

ANNA KAPALA

Wrocław University of Environmental and Life Sciences, Poland
e-mail: anna.kapala@upwr.edu.pl
ORCID: 0000-0002-8554-6517

The concept of food in European Union law in the context of short supply chains and local food systems

La nozione di alimenti nel diritto dell'Unione europea
nel contesto delle filiere alimentari corte
e dei sistemi alimentari locali

The aim of this article is to answer the question of whether the existing conceptual categories of food in European Union law, both the general ones such as an “agricultural product” or a “foodstuff” as well as the specific categories such as a “mountain product” are adequate for describing food in short food supply chains (SFSCs) and local food systems (LFSs). It has been concluded that the existing concepts do not reflect the specificity of products offered either under the LFSs or the SFSCs system. This lack of clarity hinders not only their effective promotion through legal instruments but also their recognition in the market. Therefore, the author proposes the introduction of new categories in EU law, such as “local product,” “product directly from the farmer,” or “product from short food supply chains,” along with a voluntary labelling system based on producer self-monitoring. This system would enable consumers to make informed choices and to strengthen the development of local and sustainable food systems.

Keywords: short food supply chains, local food, local food systems, mountain product, European Union law

L'obiettivo di questo articolo è rispondere alla domanda se le categorie concettuali di alimenti esistenti nella legislazione dell'Unione Europea – sia quelle generali, come “prodotto agricolo” e “prodotto alimentare”, sia quelle specifiche, tra cui la designazione “prodotto di montagna” – siano adeguate a definire gli alimenti oggetto delle filiere alimentari corte e nei sistemi alimentari locali. Nella conclusione, l'Autrice ha affermato, tra l'altro, che le definizioni attuali non riescono a cogliere la particolarità dei prodotti offerti nell'ambito delle filiere alimentari corte e nei sistemi alimentari locali, il che rende difficoltoso sia il

loro efficace sostegno tramite strumenti giuridici, sia il loro riconoscimento sul mercato. Ha quindi proposto di introdurre nel diritto UE nuove categorie, quali “prodotto locale”, “prodotto direttamente dall’agricoltore” o “da filiere corte”, accompagnate da un sistema volontario di etichettatura basato sul principio di autocontrollo del produttore. Tale sistema permetterebbe ai consumatori di fare scelte consapevoli e favorirebbe lo sviluppo di sistemi alimentari locali e sostenibili.

Parole chiave: filiere alimentari corte, cibo locale, sistemi alimentari locali, prodotto di montagna, diritto dell’Unione europea

Introduction

The issue of defining food has been addressed many times in Polish legal literature.¹ However, it has not been analysed in the context of short food supply chains (SFSCs) and local food systems (LFSs).² This article focuses on the definitional and conceptual gaps in EU law concerning food that is produced and distributed within the frameworks of the SFSCs and LFSs systems. Despite the declarative and ambitious assumptions contained in the European Union’s programming documents including the Farm to Fork strategy,³ EU law has not yet regulated the status of the SFSCs or the LFSs in any comprehensive manner, neither has it introduced a definition of food products manufactured and marketed under the above models. Consequently, these issues remain largely within the scope of national legislations.

The most precise national approach can be found in Italy. It is worth noting that Italian Law No 61/2022⁴ defines products from short food supply chains

¹ K. Leśkiewicz, *Wokół prawnego pojęcia żywności*, “Przegląd Prawa Rolnego” 2015, no. 1, pp. 179–192; eadem, *Bezpieczeństwo żywnościowe i bezpieczeństwo żywności – aspekty prawne*, “Przegląd Prawa Rolnego” 2012, no. 1, p. 179 ff.; M. Korzycka, *Definicje żywności w prawie*, in: M. Korzycka, P. Wojciechowski, *System prawa żywnościowego*, Warszawa 2017, pp. 175–178.

² This issue is discussed in A. Kapała, *Krótkie łańcuchy dostaw i lokalne systemy żywnościowe – studium prawnoporównawcze*, Lublin 2023, pp. 70–77.

³ 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, COM(2020) 381 final, p. 15.

⁴ Law No 61/2022 on the promotion and support of zero-kilometre and short-chain products (Legge 17 maggio 2022, n. 61 Norme per la valorizzazione e la promozione dei prodotti agricoli e alimentari a chilometro zero e di quelli provenienti da filiera corta, Gazzetta Ufficiale n. 135 of 11.06.2022). For more information: A. Kapała, *Krótkie łańcuchy dostaw...*, pp. 86–90.

as well as local products, which it refers to as “zero-kilometre products,” as agricultural products listed in Annex I to the TFEU and as foodstuffs defined in Article 2 of Regulation (EC) No 178/2002.⁵ This type of food is undoubtedly the result of farmers’, activities carried out at every stage of the food chain – from primary production and processing to packaging and marketing the final product.

This topic has been chosen because of its growing relevance in the context of the transformation of European food systems towards greater sustainability, resilience and locality. Issues related to locality, shortening food supply chains and empowering small producers have become particularly important in the face of crises such as the COVID-19 pandemic or the war in Ukraine, which have highlighted the vulnerability of long and centralised food distribution models. At the same time, the absence of unambiguous legal definitions of food produced and marketed under SFSCs and or LFSs not only hinders the creation of effective public policies and support instruments, but also limits the consumers’ ability to recognise such food on the market or make the “informed choices” that are referred to in Article 3 of Regulation (EU) No 1169/2011 on the provision of food information.⁶

The analysis of the basic conceptual categories such as an “agricultural product” or a “foodstuff” in relation to food from SFSCs and LFSs is also theoretically important, as it shows close links between agricultural law and food law and the need for a coherent and complementary approach to them in the face of dynamic changes taking place in food production and distribution models.

The aim of this article is to answer the question of whether the notional food categories that apply in European Union law – both the general ones, such as “agricultural product” or “foodstuff” as well as some specific designations such as “mountain product” – are adequate for defining food produced and traded within short supply chains and local food systems (referred to as local food).⁷ In order to achieve this goal, conceptual constructions of European Union law (agricultural and food) will be analysed in the context

⁵ Regulation (EC) No 178/2002 laying down the general principles and requirements of food law (OJ L 31, 1.02.2002 as amended).

⁶ Regulation (EU) No 1169/2011 on the provision of food information (OJ L 304/18, 22.11.2011 as amended).

⁷ The EU legislator has distinguished various special categories of food, regulated by separate legal acts: foodstuffs for particular nutritional uses, genetically modified food, novel food, food obtained using the organic method, food covered by the quality system, etc. See K. Leśkiewicz, *Prawo żywnościowe*, Warszawa 2020, pp. 130–191; M. Korzycka, *Wybrane obszary szczegółowej regulacji prawa żywnościowego*, in: M. Korzycka, P. Woj-

of the specific characteristics of local food and food from the SFSCs, such as production by farmers (in connection with the agricultural activity), local origin, lack of intermediaries, artisanal production methods, small scale of activity and sustainable nature of production.⁸ Issues such as the adequacy of the Protected Designation of Origin (PDO) or the Protected Geographical Indication (PGI) quality systems to the subject matter of the SFSCs and the LFSs have already been researched in separate studies.⁹

1. Local food and food from short food supply chains in relation to the fundamental legal categories of an “agricultural product” and a “foodstuff”

In EU law, food that is subject to short food supply chains and local food systems can fall under different conceptual categories, and particularly under the concepts of an “agricultural product” and a “foodstuff.” These concepts, although partially overlapping, are not identical and have different normative effects. Their analysis is important to determine what type of food can actually function within the SFSCs and the LFSs.

As provided for in Article 38(1) of the Treaty on the Functioning of the European Union (TFEU), food placed on the market under the SFSCs and the LFS may be considered an agricultural product.¹⁰ According to that provision, agricultural products include “products of the land, products from livestock farming and fisheries, as well as products of primary processing which are directly related to these products.” The catalogue of these products, included in Annex I to the Treaty, also includes wine, meat, vegetables, fruit, milk, sugar and cereal products. While rather extensive, this list is not exhaustive.¹¹

ciechowski, *System prawa...*, pp. 320–411. P. Wojciechowski, *Wspólnotowy model urzędowej kontroli żywności*, Warszawa 2008, pp. 130–140.

⁸ For more on the characteristics of production within the SFSC and LFS systems: A. Kapała, *Krótkie łańcuchy dostaw...*, pp. 29–76.

⁹ Ibidem, pp. 80–85; eadem, *Identifying local food in the context of European system of geographical indications and consumer’s right to information*, “Revista Catalana de Dret Ambiental” 2024, no. 15(1), pp. 1–11.

¹⁰ Treaty on the Functioning of the European Union (TFEU) (consolidated version OJ EU C 202, 2016). On agricultural products as food: P. Wojciechowski, *Wspólnotowy model urzędowej kontroli...*, p. 140.

¹¹ P. Wojciechowski (*Wspólnotowy model urzędowej kontroli...*, p. 140) indicates that the concept of “products of first processing which are directly related to those products” used in Article 38 TFEU is not unambiguous. The ECJ, in referring to this concept, relied on the economic criterion (processing costs) and not on the number of successive stages, the level of advancement or interference of a given operation with the primary product (“processed

Processed products, not listed in Annex I TFEU but suitable for consumption may also be subject of the SFSCs or LFSs and should be included in the legal definition of “foodstuff” contained in Article 2 of Regulation (EC) No 178/2002. The criterion for classifying a product as food is its intended use for human consumption, therefore, the concept of “food” excludes those agricultural products listed in Annex I that are not intended for human consumption.¹² Not every agricultural product is food.

The definition of a “foodstuff” in Regulation (EC) No 178/2002 is not linked to the concept of agricultural products in the Treaty¹³ and, unlike the concept of an “agricultural product,” it does not imply a direct link with agriculture. Therefore, “food” may also encompass products that do not come directly from agriculture,¹⁴ but have been obtained as a result of complex industrial processes, such as genetic engineering, nanotechnology or cloning.¹⁵ In the context of SFSCs and LFSs, this may lead to definitional tensions: on the one hand, the term “foodstuff” may be too broad a category, encompassing food detached from traditional and local agricultural practices; on the other hand, the term “agricultural product” may be too narrow, excluding processed forms of local food, even though artisanal processing is possible within the scope of a farmer’s activity.¹⁶

The separation of agricultural law and food law as two distinct legal orders does not fully reflect the extent to which they actually intersect. In reality, they are closely interconnected. As rightly noted in the literature, agricultural products are a common denominator in both agricultural and food law issues,¹⁷ “a bridge between agricultural law and food law.”¹⁸ This is also

products whose processing costs were so significant that the price of the primary products appears to be a marginal cost in comparison are not covered by this definition”). See ECJ judgment of 29 May 1974 in Case 185/73 *Bielfel v Konig*, ECR 1974, p. 607.

¹² Article 2(b) and (c) of Regulation (EC) No 178/2002 expressly excludes live animals, unless they are to be placed on the market for human consumption, and plants before harvest. Annex I TFEU also lists other agricultural products not intended for consumption, such as straw, fodder, live trees, raw natural cork; cork waste, etc.

¹³ K. Leśkiewicz, *Wokół prawnego pojęcia...*, p. 190.

¹⁴ Ibidem.

¹⁵ Ł.M. Sokołowski, *Wytwarzanie nowej żywności a pojęcie działalności rolniczej*, “Przegląd Prawa Rolnego” 2017, no. 2, pp. 97–98.

¹⁶ More on the characteristics of the Short Food Supply System and the Local Food System: A. Kapąła, *Krótkie łańcuchy dostaw...*, pp. 62–120. On the scope of agricultural activity with regard to processing and direct sales under Polish law: ibidem, pp. 111–120.

¹⁷ A. Jurcewicz, *Związki prawa żywnościowego z prawem rolnym – wybrane problemy*, “Studia Iuridica Agraria” 2002, vol. 3, p. 84 ff.

¹⁸ M. Korzycka, P. Wojciechowski, *System prawa...*, p. 39.

confirmed by Article 3(1) of Regulation (EC) No 178/2002, which states that primary production, i.e. agriculture, is an integral stage of the food chain.

The lack of a clear link between the concept of food and agriculture stems from the fact that food law initially developed “mainly around issues related to the production and marketing of processed agricultural products intended for human consumption.”¹⁹ And yet, primary products are also subject to food law regulations, as is the entire food chain, “from farm to fork.”²⁰

Food law focuses on food safety, which is particularly important at the stages following primary agricultural production: food processing, including the storage, processing, and treatment of primary products.²¹ The importance of food safety increases with the expansion of markets and, consequently, with the growing geographical distance between the locations where successive stages of production, processing, and distribution take place. This phenomenon leads to a higher risk of product contamination and the emergence of other threats to food safety.²² In contrast, at the core of legal regulations concerning the agricultural sector being the source of raw materials intended for transformation into food for human consumption, there has always been the issue of food security.²³

The legal framework that focuses simultaneously on the concept of food and the concept of agriculture (i.e., agricultural products) is referred to in Italian legal doctrine as “agri-food law.”²⁴ However, it is emphasised that treating the regulations on agriculture and food production as a single, uniform body of laws is not straightforward since each follows distinct organising principles.²⁵ In the food system, the guiding principle is food safety, which serves as the main criterion for the operations of food business operators. In contrast, within the agricultural sector, the guiding criterion for the activities

¹⁹ Ibidem, p. 40.

²⁰ Ibidem.

²¹ A. Jannarelli, *Profil giuridici del sistema agro-alimentare tra ascesa e crisi della globalizzazione*, Bari 2011, p. 250.

²² Ibidem, p. 250.

²³ Ibidem.

²⁴ A. Germanò, M.P. Ragionieri, E. Rook Basile, *Diritto agroalimentare. Le regole del mercato degli alimenti e dell'informazione alimentare*, Torino 2019, p. 15. In the Polish legal doctrine on agri-food law: R. Budzinowski, *Problemy ogólne prawa rolnego. Przemiany podstaw legislacyjnych i koncepcji doktrynalnych*, Poznań 2018, pp. 219–222; idem, *Food-related challenges of the Common Agricultural Policy*, in: I. Härtel, R. Budzinowski (eds.), *Food security, food safety, food quality, forum Umwelt-Agrar- und Klimaschutzrecht*, Baden-Baden 2016, p. 45.

²⁵ A. Germanò, M.P. Ragionieri, E. Rook Basile, *Diritto agroalimentare...*, p. 252.

of farms is the production of goods intended for the market.²⁶ Nonetheless, there is undoubtedly a strong interconnection between agricultural law and the law governing the production and distribution of food.²⁷ The majority of agricultural products listed in Annex I to the TFEU are intended for human consumption.²⁸

The EU legislator's approach to the "severing of the link"²⁹ between the concepts of food and agriculture has undergone a subtle shift. This change may be observed in the transition from the narrower concept of the "food production chain" in Regulation (EC) No 178/2002³⁰ to the broader notion of the "agri-food chain" introduced in Regulation (EU) No 2017/625.³¹ The latter encompasses concern for all aspects related to the life cycle of products of plant or animal origin, as well as the subsequent stages of their use, even if not directly related to the production and distribution of food.³² This reflects a growing recognition of the need to take a holistic view of the food production process, and in particular, to acknowledge the intrinsic link between food, agriculture, and the farmer.

Diversity in terminology (agricultural product, food) is also evident in national legislations as a result of the need to align national law with EU law, and additionally due to the autonomous definitions of agricultural activity adopted by individual Member States. In Italian law, the outcome of agricultural activity may be a processed product, provided that the processing involves raw materials that originate predominantly from the farmer's own production activities, such as cultivation, animal husbandry, or fishing.

The concept of agricultural activity in Italian law (Article 2135 of the Italian Civil Code) is linked to the care for and management of the agri-biological cycle, which involves the use of natural resources and forces.³³ Maintaining

²⁶ Ibidem. For more on food law as a separate branch of law: M. Korzycka, P. Wojciechowski, *System prawa żywnościowego*, pp. 29–36; M. Korzycka-Iwanow, *Prawo żywnościowe. Zarys prawa polskiego i wspólnotowego*, Warszawa 2007, pp. 78–84.

²⁷ R. Budzinowski, *Problemy ogólne prawa rolnego...*, pp. 220–221.

²⁸ A. Germanò, M.P. Ragionieri, E. Rook Basile, *Diritto agroalimentare...*, p. 251.

²⁹ K. Leśkiewicz, *Wokół prawnego pojęcia...*, p. 190.

³⁰ Cf. § 12 of Regulation (EC) No 178/2002.

³¹ It appears, for example, in recitals 3, 97, 98 of the preamble to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law and rules on animal health and welfare, plant health and plant protection products (OJ L 95, 7.04.2017).

³² F. Albisinni, *Impresa agricola e scienze della vita nel diritto europeo dell'agricoltura*, "Przegląd Prawa Rolnego" 2021, no. 2, p. 84.

³³ For more on the definition: K. Paquel, *Produkcja energii z biomasy rolniczej a pojęcie działalności rolniczej w prawie włoskim i francuskim*, "Przegląd Prawa Rolnego" 2013, no. 2,

a connection between the final food product and the agri-biological cycle allows such a product to be theoretically classified as “agri-food” rather than as the result of an industrial activity. For this reason, Italian legal scholars use the term an “agri-food product,”³⁴ which appears to be appropriate for defining the object of supply within the framework of short supply chains and local food systems.

According to L. Costato, the term “agri-food” should be used for food that retains the characteristics and qualities of an agricultural product, or that has been processed directly by the farmer. In contrast, more complex processing that departs from agricultural tradition leads to the creation of products that should be referred to simply as “food products.”³⁵ The term “agri-food product” is not, however, used in the Italian regulation on direct sales, which employs the terms an “agricultural product,” and a “food product,” or “derived products” (“prodotti derivati” – Article 4(5) of Legislative Decree No 228/2001).

The aforementioned Act No 61/2022 also refers to EU legal terminology: “agricultural product” and “foodstuff.” However, the legal concept of “local agri-food production” appears in Law No 30/2022 on the promotion of small-scale local agri-food production,³⁶ while the term “agri-food product” occurs in legislative acts only when combined with the adjective “traditional” (e.g., in the law on agritourism³⁷). In turn, French law uses the term “agri-food product” (*produit agroalimentaire*) in Article L230-4 of the French Rural Code,³⁸ in the context of “promoting sustainable methods of production, processing and distribution of agricultural and agri-food products,” albeit without further clarification.

p. 35; A. Szymecka, *Przedsiębiorstwo rolne we włoskim systemie prawnym (I)*, “Przegląd Prawa Rolnego” 2007, no. 2, p. 189; R. Budzinowski, *Nowa definicja przedsiębiorcy rolnego we włoskim kodeksie cywilnym*, “Studia Iuridica Agraria” vol. 3, p. 91 ff.

³⁴ L. Costato, *Agricoltura e alimenti*, in: P. Borghi, I. Canfora, A. Di Lauro, L. Russo (eds.), *Trattato di diritto alimentare italiano e dell’Unione Europea*, Milano 2021, p. 10. See also, for example, the title of the chapter: I. Canfora, *La vendita dei prodotti agroalimentari*, *ibidem*, p. 125.

³⁵ L. Costato, *Agricoltura e alimenti*, p. 1.

³⁶ Legge 1 aprile 2022, n. 30 norme per la valorizzazione delle piccole produzioni agro-alimentari di origine locale (Gazzetta Ufficiale, Serie Generale n. 94 of 22.04.2022).

³⁷ Article 2(3)(b) legge 20 febbraio 2006, n. 96 Disciplina dell’agriturismo (Gazzetta Ufficiale n. 63, 16.03.2006 tags).

³⁸ Code rural et de la pêche maritime, version consolidée au 14 avril 2020, art. L. 311-1, as amended by Loi no. 2019-469 du 20 mai 2019, Article 4(V) (Journal Officiel de la République Française no. 0117 of 21.05.2019).

The Polish legislator introduced the term “agri-food products” (*artykuły rolno-spożywcze*) in the Act establishing commercial quality requirements, defining them as “agricultural products, forest undergrowth, game, marine and freshwater organisms in the form of raw materials, semi-finished products, and finished products obtained from these raw materials and semi-finished products, including foodstuffs.”³⁹ This term appears to be appropriate for identifying products subject to supply within the framework of short supply chains and local food systems. However, certain doubts may arise regarding the inclusion of forest undergrowth and game as part of SFSCs and LFSs, since gathering and hunting are not considered agricultural activities under national definitions (both Polish and Italian).⁴⁰ Nonetheless, these products are covered by both EU and national regulations concerning direct supply.⁴¹

2. The concept of local food and food from short supply chains in view of its characteristics and origin

Another characteristic feature of food supplied through short supply chains and local food systems is the method of its production (processing and treatment), which typically involves artisanal techniques available on a farm or in household settings, without the use of industrial technologies. As a result, the final product tends to be perceived as more “natural.” This *naturalness* translates into a higher quality or value that consumers perceive, both in terms of sensory attributes quality and presumed health benefits.⁴²

³⁹ Article 3(1) of the Act of 21 December 2000 on the commercial quality of agricultural and food products (i.e. Journal of Laws of 2023, item 1980).

⁴⁰ A. Szymecka, *Przedsiębiorstwo rolne...*, p. 192.

⁴¹ Article 1(2)(c) of Regulation (EC) No 852/2004 includes a general category of raw materials in the scope of direct supplies. They are defined in more detail in the Polish regulation on direct supplies of foodstuffs, which also includes “raw materials from the personal harvest of undergrowth herbs” (§ 2 section 1 of the Regulation of the Minister of Health of 6 June 2007 on direct supplies of foodstuffs includes the concept of direct supplies). Venison may also be the subject of direct sale under Polish regulations, if it has been obtained by a hunting association of the Polish Hunting Association which is the lessee of the hunting district or a game breeding centre run by the manager of the hunting district (see § 3 point 3 of the Regulation of the Minister of Agriculture and Rural Development of 30 September 2015 on veterinary requirements for the production of products of animal origin intended for direct sale, Journal of Laws of 2015, item 1703). Italian law also regulates direct supplies of small quantities of game (see Article 1(3) of legge 30/2022).

⁴² K. Leśkiewicz, *Wokół prawnego pojęcia...*, p. 179.

Consumers specifically expect such qualities from food purchased through the SFSCs and the LFSs.⁴³

However, the *naturalness* of food is not guaranteed by EU law. The legal definition of “foodstuff” in Regulation (EC) No 178/2002 is functionally neutral – it does not consider the food’s nutritional, health-related, or life-sustaining properties.⁴⁴ The decisive legal criterion for whether a given substance or product may be intended for human consumption is *safety*.⁴⁵ However, safety of a product does not mean that it is “healthy,” “natural,” or of “high quality.”⁴⁶

The only categories of food products that have been explicitly distinguished by the EU legislator based on their methods of production are organic products and those covered by the EU quality schemes: PDO, PGI and TSG (Traditional Speciality Guaranteed). Inclusion in any of these categories is conditional upon meeting a set of numerous and precisely defined legal requirements set out in separate EU legislative acts. This is particularly evident in the case of the organic farming system governed by Regulation (EU) 2018/848⁴⁷ which establishes strict standards concerning production methods, processing, labelling, and certification. These legal frameworks aim to ensure that the distinctive characteristics of such products – linked to their origin, traditional production methods, or environmentally friendly practices – are legally protected and verifiable.

Meanwhile, many products offered within short supply chains and local food, which are often produced using artisanal methods and exclusively natural ingredients, without chemical additives or preservatives, do not qualify for any of the specific normative categories established under EU law. These products are frequently considered to be of higher *quality*, as they are associated with characteristics such as freshness, seasonality, a reduced carbon

⁴³ M.-L. Augère-Granier, *Short food supply chains and local food systems in the EU*, European Parliamentary Research Service, 2016; G. Edwards-Jones, *Does eating local food reduce the environmental impact of food production and enhance consumer health?* “Proceedings of the Nutrition Society” 2010, no. 69(4), pp. 582–591.

⁴⁴ K. Leśkiewicz, *Wokół prawnego pojęcia...*, pp. 182–183.

⁴⁵ *Ibidem*, p. 185.

⁴⁶ Regulation (EC) No 178/2002 does not define a safe product, but states that no dangerous foodstuff may be placed on the market. “A foodstuff is considered dangerous if it is considered that: (a) it is harmful to health, (b) it is unfit for human consumption” (Article 14(2) of the Regulation).

⁴⁷ Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (EU L 150, as amended).

footprint, and a connection to a specific *terroir*. However, under current EU law, they are merely classified as “foodstuffs” within the meaning of Article 2 of Regulation (EC) No 178/2002, without any further legal distinction based on their technological, environmental, or ethical attributes.

While the EU legal system permits the communication of certain product characteristics to consumers through nutrition and health claims, as regulated by Regulation (EC) No 1924/2006,⁴⁸ the scope of these tools is limited.⁴⁹ A food business operator may use only those claims that have been previously approved and are included in the list of permitted nutrition claims (e.g., “natural,” “no added sugars,” or a “source of fibre”).⁵⁰ However, the use of such claims is subject to strict conditions regarding their content, presentation, and scientific substantiation. Importantly, these claims refer exclusively to individual properties of the product itself, rather than to its integration within a local system of production and distribution. Therefore, they are insufficient to capture the broader category of food offered within the SFSC and LFS systems.

The Polish legal system also allows to label food as free from genetically modified organisms (GMOs).⁵¹ Such labelling may serve as an additional source of information for consumers and indirectly support choices aligned

⁴⁸ Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ L 404, 30.12.2006 as amended).

⁴⁹ For more information on nutrition and health claims: K. Leśkiewicz, *Prawo żywnościowe*, pp. 122–129; A. Szymecka-Wesołowska (ed.), *Oświadczenia żywieniowe i zdrowotne w oznakowaniu, prezentacji i reklamie żywności. Komentarz*, Warszawa 2015. On the issue of communicating the absence of a specific substance in a product on the label: P. Wojciechowski, *Conditions of providing information on the absence of specific substances in food where there is no detailed regulation – are consumers properly protected?* in: R. Budzinowski (ed.), *XV World Congress of Agricultural Law: Contemporary challenges of Agricultural Law: among Globalisation, Regionalisation and Locality*, Poznań 2018, pp. 481–487; K. Leśkiewicz, *Legal aspects of labelling gluten-free products*, “Przegląd Prawa Rolnego” 2016, no. 1, pp. 23–32.

⁵⁰ In accordance with Article 8 of Regulation (EC) No 1924/2006, nutrition claims are only permitted if they are listed in the Annex and comply with the requirements laid down in that Regulation. In turn, the list of permitted health claims is set out in Regulation (EU) No 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of the risk of disease and the development and health of children (OJ L 136/1, 25.05.2012). The use of health claims on foods should comply with the conditions laid down in that Annex and with the requirements laid down in Regulation (EC) No 1924/2006.

⁵¹ Act of 13 June 2019 on the labelling of products produced without the use of genetically modified organisms as free of these organisms (Journal of Laws of 2021, item 763).

with preferences for local or traditional food. However, it does not establish a separate normative category.

The terms “local” and “directly from the farmer” describe food supplied through short food supply chains and local food systems. These characteristics are not reflected in the existing normative categories of either EU or Polish law. There is no legal definition of “local food,” and categories referring to the place of production or the form of distribution are absent from the official food labelling system. Without clear and uniform regulations consumers may be misled or unjustified marketing practices may arise, including the misuse of terms and thus suggesting proximity, authenticity, or direct producer-consumer relationships where there is no verifiable basis for them.

Products bearing the PDO or PGI labels cannot always be equated with *local products* in the strict sense.⁵² While these designations indicate the geographical origin of a product, they do not restrict its distribution to local markets; therefore, such products are not necessarily “local.” On the contrary, many protected products may be subject to mass distribution through long supply chains,⁵³ thereby losing their direct connection with the local community or the producer–consumer relationship, which lies at the heart of the SFSCs and LFSs.

3. Optional quality term: “mountain product”

Optional quality terms are regulated in Chapter III (Articles 78–83) of Regulation (EU) 2024/1143 on geographical indications.⁵⁴ The purpose of establishing this system is to facilitate producers to communicate, within the internal market, the characteristics and specific qualities of their agricultural products to consumers within the internal market. These products offer added value compared to similar products that are not covered by any formal quality certification scheme.

⁵² For more information: K. Leśkiewicz, *Systemy jakości produktów rolnych i środków spożywczych w świetle nowej regulacji prawnej*, “Przegląd Prawa Rolnego” 2013, no. 1, pp. 119–133.

⁵³ L.Y. Kebir, A. Torre, *Geographical proximity and new short supply food chains*, in: L. Lazzeretti (ed.), *Creative industries and innovation in Europe, concepts, measures, and comparative case studies*, New York 2016.

⁵⁴ Regulation (EU) 2024/1143 of the European Parliament and of the Council of 11 April 2024 on geographical indications for wine, spirit drinks and agricultural products, and traditional specialties guaranteed and quality terms optionally used for agricultural products (OJ L 2024/1143, 23.04.2024)

Currently, the only optional quality term at the EU level is the “mountain product.” as set out in Article 82 of Regulation (EU) No 2024/1143.⁵⁵ The designation “mountain product” cannot be applied to all agricultural products and foodstuffs; it is limited to agricultural products intended for human consumption that are listed in Annex I to the Treaty on the Functioning of the European Union (TFEU). Therefore, its scope of application is narrower than that of other EU quality schemes such as PDO, PGI, or TSG.

To lawfully use the designation “mountain product” both, the raw material and the animal feed must primarily originate from mountain areas and, as is in the case of processed products, the processing itself must also take place in these areas (Article 81 of Regulation 2024/1143).⁵⁶ The requirements do not include an obligation to prepare a product specification or to verify its physical, chemical, microbiological, or organoleptic properties. The sole basis for qualification is the origin of the raw materials from mountain areas, which in itself is recognised as added value.⁵⁷

However, the concept of a “mountain” area cannot refer to any specific mountain range located in a particular Member State.⁵⁸ Accordingly, the designation of a “mountain product” does not correspond to any specific geographical region in a cultural or administrative sense, and it does not take into account the significant morphological, climatic, or social differences that exist between various mountain areas across Europe.

This designation may be placed on product labels and is subject to a system of self-monitoring. In such cases, the producer must comply with the food labelling requirements set out in Regulation (EU) No 1169/2011, rather than by the technical requirements of a quality certification system, which relies on external control carried out by authorised certification bodies.⁵⁹

⁵⁵ Regulation (EU) 2024/1143 of the European Parliament and of the Council of 11 April 2024 on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialties guaranteed and optional quality terms for agricultural products, amending Regulations (EU) No 1308/2013, (EU) 2019/787 and (EU) 2019/1753 and repealing Regulation (EU) No 1151/2012 (OJ L 2024/1143, 23.04.2024).

⁵⁶ For the purposes of this regulation, mountain areas in the Union are areas designated in accordance with Article 32(2) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council.

⁵⁷ C. Agostini, *Prodotti della montagna e prodotti delle isole*, in: P. Borghi, I. Canfora, A. Di Lauro, L. Russo (eds.), *Trattato di diritto alimentare...*, p. 485.

⁵⁸ L. Costato, L. Russo (eds.), *Corso di diritto agrario italiano e dell'Unione Europea*, Milano 2015, p. 237.

⁵⁹ Relevant in this context is Article 8 of Regulation No 1169/2011, which imposes responsibility for food information on the food operator under whose name or business name

Although the “mountain product” has been recognised by the EU legislator as an optional quality designation referring to production closely linked to a specific type of area, its function is not to identify the local origin of the product or to indicate that the product comes directly from the producer. Unlike it is in the case of PDO and PGI, this designation does not refer to a specific geographical area but merely to a category of territory with certain environmental characteristics. As such, the designation is primarily functional rather than identity-based. Therefore, it cannot be equated with the concept of “local food” or with systems typical of short supply chains. Products labelled as “mountain products” may be marketed through long supply chains, involving intermediaries and reaching areas beyond the local region, which weakens their connection to the concept of local food and direct sales.

It is worth noting, however, that products sold within short food supply chains and local food systems, if they meet the criteria for being classified as “mountain products,” may benefit from using this form of designation. This system protects the interests of producers operating under more challenging geographical conditions, as compared to entities seeking to gain unjustified or unfair advantages by falsely indicating a mountain origin when labelling their products.⁶⁰

From a systemic perspective, the optional designation of a “mountain product” demonstrates that the EU legislator recognises the need to take into account certain specific production conditions as a criterion for differentiating agricultural products. This may serve as a starting point for proposing the introduction of additional quality terms, such as a “local product” or a “product from a short supply chain” which would better reflect current consumer expectations and support the goals of a sustainable transformation of food systems.

Conclusions

The analysis leads to the conclusion that current European Union law lacks a clear and coherent recognition of local food and food from short food supply chains as distinct legal categories that reflect their specific characteristics of production methods and distribution models. In practice, any product

a given food is placed on the market, and Article 7 of that Regulation, according to which food information must not be misleading, in particular as to the place of origin of the product.

⁶⁰ Recital 44 of the preamble to Regulation (EU) No 1151/2012; M. Korzycka, *Żywność regionalna i tradycyjna*, in: M. Korzycka, P. Wojciechowski, *System prawa...*, p. 386.

sold near the place of its production may be labelled as “local,” regardless of whether it was produced by a farmer or a large industrial manufacturer, and irrespective of the production methods used or the level of processing.

The absence of a suitable conceptual category for food sold in SFSCs and LFSs is not only due to the lack of legally defined features such as “local” or “directly from the farmer.” General legal categories such as a “foodstuff” or an “agricultural product” also fail to capture the specific characteristics of such products. The concept of “foodstuff” is, in some cases, too broad, while that of “agricultural product” is too narrow. Food of this kind is inherently linked to agriculture, as it is the result of a farmer’s activity – not only in terms of crop or livestock production, but also of associated activities such as food processing.

The term that seems most appropriate is an “agri-food product” – a category not recognised under EU law, although it does appear in Polish law. It should be noted, however, that this definition serves other purposes (specifically, in the context of commercial quality requirements) and does not directly address the regulatory needs of SFSCs or LFSs. Nevertheless, it reflects a conceptual bridge between agricultural law and food law. Thus, just as organic farming combines environmental and food-related considerations,⁶¹ SFSCs and LFSs integrate both agricultural and food dimensions, along with their respective legal frameworks.

Neither are quality labels such as PDO, PGI, “mountain product,” or “organic product” entirely appropriate for food produced and marketed within SFSCs and LFSs. They do not guarantee that the product comes directly from the farmer or from a geographically close area. While these labels may help to differentiate products on the market, they do not necessarily reflect the socio-economic character of SFSCs and LFSs, which is based on geographical proximity, relational exchange, and the shortening of the distance between the producer and the consumer.

The “mountain product” system, while offering a tool for distinguishing products from areas with difficult production conditions, does not refer to a specific geographic region, but rather to a type of territory (mountainous), and it is not tied to local sales. Its function is therefore functional, not identity-based, which makes it unsuitable as a regulatory tool for food from SFSCs and LFSs.

The absence of a legal definition of local food or food from short supply chains, as well as the lack of a dedicated labelling system means that consum-

⁶¹ R. Budzinowski, *Problemy ogólne prawa rolnego...*, p. 219.

ers are unable to easily recognise such products on the market. Furthermore, since EU law (under Article 26 of Regulation (EU) No 1169/2011) generally does not require the indication of the place of origin, meaning that consumers lack the necessary information to make informed choices. This regulatory gap also places small producers at a disadvantage, as they lack formal tools to differentiate their products from those of industrial producers. The absence of an appropriate labelling system weakens the potential of SFSCs and LFSSs to act as instruments of food system transformation toward greater sustainability, resilience, and fairness.

It is therefore necessary to propose the introduction of new legal categories in EU law: “local product” and “product directly from the farmer” (or “from short supply chains”), which would cover agri-food products with clearly defined origin, produced by small-scale operators with the use of artisanal methods, within limited geographic areas and through simplified distribution channels. This concept should be linked to a voluntary labelling system designed to help consumers to identify such foods on the market, supporting the stakeholders involved in SFSCs and LFSSs. This label, similar to the “mountain product” designation, would be subject to a self-monitoring system in which the producer is responsible for ensuring that the information provided is accurate and not misleading - particularly with respect to the origin, characteristics, and production methods, in line with Article 7 of Regulation (EU) No 1169/2011. While the proposed voluntary labelling system based on producer self-monitoring offers a pragmatic and low-cost approach, a hybrid model would also be worth considering. For instance, a two-tiered system combining self-declaration with optional third-party verification or audits could enhance trust and prevent opportunistic behaviour.

The introduction of a coherent regulatory solution, which will include the definition of local food and a relevant labelling system for such food as well as producer information responsibility, may meaningfully contribute to the strengthening of local agricultural economies, promoting conscious consumption, and building sustainable food systems. Such a framework would ensure that products genuinely meet consumer expectations regarding local food, while also enhancing access to transparent information about the environmental and ethical implications of food choices, taking into account both production methods and distribution channels.

BIBLIOGRAPHY

- Agostini C. (2021), *Prodotti della montagna e prodotti delle isole*, in: P. Borghi, I. Canfora, A. Di Lauro, L. Russo (eds.), *Trattato di diritto alimentare italiano e dell'Unione Europea*, Milano.
- Albisinni F. (2021), *Impresa agricola e scienze della vita nel diritto europeo dell'agricoltura*, "Przegląd Prawa Rolnego" no. 2.
- Augère-Granier M.-L. (2016), *Short food supply chains and local food systems in the EU*, European Parliamentary Research Service.
- Budzinowski R. (2002), *Nowa definicja przedsiębiorcy rolnego we włoskim kodeksie cywilnym*, „Studia Iuridica Agraria” vol. 3.
- Budzinowski R. (2016), *Food-related challenges of the Common Agricultural Policy*, in: I. Härtel, R. Budzinowski (eds.), *Food security, food safety, food quality, forum Umwelt-Agrar- und Klimaschutzrecht*, Baden-Baden.
- Budzinowski R. (2018), *Problemy ogólne prawa rolnego. Przemiany podstaw legislacyjnych i koncepcji doktrynalnych*, Poznań.
- Canfora I. (2021), *La vendita dei prodotti agroalimentari*, in: P. Borghi, I. Canfora, A. Di Lauro, L. Russo (eds.), *Trattato di diritto alimentare italiano e dell'Unione Europea*, Milano.
- Costato L., Russo L. (eds.) (2015), *Corso di diritto agrario italiano e dell'Unione Europea*, Milano.
- Edwards-Jones G. (2010), *Does eating local food reduce the environmental impact of food production and enhance consumer health?* “Proceedings of the Nutrition Society” no. 69(4).
- Germanò A., Ragionieri M.P., Rook Basile E. (2019), *Diritto agroalimentare. Le regole del mercato degli alimenti e dell'informazione alimentare*, Torino.
- Jannarelli A. (2011), *Profil giuridici del sistema agro-alimentare tra ascesa e crisi della globalizzazione*, Bari.
- Jurcewicz A. (2002), *Związki prawa żywnościowego z prawem rolnym – wybrane problemy*, „Studia Iuridica Agraria” vol. 3.
- Kapała A. (2023), *Krótkie łańcuchy dostaw i lokalne systemy żywnościowe – studium prawnoporównawcze*, Lublin.
- Kapała A. (2024), *Identifying local food in the context of European system of geographical indications and consumer's right to information*, “Revista Catalana de Dret Ambiental” no. 15(1).
- Kebir L.Y., Torre A. (2016), *Geographical proximity and new short supply food chains*, in: L. Lazzeretti (ed.), *Creative industries and innovation in Europe, concepts, measures, and comparative case studies*, New York.
- Korzycka M. (2017), *Definicje żywności w prawie*, in: M. Korzycka, P. Wojciechowski, *System prawa żywnościowego*, Warszawa.
- Korzycka M. (2017), *Wybrane obszary szczegółowej regulacji prawa żywnościowego*, in: M. Korzycka, P. Wojciechowski, *System prawa żywnościowego*, Warszawa.
- Korzycka M. (2017), *Żywność regionalna i tradycyjna*, in: M. Korzycka, P. Wojciechowski, *System prawa żywnościowego*, Warszawa.
- Korzycka-Iwanow M. (2007), *Prawo żywnościowe. Zarys prawa polskiego i wspólnotowego*, Warszawa.

- Leśkiewicz K. (2012) *Bezpieczeństwo żywnościowe i bezpieczeństwo żywności – aspekty prawne*, “Przegląd Prawa Rolnego” no. 1.
- Leśkiewicz K. (2013), *Systemy jakości produktów rolnych i środków spożywczych w świetle nowej regulacji prawnej*, “Przegląd Prawa Rolnego” no. 1.
- Leśkiewicz K. (2015), *Wokół prawnego pojęcia żywności*, “Przegląd Prawa Rolnego” no. 1.
- Leśkiewicz K. (2016), *Legal aspects of labelling of gluten-free products*, “Przegląd Prawa Rolnego” no. 1.
- Leśkiewicz K. (2020), *Prawo żywnościowe*, Warszawa.
- Paquel K. (2013), *Produkcja energii z biomasy rolniczej a pojęcie działalności rolniczej w prawie włoskim i francuskim*, “Przegląd Prawa Rolnego” no. 2.
- Sokołowski Ł.M. (2017), *Wytwarzanie nowej żywności a pojęcie działalności rolniczej*, “Przegląd Prawa Rolnego” no. 2.
- Szymecka A. (2007), *Przedsiębiorstwo rolne we włoskim systemie prawnym (I)*, “Przegląd Prawa Rolnego” no. 2.
- Szymecka-Wesołowska A. (ed.) (2015), *Oświadczenia żywieniowe i zdrowotne w oznakowaniu, prezentacji i reklamie żywności. Komentarz*, Warszawa.
- Wojciechowski P. (2008), *Wspólnotowy model urzędowej kontroli żywności*, Warszawa.
- Wojciechowski P. (2018), *Conditions of providing information on the absence of specific substances in food where there is no detailed regulation – are consumers properly protected?* in: R. Budzinowski (ed.), *XV World Congress of Agricultural Law: Contemporary challenges of Agricultural Law: among Globalisation, Regionalisation and Locality*, Poznań.