly more than 2 million tons of carbon dioxide on average)[15].

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[9] See M. Czermińska, *Zasady i funkcjonowanie wspólnej polityki handlowej Unii Europejskiej – implikacje dla Polski*, „Zeszyty Naukowe Uniwersytetu Ekonomicznego w Krakowie" 2008, nr 777, pp. 5–30.

[10] Council Regulation (EC) No. 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (OJ L 347/1, 30.12.2015, p. 1 as amended), hereinafter: Regulation (EC) No. 2173/2005; Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (OJ L 295/23, 12.11.2011, p. 23), hereinafter: Regulation (EU) No. 995/2010.

[11] See K. Leśkiewicz, *Prawne aspekty…*, p. 25 ff.

[12] Cf. *Prawo ochrony środowiska*, red. M. Górski, Warszawa 2018, pp. 290–293; A. Bolte, *Adaptive forest management in central Europe: Climate change impacts, strategies and integrative concept*, "Scandinavian Journal of Forest Research" 2009, Vol. 24(6), DOI: https://doi.org/10.1080/02827580903418224.

[13] Cf. A. Kaliszewski, *Cele polityki leśnej w Polsce w świetle aktualnych priorytetów leśnictwa w Europie. Część 1. Procesy kształtujące politykę leśną w Europie*, „Leśne Prace Badawcze" 2018, nr 1, http://agro.icm.edu.pl/agro/element/bwmeta1.element.agro-80add842-4d19-4372-84af-f9ec6f-23fa67/c/DOI-10.2478-frp-2018-0009_77.pdf [access: 10.03.2020]; K. Jabłoński, W. Stempski, *Rola lasów i leśnictwa w pochłanianiu gazów cieplarnianych*, „Czasopismo Inżynierii Lądowej, Środowiska i Architektury" 2017, nr 4, DOI: https://doi.org/10.7862/rb.2017.202, pp. 163–170.

[14] S. Zając, A. Sikora, W. Rzewuski, *Regulacje prawne i finansowe oraz działania w zakresie leśnictwa w ramach polityk Unii Europejskiej*, Sękocin Stary 2007.

[15] K. Jabłoński, W. Stempski, *op. cit.*, p. 163.

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The European Union assumes gradual reduction of greenhouse gas emissions until 2050[16]. Some countries, including Poland, have exceeded the yearly emission limits[17]. The most recent goals assume that the European Union will achieve climate neutrality by 2050, in accordance with the Paris agreement[18]. The European Council decided that all EU policies have to be consistent with this goal. At the same time, EU leaders decided that there is a need to provide energy security and respect Member States' right to decide about their own energy mix and to choose the most appropriate technologies[19]. Poland did not undertake to implement this goal and the European Council wants to return to this topic in June 2020. Meanwhile, climate protection issues are vital for implementation of the climate neutrality goal in the entire European Union[20].

When it comes to theoretical aspects, it must be emphasized that EU regulations have a growing influence on forestry. It is, thus, justified to examine the influence of EU regulations on the directions of forestry that falls within the competences of individual Member States. Given the above, the goal of considerations is to find the scope of and reasons for inclusion of forestry in EU regulations.

II.

The division of competences between the European Union and the Member States is regulated by Articles 2–6 of the Treaty on the Functioning of the European Union (TFEU)[21]. According to Article 5 (1) of the Treaty on European Union (TEU)[22], the EU has only the competences granted to it by Treaties. In light of these

[16] Percentage points are the difference between the volume of emissions and yearly limit of emissions expressed as a percentage change in comparison with emissions in 2005 as the base year.

[17] Report from the Commission to the European Parliament and the Council EU and the Paris Climate Agreement: Taking stock of progress at Katowice COP (required under Article 21 of Regulation (EU) No. 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No. 280/2004/EC, COM/2018/716 final, Brussels, 26 October 2018, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0716 [access: 10.06.2019].

[18] Conclusions of the European Council of 12 December 2019 on climate change, long-term financial framework, the conference on the future of Europe, relations between the EU and Africa, World Trade Organization, Turkey and Albania, www.consilium.europa.eu/media/41768/12-euco-final-conclusions-en.pdf [access: 15.12.2019].

[19] *Ibidem*.

[20] *Ibidem*.

[21] Treaty on the Functioning of the European Union, Rome, 25 March 1957 (OJ C 326/47, 26.10.2012, consolidated version).

[22] Treaty on European Union, Maastricht, 7 February 1992 (OJ C 326/13, 26.10.2012, consolidated version).

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regulations, the following types of competences can be distinguished: exclusive (areas in which the EU alone is able to legislate and adopt binding acts – Article 3 TFEU), shared (the EU and Member States are both able to legislate and adopt legally binding acts; the latter exercise their own competence where the EU does not exercise, or has decided not to exercise, its own competence – Article 4 TFEU) and supporting (specified in Article 6 TFEU, for which the EU can only intervene to support, coordinate or complement the action of Member States; legally binding EU acts must not require harmonization of Member States' laws or regulations)[23].

Forestry does not belong to the exclusive competences as mentioned in Article 3 TFEU and there is no common forestry policy[24]. Forestry, thus, belongs to the competences of Member States, under the principle of subsidiarity. Among challenges that Member States and the EU undoubtedly face is the counteracting and prevention of climate change, including reduction of greenhouse gas emissions and sustainable resource management[25]. The EU has the right to support the national forestry policy and programs through monitoring and possible reporting on the condition of EU forests, anticipation of global tendencies in this area and drawing of Member States' attention to new challenges as well as offering and possible coordination of or support for early action opportunities within the EU[26].

III.

According to the Forest Act, "forestry" is the activity regarding development, protection, and management of forests, preserving and expanding resources and forest stand, game management, acquisition – excluding purchase – of timber, resin, trees, stump timber, bark, needles, game and ground cover plants as well as sale of these products and implementation of non-productive functions of forests[27].

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[23] J. Goździewicz-Biechońska, K. Leśkiewicz, *op. cit.*, pp. 223–235.

[24] M. Geszprych, *Wpływ regulacji unijnych na kształtowanie gospodarki leśnej w lasach prywatnych w prawie polskim*, „Kwartalnik Prawa Publicznego" 2008, nr 3/4, p. 115.

[25] Conclusions of the European Council of 12 December 2019 on climate change, long-term financial framework, the conference on the future of Europe, relations between the EU and Africa, World Trade Organization, Turkey and Albania, www.consilium.europa.eu/media/41768/12-euco-final-conclusions-en.pdf [access: 15.12.2019].

[26] European Commission, *Mapping and assessment of forest ecosystems and their services – Applications and guidance for decision making in the framework of MAES*, 2015, http://publications.jrc.ec.europa.eu/repository/bitstream/JRC98777/lb-na-27751-en-n.pdf [access: 5.08.2017], p. 6.

[27] For more about forestry, see A. Habuda, W. Radecki, *Rozdział 7. Trwale zrównoważona gospodarka leśna*, [in:] *Polskie prawo leśne*, red. A. Habuda, Warszawa 2016, pp. 166–196; J. Pakuła, *Pojęcie i zasady gospodarki leśnej*, [in:] *Wybrane problemy prawa leśnego*, red. B. Rakoczy, Warszawa 2011, p. 79 ff.; B. Rakoczy, *Gospodarka leśna i trwale zrównoważona gospodarka leśna w prawie polskim*, Warszawa 2018.

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"Permanently sustainable forestry", in turn, is an activity that aims at development of forest structure and its use in a manner and at a pace that guarantee permanent preservation of their biological richness, high productivity and regenerative potential, life span and the ability to fulfill, now and in the future, all-important protective, economic and social functions at the local, national and global level, without harm to other ecosystems[28].

The need to take into account climate protection should derive from the "non-productive functions of forests" in the forestry definition as well as "the ability to fulfill, now and in the future, all-important protective, economic and social functions at the local, national and global level". These fragments clearly show that permanently sustainable forestry (not just forestry – mark that) is subordinate to, among others, the goal of preserving forests and their positive influence on the climate, air, water, soil, conditions of living and health of humans as well as the balance of nature[29].

The notion of permanently sustainable forestry refers to the principle of sustainable development[30]. The principle of sustainable development derives from international legislation[31] and has a source in the Constitution of the Republic of Poland[32] as well. Sustainable development is defined as "the process whose goal is to satisfy the developmental needs of the current generation in such a way that enables implementation of the same objectives to subsequent generations"[33].

Under Article 5 of the Polish Constitution "The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the

[28] Article 6 (1) (1) of the Forest Act.

[29] Article 7 (1) (1) of the Forest Act.

[30] Cf. Resolution adopted by the General Assembly on 25 September 2015 [without reference to the Main Committee (A/70/L.1)], 70/1. Transforming our world: the 2030 Agenda for Sustainable Development, www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf [access: 29.11.2019].

[31] See, e.g., United Nations Conference on the Human Environment (Stockholm Conference), June 5–16, 1972, https://sustainabledevelopment.un.org/milestones/humanenvironment [access: 7.12.2019]; *Report of the World Commission on Environment and Development: Our Common Future*, https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf [access: 12.12.2019]; *Transforming our world: the 2030 Agenda for Sustainable Development*, www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E [access: 7.12.2019].

[32] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483), hereinafter: the Polish Constitution. See English translation of the Constitution at: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [access: 10.02.2020].

[33] In 1987 the World Commission on Environment and Development under the helm of G.H. Brundtland published a report entitled "Our Common Future". See Polski Komitet ds. UNESCO, *UNESCO a Dekada Edukacji dla Zrównoważonego Rozwoju*, www.unesco.pl/edukacja/dekada-edukacji-nt-zrownowazonego-rozwoju/unesco-a-zrownowazony-rozwoj/dostęp [access: 7.07.2017].

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principles of sustainable development". The literature assumes that Article 5 of the Polish Constitution lists the goals of the country that fit implementation of the protective function which, however, is not the only function ascribed to the state by the legislator[34]. The fact that Poland does not recognize EU obligations in terms of achievement of climate neutrality seems to be inconsistent with the constitutional objective to pursue the principle of sustainable development, even if it could be justified from the economic viewpoint. This stance is also hard to fathom in the context of the content of the document – development strategy entitled "State Environmental Policy 2030"[35]. The above-mentioned document considers it necessary to support multipurpose and permanently sustainable forestry as well as actions to prevent climate change[36].

IV.

Within EU trade policy, regulations focus on prevention of illegal timber harvesting[37] in terms of placing timber on the internal market[38] and obligations of operators that provide timber and timber products for sale[39]. Prevention of illegal timber harvesting is regulated by Regulations (EC) No. 2173/2005[40] and 995/2010[41]. The above-mentioned acts establish a ban on sale of illegally harvested timber and related negative social, economic, and environmental consequences. In particular, illegally harvested timber is timber harvested in such a way that violates legislation applicable in the country of harvesting[42], e.g. the Forest Act. Legal solutions are to support control and supervision of placing timber and timber products on the

[34] L. Bosek, *Komentarz do art. 5*, [in:] *Konstytucja RP*, t. 1: *Komentarz do art. 1–86*, red. M. Safjan, L. Bosek, Warszawa 2016.

[35] Ministerstwo Środowiska, *Polityka Ekologiczna Państwa 2030*, Warszawa 2019, https://bip.mos.gov.pl/fileadmin/user_upload/bip/strategie_plany_programy/Polityka_Ekologiczna_Panstwa/Polityka_Ekologiczna_Panstwa_2030.pdf [access: 20.12.2019].

[36] *Ibidem*, p. 72.

[37] Cf. K. Leśkiewicz, *Administracyjne kary pieniężne związane z wprowadzaniem do obrotu nielegalnie pozyskanego drewna i produktów z drewna*, „Studia Iuridica Agraria" 2017, t. 15, DOI: https://doi.org/10.15290/sia.2017.15.07, p. 105 ff.

[38] Regulation (EC) No. 2173/2005.

[39] Regulation (EU) No. 995/2010.

[40] "Legally produced timber" means "timber products produced from domestic timber that was legally harvested or timber that was legally imported into a partner country in accordance with national laws determined by that partner country as set out in the Partnership Agreement", under Article 2 (10) of Regulation (EC) No. 2173/2005. Illegally harvested timber, then, is timber acquired through logging forbidden by the law of the country in which it was harvested or its import was not in accordance with the law of the country from which it was imported.

[41] Cf. Article 2 (g) of Regulation (EU) No. 995/2010.

[42] Article 2 (g) of Regulation (EU) No. 995/2010.

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market and their goal is to implement sustainable forestry in countries that produce timber[43]. State forest management does not have to be consistent with the principle of sustainable development "in the interest of public welfare"[44]. At the Union level, there is a system of licensing in order to make sure that only timber products from legally harvested timber are placed on the EU markets, in accordance with the national legislation of the country that produces timber[45]. This system is referred to as the FLEGT licensing scheme[46]. Besides, Regulation (EU) No. 995/2010 establishes an obligation of "due diligence" while placing timber or timber products on the market. Provisions of this regulation must be implemented by the operator that places these products on the EU markets for the first time. The obligation is specified by a number of procedures and measures described as "due diligence system"[47] which can be based on supervision and control resulting from national legislation. A guarantee of compliance with applicable legislation may include e.g. certification or systems verified by a third party[48]. In practice, a guarantee that timber harvesting took place within "sustainable forestry" is provided through evaluation of compliance – certification that may include forestry or supply chain (including source of timber)[49].

V.

In the EU, protection and improvement of the quality of the environment is included in Article 11 or Article 191 TFEU[50]. The EU implements sustainable development goals set by the UN, including long-term reduction of greenhouse gas emissions and larger removals by sinks in all sectors[51]. The climate and energy framework includes land use, land use change, and forestry sector (LULUCF) which is exposed to the effects of climate change on the one hand, and on the other, it can contribute to mitigation of these effects. The most important obligation of Member States is to maintain lower emissions than removals in the periods from 2021 to 2025 and from 2026 to

[43] Point 2 of the preamble to Regulation (EC) No. 2173/2005.

[44] Article 3 of the Act of 6 July 2001 on Preservation of the National Character of Strategic Natural Resources of the Country (Journal of Laws 2018, item 1235).

[45] Point 3 of the preamble to Regulation (EC) No. 2173/2005.

[46] Article 1 (2) of Regulation (EC) No. 2173/2005. Under Point 1 of the preamble to Regulation (EC) No. 2173/2005, the abbreviation FLEGT means "Forest Law Enforcement, Governance and Trade".

[47] See Article 4 (2) and Article 6 of Regulation (EU) No. 995/2010.

[48] Article 6 (1) (a–c) of Regulation (EU) No. 995/2010.

[49] FSC, https://pl.fsc.org/pl/o-fsc [access: 15.05.2018]. It is worth mentioning that FSC is a member of ISEAL – the global membership association for credible sustainability standards among whose members there are also: Fairtrade, Marine Stewardship Council (MSC) and Rainforest Alliance.

[50] Treaty on the Functioning of the European Union (Journal of Laws 2004, No. 90, item 864/2).

[51] Points 36 and 37 of the preamble to Regulation (EU) 2018/2019.

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2030, taking into account flexibilities. It means that Member States are obliged to prepare and keep accounts according to the principle of accuracy, completeness, consistency, comparativeness, and transparency (Article 5 of the LULUCF Regulation). Every Member State has to make sure that accounted for greenhouse gas emissions from land use are fully balanced with CO_2 removals through activity in this sector.

The LULUCF also guarantees maintaining of the proportion of timber harvested for products and bioenergy in the years 2000–2009. There is a mechanism of compensation for possible emissions from managed land use in case a given country does not achieve the removal volume equal to the reference level and its activity is based exclusively on the forestation rate of the Member State (average forestation rate for the reference period 2000–2009). Poland has been granted a compensation limit for 10 years (2021–2030) in the amount of –22.5 million tons of CO_2 equivalent as total maximum limit for this period. However, accounting of balances for afforestation or deforestation and harvested timber products (excluding paper) should not be restricted with either a limit or a reference level.

When it comes to forestry, there is an assumption that the reference level for forests must be based on continued practice of sustainable forestry documented between 2000 and 2009 with reference to dynamic age-related forest characteristics in national forests with the use of the best available data. This level should also take into account "the future impact of dynamic age-related forest characteristics in order not to unduly constrain forest management intensity as a core element of sustainable forest management practice, with the aim of maintaining or strengthening long-term carbon sinks" (Article 8 (5) of the LULUCF Regulation).

When it comes to afforested and deforested land, emissions and removals shall be accounted as total emissions and total removals for each year in the period from 2021 to 2025 and from 2026 to 2030[52]. Emissions and removals for managed forest land shall be calculated as emissions and removals in the period from 2021 to 2025 and from 2026 to 2030 minus the value obtained by multiplying by five the forest reference level of the Member State concerned[53]. If the result is negative in relation to the forest reference level[54] for a given Member State, this country should include in its managed forest land accounts "total net removals of no more than the equivalent of 3,5 per cent of the emissions of that Member State's emissions in its base year or period as specified in Annex III, multiplied by five", excluding exceptions specified in the LULUCF, in the land accounting category of managed forest land.

[52] Article 6 (1) of the LULUCF Regulation.

[53] Article 8 (1) of the LULUCF Regulation.

[54] Under Article 3 (1) (7) of the LULUCF Regulation, "forest reference level" is the estimated forest reference level expressed in tons of CO_2 equivalent per year, of the average annual net emissions or removals resulting from forest land management in a given Member State in the periods from 2021 to 2025 and from 2026 to 2030, based on the criteria established in this Regulation.

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VI.

In conclusion, it must be stated that the FLEGT licensing scheme and the due diligence system regard the manner timber is both harvested and sold. The LULUCF Regulation, in turn, because of accounting mechanisms of emissions and removals from forest land management, may affect timber harvesting. Thus, these areas fall under the notion of forestry. What is important, the attribute of sustainable forestry serves only actions that are consistent with the discussed regulation.

Even though forestry belongs to the competences of Member States and there is no formal establishment of common forest policy in the TFEU, the new LULUCF Regulation and provisions of regulations regarding prevention of illegal timber trade prove that there is an ongoing process of subjecting forestry to the competences of the European Union to a growing extent as well as reducing the area left to Member States. It must be stated that the platform for expansion of EU regulations on Member States' forestry in terms of land use and timber trade – acts adopted within the trade policy and climate and energy framework – is the principle of sustainable development that derives from international legislation and is also included in the Constitution of the Republic of Poland. This principle is also the foundation for development of the beginnings of common forest policy that emerges at the verge of EU policies.

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STRESZCZENIE

Przedmiotem rozważań są prawne aspekty wpływu unijnej polityki klimatyczno-energetycznej oraz handlowej na realizację trwale zrównoważonej gospodarki leśnej. Mimo zaliczenia gospodarki leśnej do kompetencji krajów członkowskich i braku formalnego ustanowienia wspólnej polityki leśnej w TFUE nowe rozporządzenie LULUCF oraz przepisy rozporządzeń dotyczących przeciwdziałania

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nielegalnemu obrotowi drewnem świadczą o postępującym procesie coraz większego podporządkowania gospodarki leśnej kompetencjom Unii Europejskiej i redukowania obszaru zostawionego krajom członkowskim. Realizując cel rozważań, stwierdzić należy, że płaszczyzną ekspansji unijnej regulacji obejmującej gospodarkę leśną krajów członkowskich w sferze zarządzania gruntami, a także obrotu drewnem, a więc aktów przyjętych w ramach polityki handlowej i klimatyczno-energetycznej, jest zasada zrównoważonego rozwoju wywodząca się z prawa międzynarodowego, uregulowana także w Konstytucji Rzeczypospolitej Polskiej. Zasada ta stanowi również podstawę do kształtowania się zalążków wspólnej polityki leśnej, wyłaniającej się na styku innych unijnych polityk.

Słowa kluczowe: gospodarka leśna; zasada zrównoważonego rozwoju; zmiany klimatu; prawo leśne

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