ANALYSIS DEDICATED TO THE LEGISLATIVE PROPOSALS OF THE EUROPEAN COMMISSION ANNOUNCING THE FUTURE REFORM OF THE EU BUDGET, INCLUDING THE COMMON AGRICULTURAL POLICY (CAP) – FROM THE PERSPECTIVE OF THE FUTURE FUNCTIONING OF LOCAL ACTION GROUPS (LAGs)

I. Introduction

1. This analysis was prepared at the request of the Polish Network of Local Action Groups – the Federation of Regional LAGs Networks – and is dedicated to draft documents intended to regulate the functioning of EU funds in the 2028–2034 financial perspective, namely:

   - Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Fund for economic, social and territorial cohesion, agriculture and rural, fisheries and maritime, prosperity and security for the period 2028–2034 and amending Regulation (EU) 2023/955 and Regulation (EU, Euratom) 2024/2509[1];
   - Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the conditions for the implementation of the Union support to the Common Agricultural Policy for the period from 2028 to 2034[2];
   - Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Fund for Regional Development including for European Territorial Cooperation (Interreg) and the Cohesion Fund as part of the Fund set out in Regulation (EU) [...] [NRP] and establishing conditions for the implementation of the Union support to regional development from 2028 to 2034[3].

   The above-mentioned documents have been analysed from the perspective of the proposed changes which will affect the functioning of Local Action Groups[4] currently implementing local development strategies[5] co-financed by EU funds, in particular by means of strategic plans drawn up by the Member States under the Common Agricultural Policy[6].

2. The analysed documents have been published by the European Commission and are currently being reviewed by EU Member States, which will submit comments and proposals for amendments. Given the significance of these documents for Local Action Groups, it is essential that the comments submitted by Member States reflect

[1] Hereinafter: "Regulation establishing the Fund".
[2] Hereinafter: "the CAP Implementation Regulation".
[3] Hereinafter: "Regulation on the ERDF and the Cohesion Fund".
[4] Hereinafter: „LAGs".
[5] Hereinafter: „LDS".
[6] Hereinafter: „CAP".

the perspective of LAGs, and that these Groups, individually or collectively, advocate for the inclusion of modifications that address their needs and experiences.

To make this possible, a thorough understanding of the proposed regulations is necessary—one that goes beyond provisions directly governing the future status of LAGs. Realistically, advocating for changes that contradict the core assumptions and objectives expressed in the draft documents is unlikely to be effective. LAGs do not hold a sufficiently strong position, even within the framework of the CAP, to radically alter the direction of the proposed regulations.

3. The analysed proposals are still at a relatively early stage of development and will undoubtedly be subject to revisions. They contain both editorial and logical errors[7]. Their content will certainly evolve. However, past experience suggests that these changes will not overturn the underlying logic and key principles adopted by the European Commission in preparing the proposals. Well-reasoned amendment proposals, for which LAGs manage to gain support from national administrations and other stakeholders, and which align with the overarching principles expressed in the draft regulations, may be approved by the European Commission and incorporated into the final legal texts.

4. The analysed proposals do not answer the question of how much funding Poland (or any other country) will receive in the new financial perspective, nor how much of the total allocation will be dedicated to the LEADER initiative. The former may be addressed in other EU documents currently under consideration. The latter will be determined during the development and negotiation of the main national programming document—the National and Regional Partnership Plan (discussed further in this analysis). However, emphasizing the role of LEADER and linking this approach to the key objectives outlined in the analysed documents may result in a greater allocation of funds for Local Action Groups.

[7] For example, in Article 4 of the Regulation establishing the Fund, point 1 is missing—numbering begins with point 2—and the definitions of "milestone" and "target" in points 11 and 12 are identical, which makes it impossible to distinguish between the two terms. This constitutes a clear legislative error, as assigning the same definition to two distinct concepts is not permissible.

II. New Multiannual Financial Framework 2028–2034 – the logic of implementing EU funds in the new financial perspective

1. In recent decades, EU funds with nationally allocated envelopes have played a key role in supporting the achievement of the Union's most important objectives and its common policies. EU funds have contributed to economic, territorial and social cohesion, ensured a decent standard of living for the agricultural community, and facilitated access to affordable food. In recent years, they have also been engaged in creating an area of freedom, security and justice.

2. The previous model of financing these aspects of public life and the economy was based on the coexistence of several funds, most of which were allocated in advance to Member States. Each fund was regulated by a separate Union regulation. Within a given fund, every Member State prepared national programming documents (operational programmes/plans) defining how the resources allocated to that Member State would be used. These national programming documents were subsequently subject to approval by the European Commission.

   As a result, within the EU several hundred programmes/plans (the analysed documents refer to approx. 540) simultaneously governed the use of EU funds. Each programme had separate rules, and although certain regulations were common, even within a single Member State it was difficult to establish a uniform approach to analogous issues related to the use and accounting of European resources.

   The commented documents significantly modify this approach.

3. The European Commission has recognised the shortcomings of the current model of regulating support within the EU. Undoubtedly, it was complex, and the dispersion of programmes and interventions increased bureaucracy and facilitated the waste of public resources (different EU-funded programmes supported operations leading to contradictory objectives, as Union bodies noted in other documents). Thus, pursuing a coherent policy focused on concrete results was hindered.

4. The regulations under consideration aim to develop simpler, more unified and, at the same time, more flexible rules for the functioning of EU funds. In its documents, the European Commission emphasises the need to address "*the complexity, weaknesses and rigidity of the current system and to maximise the effects of every euro spent*", while ensuring the budget's capacity to respond to changing realities.

5. To achieve these objectives, **the initiative provides for the grouping of nationally allocated envelopes within a single fund, called the European Fund for Economic, Territorial, Social, Agricultural and Rural Cohesion, Fisheries and Maritime Prosperity and Security**[8] Its functioning is to be governed by a single

[8] Hereinafter: „The Fund".

regulation, which will, *inter alia*, set out the rules concerning tasks, priority objectives, organisation and the grouping of:

- structural funds and the Cohesion Fund;
- instruments of the CAP;
- instruments of the Common Fisheries Policy;
- instruments financed from the auctioning of allowances under emission trading systems established under Directive 2003/87/EC, aimed at addressing the social consequences of the introduction of the emissions trading system for buildings and road transport, with regard to households, micro-enterprises and vulnerable transport users;
- support for security and defence capabilities

– all within a single Fund.

6. The establishment of a single Fund is intended **to move from the current situation, in which nearly 540 programmes operate in parallel across the EU, to a model in which only 27 National and Regional Partnership Plans and a single (EU-wide) Interreg plan will be implemented**, with a broad eligibility scope and a uniform set of rules.

   This means that – as the analysed regulations assume – **each Member State will prepare one National and Regional Partnership Plan**[9] regulating the use of Fund resources. This Plan will describe which instruments and in what manner the given Member State intends to use. It will cover what has so far been regulated in several national programmes. For example, there will no longer be a separate national CAP strategic plan or an operational programme for fisheries and aquaculture. A single document (the Plan) will govern the use of EU funds in a given State.

   According to the European Commission, this will reduce administrative costs at all levels, facilitate access to financing for EU businesses (including SMEs), local authorities and project promoters, while maintaining a focus on reducing regional disparities.

7. This solution means that the comprehensive regulation of the use of EU funds across the Union will be contained in the Regulation establishing the Fund. Although additional regulations will also be adopted, governing the granting of support under specific common policies (such as the other two commented documents – the CAP Implementation Regulation and the Regulation on the ERDF and the Cohesion Fund), their scope and role will be more limited than in the previous financial perspective.

[9] Hereinafter: „The Plan".

For the agricultural sector, this approach entails closer integration of CAP interventions with other EU policies and funds – moving from the current structure of two funds under a common umbrella.

8. This approach is also reflected in the content and hierarchy of legal acts. For example, at first glance, the commented draft CAP Implementation Regulation is considerably shorter than the currently binding regulation governing the use of EU funds under the CAP, namely Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013. The draft Regulation on the ERDF and the Cohesion Fund comprises merely 15 articles.

   This stems from the fact that the regulations dedicated to specific policies are to regulate only the principles of the respective interventions within a given policy, whereas many issues directly affecting the implementation of the CAP are contained in the Regulation establishing the Fund.

9. As regards the hierarchy of acts, Article 1(2), second subparagraph of the Regulation establishing the Fund sets out the following order (confirmed also in Recital 8 of the draft Regulation): in the event of doubts regarding the application of the Regulation establishing the Fund and the sectoral regulations, the provisions of the Regulation establishing the Fund take precedence.

   This is a highly significant provision. In the legal systems of the EU Member States, one of the commonly applied derogation rules – i.e. rules establishing the hierarchy of norms – is the principle *lex specialis derogat legi generali* (a specific provision takes precedence over a general one). In the present case, however, a different solution has been chosen: **precedence is given to the general provisions contained in the Regulation establishing the Fund over the specific provisions to be included in the sectoral regulations**, including the CAP Implementation Regulation and the Regulation on the ERDF and the Cohesion Fund.

   This provision determines not only how to resolve potential conflicts between the two regulations**. It should also be interpreted as guidance that sectoral regulations should not contain rules contrary to the Regulation establishing the Fund, and in particular should contain as few exceptions as possible from the principles expressed in that Regulation**.

10. From the perspective of potential demands by LAGs, this means that any comments submitted to the draft regulations cannot be limited solely to the CAP Implementation Regulation, even if LAGs have so far based their operations exclusively or mainly on measures supporting rural development and agriculture.

On the contrary – LAGs should focus their lobbying efforts on the appropriate wording of the Regulation establishing the Fund, since – as will be indicated later in this analysis – the current wording of this Regulation may make it impossible to implement local development strategies if they were to be financed solely under the CAP.

11. The new programming period begins on **1 January 2028**. It is expected that the **Member States will submit their Plans to the Commission for approval by the end of January 2028.** Naturally, this will only be possible once the legislative work on the draft regulations under review has been concluded.

12. As follows from the above analysis, the scope of matters covered by the Fund and the Plan will be very broad, which will have its implications both in terms of the further drafting of the provisions of the Regulation establishing the Fund, and subsequently in the design of the Plan. These documents will attract interest not only from entities in a single sector, but essentially from all groups of beneficiaries across the Union and from all previously existing funds. For Local Action Groups, this means, in my view, a much more difficult struggle to defend their interests, given the multitude of entities potentially submitting their comments. Consequently, it may prove crucial for LAGs to seek allies (both at national and EU level), i.e. entities from other sectors of the economy that will be interested in similar wording of the provisions or in emphasising those aspects of the draft regulations that are beneficial for them.

13. The Regulation establishing the Fund, in Article 2(1), sets out specific objectives to be pursued by the Fund. Some of them correspond to objectives which LEADER has pursued – directly or indirectly – to date. Such specific objectives include:

    1) supporting the attractiveness of territories in order to ensure the right to remain, including:

        - supporting integrated urban and rural development strategies, including support for territorial services and infrastructure,
        - support for tourism, including its sustainable development;

    2) strengthening social cohesion by supporting people and reinforcing Union societies and the Union's social model through:

        - supporting employment, equal access to the labour market, fair and high-quality working conditions, and labour mobility,
        - increasing labour supply and improving education and lifelong learning, in particular by promoting upskilling and reskilling,
        - promoting equal opportunities for all (...), strengthening social inclusion (...), as well as supporting investments in social infrastructure,

- facilitating access to services and related infrastructure, including their modernisation, digitalisation, childcare and long-term care,
- addressing the challenges of demographic change in the EU, including labour shortages and intergenerational and regional disparities;

3) maintaining quality of life in the Union by:

- supporting fair and adequate income for farmers and their long-term competitiveness, including farmers' position in the value chain,
- improving the attractiveness and living standards in rural areas, including access to healthcare, fair working conditions and supporting generational renewal,
- enhancing farmers' preparedness to cope with crises and risks,
- increasing access to knowledge and innovation and accelerating digital and green transitions for the development of the agri-food sector.

From the LAG's perspective, it therefore seems appropriate, on the one hand, to advocate for strengthening the role and allocation of resources linked to the above specific objectives and to seek entities that will also support such changes, and on the other hand – to ensure that the LEADER instrument is taken into account in those measures that contribute to the achievement of these objectives.

14. In practice, the new approach also means that for LAGs the most important issues will be decided already at a relatively early stage of negotiations between the Member State and the European Commission. Indeed, it is already within the drafting of the Regulation establishing the Fund that the rules determining the possibility and the manner of further functioning of LAGs across the EU will be set out, and at the stage of the Commission's approval of a Member State's Plan, it will be decided to what extent LAGs will operate in that State.

    There will be no possibility of amending these rules at a later stage of negotiations, as no separate Plans (e.g. for the CAP) will be negotiated.

15. Therefore, it is crucial that LAGs engage from the outset in the work on the drafting and implementation of the Plan, using the mechanisms foreseen in the Regulation establishing the Fund.

    Thus, Article 6(1) of the Regulation provides that each Member State shall organise and implement a comprehensive partnership in accordance with its institutional and legal framework and taking into account the specificities of the chapters concerned.

    The Member State should involve such a partnership in the preparation of the Plan. It is therefore advisable that Local Action Groups ensure their representation within this partnership.

At a later stage, it is equally important to secure adequate LAG representation within the **Monitoring Committee**, particularly since this Committee should also include those partners who participated in the drafting of the Plan[10]. **Among the competences of this Committee will be, *inter alia*, the approval of proposals for amendments to the Plan and the approval of territorial development strategies referred to in Article 75 of the Regulation establishing the Fund[11]**. A strong LAGs' presence within this Committee may hinder, at the implementation stage of the Plan, the introduction of amendments to this document that would be detrimental to LAGs.

16. The Regulation establishing the Fund emphasises a focus on faster and more effective spending of resources, by linking the disbursement of funds to Member States to progress in the implementation of actions, rather than to the reimbursement of eligible costs.

    It also establishes protective mechanisms intended to safeguard the rule of law and to ensure effective application of the EU Charter of Fundamental Rights throughout the implementation process[12]. This will make it easier to block payments to a Member State if, in the European Commission's assessment, European standards of the rule of law are being violated there (as in the recent cases of Poland or Hungary, where the Commission made such attempts). This potentially means greater leverage for the European Commission over a Member State to align with its guidance, including the suspension of funding for the implementation of local development strategies, even if the breaches of the rule of law concern areas unrelated to LAGs.

17. The Regulation establishing the Fund also provides for the gradual allocation of resources to Member States throughout the programming period, easier revision of plans and the establishment of an EU-level reserve (the "EU Facility"), creating additional flexibility to adapt to new priorities and crises.

    Linking the disbursement of funds by the Commission to Member States with agreed and pre-defined milestones, objectives and results covering the entire implementation period of the supported actions is intended to contribute to regular payments to Member States. To facilitate this process, Member States will be able to submit payment applications up to six times per year[13].

    In order to simplify financing and reduce administrative burdens for beneficiaries, Member States are also encouraged to apply the same form of cost reimbursement as applies to payments from the Commission to the Member State, or to use standard unit costs, lump sums, or flat-rate financing.

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[10] Article 55(1), first subparagraph of the Regulation establishing the Fund.

[11] Article 56(2)(a) and (e) of the Regulation establishing the Fund. In my opinion, the latter competence of the Monitoring Committee requires further clarification, as the procedure for selecting local development strategies (LDS) has not been clearly defined in this Regulation.

[12] Recital 27 of the Regulation establishing the Fund.

[13] Recital 25 of the Regulation establishing the Fund.

Additionally, the Regulation establishing the Fund provides that each Member State should conduct a **mid-term review** of its National and Regional Partnership Plan (Recital 38). This review should contain a comprehensive proposal to amend the Plan, based on progress in implementation, the main findings of relevant evaluations, and a review of estimated total costs of the actions covered by the Plan. It should also provide an opportunity to take into account new challenges or possible crises.

18. All this means that, although the rules on the use of resources will be established in the near future, the amount of funds allocated to a given Member State – as well as what part of that amount will be devoted to a given type of intervention – may be subject to modifications during the programming period.

    In the case of weak performance in implementing the Plan, failure to achieve the agreed indicators, or the emergence of previously unidentified challenges or breaches of the rule of law, it will be possible both to reallocate resources within a given national Plan and to withdraw from a Member State those resources that are unnecessary or misused.

19. In practice, this matters particularly because, in the situation of a single Fund whose resources are to finance such diverse aspects of Member States' functioning as the CAP (including LEADER), social policy, the development of science, or defence industry needs – such potential transfers may have more serious consequences and may occur more frequently than in previous programming periods. The draft provisions make it possible, for instance, for resources initially allocated to LEADER to be reallocated during the implementation of the Plan in order to support – for example – a Member State's energy policy needs or needs arising from a migration crisis. This is, of course, a hypothetical situation, but in the face of the sudden events experienced by the entire Union in recent years, it cannot be ruled out.

    Such flexibility of the Plan, combined with the risk of reallocating funds initially earmarked for LAGs to more pressing needs, argues in favour of advocating that the LEADER instrument should operate under the simplest possible mechanisms for the selection of operations and for financing their implementation, and that the selection of local development strategies in a Member State should be carried out as quickly as possible. Otherwise, due to the low level of fund disbursement and delays in achieving the agreed indicators, LEADER may become a natural source from which resources will be withdrawn to finance other EU policies.

20. In order to ensure continuity of EU fund disbursement, the recitals of the Regulation establishing the Fund emphasise the need, in managing resources, to rely as much as possible on existing structures, with the active involvement of regional and local authorities, social partners, and other relevant stakeholders, who are expected

to play a key role in designing, managing, implementing, and monitoring the actions supported under the Fund[14].

LAGs should emphasise this declaration of the European Commission and present themselves as part of existing structures with longstanding traditions and experience.

[14] Recital 22 of the Regulation establishing the Fund.

III. The CAP in the new documents – key issues for LAGs

1. As indicated in the previous section, the rules for implementing the CAP have been regulated both in the Regulation establishing the Fund and in the CAP Implementation Regulation. This also applies to provisions relevant from the perspective of LAGs.

2. For the continued functioning of LAGs, a key provision may be Article 4 of the Regulation establishing the Fund, which sets out the definition of the most important terms used in this act. **Particularly significant is the definition of "beneficiary"** in Article 4(3)[15].

   According to this definition, a beneficiary means a legal or natural person, as well as an organisational unit without legal personality, which is responsible for initiating, or initiating and implementing, an operation under the Plan. However, point (c) of this provision states that the **beneficiary under the CAP is: "*a farmer*",** defined as:

   *(i) a natural or legal person whose holding is situated in the Union and **whose principal activity is agricultural activity** in accordance with the criteria defined by the Member States in line with this Regulation; or*

   *(ii) inatural person or small legal person, whose **principal activity is not agriculture, but who is engaged in at least a minimum level of agricultural activity,** as defined by Member States.*

   Article 4(22) of the Regulation establishing the Fund additionally provides that Member States may, in their Plans, establish a definition of "*agricultural activity*", which constitutes a component of the above definition of "*farmer*".

   However, as follows from that provision, the definition of "*agricultural activity*" must focus on the production of agricultural products or on maintaining agricultural land, understood as land used for agricultural activity[16].

3. Such a construction of the definition of beneficiary under the CAP has very serious implications for LAGs. It means that, in principle, **only farmers as defined above will be able to be beneficiaries of local strategies if these strategies would be financed from CAP resources only**.

   Although this approach appears consistent with the intention – expressed in the recitals of the Regulation establishing the Fund – of targeting Fund resources more precisely at specific areas requiring support and of avoiding overlaps between

[15] Nota bene, the numbering in this article is incorrect—point 1 is missing.

[16] It is worth noting that the guidelines addressed to Member States in this article, according to which they are expected to define "agricultural activity" and "agricultural area", contain a logical flaw. The definition of the former refers to the latter (agricultural activity is defined as the maintenance of agricultural areas), while the definition of the latter relies on the former (an agricultural area is one where agricultural activity is carried out). This constitutes a classic example of explaining the unknown by means of the unknown (*ignotum per ignotum*).

different interventions, it would nevertheless amount to a revolution in the logic of implementing local development strategies. Assuming that this definition of beneficiary is maintained and that the European Commission confirms the correctness of the above interpretation, **the implementation of local strategies financed solely from CAP resources will be very difficult, if not impossible**.

Currently, the activity of LAGs and the implementation of their strategies have been based on an integrated approach – LAGs, including those using only CAP resources, brought together entities from different sectors of the economy as well as public authorities and NGOs, because the strategy included an "offer" for each of these groups. Beneficiaries of operations could include not only farmers but also entrepreneurs operating in the strategy area, public authorities, or NGOs.

Meanwhile, **under the cited provision, if in a given Member State the Plan approved by the Commission provides for the use of the LEADER approach solely under the CAP, the previous "broad" strategy will, in practice, no longer be possible**. **Entrepreneurs, NGOs or public authorities will not be able to be beneficiaries of such "agricultural" strategies**. Consequently, **it will also be difficult to expect representatives of these entities to engage in LAGs activities**, including in the assessment of operations under the implementation of strategies. This raises the question of how compliance will be ensured with the rule under Article 76(3)(c) of the Regulation establishing the Fund, which requires that no interest group may hold a dominant position in the decision-making process.

4. This approach also appears inconsistent with the assumptions of the CAP Implementation Regulation. In the introductory part of the analysed draft document (*Context of the proposal*), it is stated that the CAP "*contributes to cohesion and the right to stay by fostering a diverse and resilient rural economy in rural areas, supporting for example business opportunities, agro-tourism, infrastructure, and the bioeconomy via its LEADER strategies*". It is difficult to understand what kind of infrastructure is meant here if the scope of support is limited solely to farmers, whose main interest is not to invest in local infrastructure (normally this task belongs to public authorities).

IV. Issues relevant for LAGs in the draft Regulation on the ERDF and the Cohesion Fund

1. The draft Regulation on the ERDF and the Cohesion Fund mentions issues relevant for Local Action Groups only briefly, and in a manner far from satisfactory from their perspective.

2. In the contextual part of the draft (which does not have legislative force) devoted to the background of the legislative proposal, the authors emphasise that the **European Regional Development Fund** (ERDF) and the **Cohesion Fund** will operate in close complementarity with other policies covered by the national and regional partnership plans, thereby supporting synergies between these policies. Interventions under this Regulation are to, inter alia, reduce regional disparities within and between territories, including between urban, rural, coastal and sparsely populated areas.

   This has been reflected, for instance, in Article 4 of the Regulation, which states that, in view of the need to address the challenges faced by disadvantaged regions and areas, including rural areas, Member States and regions should, **where appropriate**, define an integrated approach to addressing demographic challenges or the specific needs of the regions and areas referred to in this paragraph, in their national and regional partnership plans, in accordance with Articles 72–74 [integrated local and urban development][17] of the Regulation establishing the Fund. Such an integrated approach may include a commitment to allocate specific financing for that purpose and may be set out in dedicated chapters of the national and regional partnership plan.

   When analysing this provision, it should be noted that the categorical wording "*should define*" has been softened by the phrase "**where appropriate**", which in practice leaves it to the discretion of the Member State whether, under cohesion and regional development policy, instruments of integrated territorial development, including CLLD, will be applied.

3. Recital 9 of the draft Regulation stresses that **it is considered necessary to support integrated territorial development** in order to more effectively address economic, environmental, climate, demographic and social challenges affecting urban areas, including functional urban areas, while also taking into account the need to support urban-rural linkages. Measures reflecting this approach should be set out in the relevant chapters of national and regional partnership plans. However**, what is highly significant is that the beginning of this recital refers only to "*promoting sustainable urban development*", completely omitting rural development**.

[17] It seems that the reference to Articles 72–74 of the Regulation establishing the Fund is incorrect. It most likely concerns Articles 74–76 of that Regulation.

This recital is linked, *inter alia*, to Article 5 of the Regulation on the ERDF and the Cohesion Fund, which requires Member States to support integrated **urban development strategies**. These strategies should focus on sustainable development and addressing environmental, energy and climate challenges, in particular on the just transition to a clean, climate-neutral and resilient economy by 2050, paying particular attention to housing, poverty, cultural heritage and the use of digital technologies for innovation and energy efficiency, supporting the development of functional urban areas, **as well as urban-rural linkages**.

4. However, no mandatory requirement has been established for the implementation of similar instruments covering rural areas. In this respect, it appears that the decision will be left to the Member States or regions, in line with the wording of Article 4 of the Regulation on the ERDF and the Cohesion Fund.

V. LEADER in the new financial perspective

1. The regulations under review provide for the existence of territorial cooperation instruments in the new programming period, including LEADER. Title XI of the Regulation establishing the Fund describes specific types of support. It also contains provisions concerning both Community-Led Local Development[18] — an instrument which operated under that name in the 2014–2020 period and concerned the functioning of Local Action Groups (LAGs) — as well as LEADER, which in previous programming periods was closely linked to LAGs operating within the CAP.

   Provisions devoted to LEADER are also included in the Regulation on the implementation of the CAP; however, as mentioned earlier, these provisions concern only the CAP and should be interpreted in line with the principles set out in Title XI of the Regulation establishing the Fund.

   References to CLLD and LEADER are moreover scattered across various sections of the regulations under review. But articles 74–77 of the Regulation establishing the Fund and Article 18 of the Regulation on the implementation of the CAP (given the mandatory nature of LEADER within the CAP, as discussed later) are the key provisions for the functioning of LAGs in the next financial period. Since CLLD, under the ERDF and Cohesion Fund Regulation, is in practice an optional instrument, as described in the previous section, broader references to its provisions (which in this respect are rather superficial) have been omitted in the subsequent part of this analysis.

2. The general observation of the author of this analysis is that the provisions concerning CLLD in the previous programming period were drafted in a more logical and transparent way: Article 31 of Regulation 2021/1060 set out the main features of CLLD and the manner of its financing; Article 32 described the requirements for local development strategies (LDS) and their selection process; Article 33 was devoted to LAGs — their tasks and competences; and Article 34 specified what CLLD funds could be allocated to.

   The proposed provisions are not characterised by such logic and clarity, which makes them more difficult to understand. There is no provision specifying the requirements strictly concerning the content of LDS and the procedure for their selection. It is also difficult to determine the precise relationship between CLLD and LEADER (see further in the analysis) and to define the exact role of LAGs in the process of LDS implementation. In the author's view, these issues require clarification at the later stages of the legislative process.

[18] Hereinafter: „CLLD".

Obligatory Nature of CLLD and LEADER and Their Consequences

3. The most important issue for LAGs from the perspective of the draft regulations is whether the future provisions foresee the continued functioning of LAGs, and more precisely – whether the regulations under review provide for the mandatory implementation of CLLD (LEADER) by the Member States.

   In this context, it should be noted that the Regulation establishing the Fund does not contain a provision introducing the obligatory nature of the CLLD instrument. Art. 74(1) uses phrase: „*Member States* ***may establish*** *and provide suport for cooperatioon*.". This wording means that a Member State may, but is not required to, implement EU support through this instrument.

4. However, Recital 14 of the CAP Implementation Regulation draft states that in order to support the social, economic, environmental, and digital transformation of rural areas, Member States "***should ensure that LEADER is supported***. LEADER is also listed in Article 5 of that regulation as one of the intervention mechanisms under the CAP.

   This recital is reflected in Article 18(1) and (2) of the CAP Implementation Regulation, which provides that *Member States* ***shall provide suport for LEADER*** *to prepare and implement LEADER local development strategies*. These provisions also stipulate that Member States shall support the LEADER initiative **at least in rural areas facing specific difficulties**, as defined in their national Plans.

5. In view of the wording used in the CAP Implementation Regulation ("*should ensure*," "*shall provide*") and in the Regulation establishing the Fund, it must be assumed that the drafters foresee t**he obligatory nature of the LEADER instrument within the CAP, whereas in other EU policies the instrument is not mandatory, although it may be introduced** (see Article 4 of the ERDF and Cohesion Fund Regulation referred to above).

6. As regards the mandatory application of LEADER within the CAP, Article 18(2) of the CAP Implementation Regulation provides that **Member States are obliged to support the LEADER approach at least in rural areas facing specific difficulties**, **as defined by Member States in their Plans**. An open question remains how these rural areas with specific difficulties will be defined. *Prima facie*, however, this means that LEADER does not have to be implemented across all rural areas of a country. Article 18(2) even suggests that a Member State should designate such areas with specific difficulties and refrain from implementing LEADER in the remaining ones.

   It also remains an open issue whether such a solution (restricting LEADER support under the CAP only to certain rural areas) is beneficial for LAGs. This will certainly depend both on the budget allocated to the instrument in the Plan and on whether the instrument will also be implemented under other EU policies. In the case of a low

budget allocated to LEADER, a narrow scope of support dedicated solely to farmers (see the considerations on the definition of a CAP beneficiary above), and the absence of this instrument in other policies, insisting on LEADER covering the maximum area of rural regions would mean very limited budgets for implementing LDSs, which in addition could support only a narrow group of beneficiaries. It does not seem to make much sense.

7. Support through LEADER under the CAP should be directed towards start-ups, the development of processing capacities, diversification of agricultural activities including agritourism, direct sales of agricultural products, and innovation — as set out in Article 18(2) of the CAP Implementation Regulation. Other types of operations are not (but seemingly may be) included under the LEADER instrument.

   It is worth noting the absence of operations that could benefit non-agricultural entities — which, however, is consistent both with the above-mentioned definition of a CAP beneficiary (Article 4(3) of the Regulation establishing the Fund) and with the subsequent paragraph of Article 18, which states that LEADER support should focus on those areas of rural development that bring added value to farmers and forest owners, such as the social, environmental, digital, and economic transformation of rural areas, improving the well-being of rural residents, and strengthening social capital.

   The above therefore indicates in my opinion that **although LEADER remains mandatory under the CAP, its scope has been narrowed compared with the current programming period.**

   If a Member State does not provide in its Plan that CLLD will also be applied under cohesion and regional development policy to cover rural areas (see Article 4 of the ERDF and Cohesion Fund Regulation), **it may turn out that not only will the implementation of LDSs be hindered, but the creation of a stable, strong multi-sector partnership will not be possible at all**.

Ring Fencing

8. The second issue of natural interest to LAGs is so-called ring fencing, i.e. the determination of a minimum level of funds that should be allocated under the Plan to the CLLD instrument (LEADER under the CAP).

   With regard to this matter, it should be noted that the **reviewed documents do not contain provisions specifying a minimum level of financial resources that Member States must allocate in their Plans to these instruments**.

   In the current programming period, such a minimum allocation for LEADER in the context of CAP Strategic Plans is set out in Article 92 of Regulation No. 2021/2115. It provides that at least 5% of the EAFRD contribution to the strategic plan shall

be reserved for LEADER. As mentioned, none of the draft regulations under review contains a similar provision. The proposed wording of the provisions therefore means that even if a Member State allocates a certain amount to LEADER in its Plan, it may be less (or more) than the previous 5% of CAP funds. Furthermore, in the course of implementing the Plan, these funds may be reduced (or increased), especially as other provisions of the Regulation establishing the Fund include incentives for active portfolio management within the Plan.

9. **From the LAGs' point of view, it seems reasonable to call for the introduction of a minimum level of funds to be allocated to LEADER under the Plan**. Such a limit could be introduced, for instance, in Article 14 or Article 20 of the CAP Implementation Regulation. However, this demand may prove very difficult to achieve. The financial limits resulting from the provisions referred to above are based on a different logic than ring fencing in previous programming periods (they do not refer to specific instruments, such as CLLD, but rather to particular needs that the Fund is meant to address). Moreover, such a "*rigid earmarking*" of the Fund, in the form of ring fencing for the LEADER instrument, would be contrary to the Commission's general objective of ensuring greater flexibility in the management of Fund resources.

Tasks and Competences of LAGs and the Scope of LDS

10. A separate issue is the implementation of CLLD under the draft regulations, namely what institutional requirements the legislator sets for these instruments, and what the characteristics and role of LAGs are. This is regulated in Articles 74, 76, and 77 of the Regulation establishing the Fund.

    The above provisions are drafted in such a way that it is difficult to precisely understand how the Commission intends to regulate the functioning of LAGs in the next programming period. In the author's view, these provisions require correction or clarification.

11. First and foremost, Article 74(1) of the Regulation establishing the Fund states that Member States may establish support for cooperation in the areas listed therein. In point (b), one of these "*areas*" is indicated as "***CLLD, including LEADER***." Under paragraph 2 of this Article, cooperation referred to in paragraph 1 (including, among others, CLLD and LEADER) should involve at least two actors and should contribute to achieving one of the specific objectives set out in Article 3 of this Regulation.

Article 74(1) of the Regulation establishing the Fund might suggest that LEADER constitutes a type or method of implementing CLLD (as has been the case so far, where the term LEADER was used in the context of CLLD under the CAP[19]).

However, the subsequent Articles may suggest that CLLD and LEADER are in fact separate instruments (i.e. that LEADER is not merely the name under which CLLD operates within the CAP). This is because Article 76 of the Regulation establishing the Fund is devoted to CLLD, whereas Article 77 concerns exclusively LEADER — as follows from the titles of these two Articles and from the fact that Article 77(1) explicitly refers only to the LEADER instrument mentioned in Article 18 of the CAP Implementation Regulation. At the same time, these two provisions are drafted in such a way that it is not clear whether there is necessarily any connection between them — namely, that Article 77 is a specification or continuation of Article 76, or that Article 77 sets out specific requirements for CLLD implemented under the CAP. It should also be mentioned that Article 22(2)(h)(i) of the Regulation establishing the Fund, when describing the requirements for the Plan, states that it should "*effectively contribute to promoting the use of cooperation-based interventions referred to in Article 74,* ***including (...) community-led local development****, or other territorial tools including just transition and smart specialisation strategies,* ***as well as LEADER*** *as referred to in Article 77 [LEADER]*; — which suggests that CLLD and LEADER are indeed two different instruments.

The relationship between CLLD and LEADER, and more specifically between Articles 76 and 77 of the Regulation establishing the Fund, in the author's opinion, requires clarification at a later stage of the legislative process. This is essential in order to determine what requirements the EU legislator establishes for the LEADER instrument — whether they differ from those applicable to CLLD, or whether, as in the previous programming period, LEADER is simply the designation for CLLD implemented under the CAP.

12. As for a detailed analysis of Article 76 of the Regulation establishing the Fund, it should be noted that it lays down the rules on which CLLD should be implemented by Member States. These are generally rules already familiar to LAGs from the current (and even earlier) programming period, but they contain certain differences that should be highlighted.

    According to Article 76(1) of the Regulation establishing the Fund, community-led local development should:

    a) focus on subregional, rural, and coastal areas[20];

[19] This was explicitly stated in Recital 30 of Regulation 2021/1060, which referred to 'community-led local development, referred to as LEADER under the European Agricultural Fund for Rural Development (EAFRD)'. Likewise, Article 3(15) of Regulation 2021/2115 provided that the term LEADER used in that Regulation means 'community-led local development as referred to in Article 31 of Regulation (EU) 2021/1060'.

[20] Currently, Article 31(2)(a) of Regulation 2021/1060 simply refers to areas 'below regional level'.

b) be designed and implemented by local action groups composed of representatives of public and private local stakeholders, in which no single interest group controls the decision-making[21];

c) be carried out through strategies in accordance with Article 75 [Integrated territorial and urban development], supportive of innovative features in the local context, networking and cooperation with other territorial actors[22].

The above are therefore almost identical to the rules in force in the current programming period.

13. In turn, Article 76(2) of the Regulation establishing the Fund specifies what CLLD support should be allocated to. This includes:

a) capacity building and preparatory actions supporting the development of strategies[23];

b) preparation and implementation of operations selected under the strategies, including cooperation actions[24];

c) management, monitoring, and evaluation of the strategies and their animation, including facilitating exchanges among stakeholders and communicating the strategy and the role of the Union[25].

This provision does not differ substantially from Article 34(1) of Regulation 2021/1060, which applies in the current programming period.

14. Article 76(3) of the Regulation establishing the Fund sets out the exclusive competences of LAGs related to the preparation and implementation of CLLD. These include:

a) preparing the local development strategy;

b) building the capacity of local actors to develop and implement operations;

c) drawing up a non-discriminatory and transparent selection procedure and criteria, which avoids conflicts of interest and ensures that no single interest group controls selection decisions.

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[21] A provision similar to the currently applicable Article 31(2)(b) of Regulation 2021/1060.

[22] A provision similar to the combined content of Article 31(2)(c) and (d) of Regulation 2021/1060.

[23] Currently, the equivalent is Article 34(1)(a) of Regulation 2021/1060, which refers to 'capacity building and preparatory actions in support of the development and future implementation of the strategy' – the proposed provisions therefore omit actions related to the 'future implementation of the strategy'.

[24] Currently, the equivalent is Article 34(1)(b) of Regulation 2021/1060, which refers to 'the implementation of operations, including preparatory activities and cooperation activities, selected under the strategy'; the proposed provision therefore also includes support related to the preparation of operations, but omits issues concerning cooperation.

[25] Currently, the equivalent is Article 34(1)(c) of Regulation 2021/1060, which refers to 'the management, monitoring and evaluation of the strategy and its animation, including facilitating exchanges between stakeholders'; the proposed provision therefore additionally includes communication of the strategy and the role of the Union.

d) selecting operations;

e) monitoring progress towards the achievement of objectives and evaluating the implementation of the strategy;

f) communicating of the local development strategy and the role of Union in its support.

This provision requires some further analysis. **It differs from Article 33(3) of Regulation 2021/1060, which currently defines the tasks assigned exclusively to LAGs**. The draft regulation does not list among the future competences of LAGs the "*preparation and publication of calls for proposals*," nor the "*fixing the amount of support and presenting the proposals to the body responsible for final verification of eligibility before approval",* as referred to in Article 33. Instead, a new task has been added, namely communicating the LDS and the role of the Union – a task that was not previously expressly defined in Regulation 2021/1060, but in practice was already carried out, given other provisions and grant-award documents.

The draft provisions thus deprive LAGs of some important competences: most notably, the preparation of calls for proposals – within this task LAGs could independently determine certain conditions, enabling them to select operations best suited to their LDS and identified local needs. LAGs will also no longer be able to set the amount of support or even influence its determination. This limits the role of LAGs in the operation selection process to merely assessing projects against the established criteria and (it seems, although not stated explicitly) their overall compliance with the LDS.

LAGs should themselves assess whether this change is beneficial or not. On the one hand, it means the loss of important competences; on the other hand, it may bring their tasks closer to those assigned in the 2007–2013 period, when LAGs could focus on assessing operations in terms of compliance with their strategy and criteria they had developed, whereas in the last two programming periods their role became more like that of a *quasi-administrative body*. Polish experience shows that competences such as verifying compliance of operations with eligibility conditions set by the Managing Authority are a major burden for LAGs, requiring detailed knowledge and an extensive administrative apparatus, while mistakes result in negative consequences – both reputational and financial.

15. Article 76(4) of the Regulation establishing the Fund provides for the possibility for LAGs to implement operations under the LDS, provided that they ensure an appropriate separation of functions (the point here seems to be that LAGs would at the same time select and implement operations, which naturally entails a conflict of interest, which LAGs should prevent by developing appropriate procedures). This corresponds to the currently applicable Article 33(5) of Regulation 2021/1060 and

may form the legal basis for implementing own operations of LAGs or cooperation projects within the LDS (provided that the Member State foresees this possibility).

16. Returning for a moment to Article 76(1) of the Regulation establishing the Fund (commented above), one further important issue deserves attention. Leaving aside the similarities with the wording of the current Article 31(2) of Regulation 2021/1060, what is puzzling is the reference in point (c) to article 75 in the context of strategies.

    Article 75 of the Regulation establishing the Fund is entitled *"Integrated territorial and urban development"* and does not refer exclusively to CLLD[26]. This suggests that LDS fall within a broader category of strategic documents, which must meet the conditions described in this provision. However, the requirements laid down in Article 75(3) for such strategies do not align with what has so far characterised CLLD and LEADER.

    Article 75(3) of the Regulation establishing the Fund provides that strategies implemented under this Article (and therefore also strategies delivered by LAGs under the CLLD instrument) *"shall be implemented **under the responsibility** of the relevant territorial or urban authorities or bodies w**ho shall select or be involved in the selection** of operations*".

    This provision thus introduces **oversight and responsibility of public authorities in implementing the strategies, including their direct participation in project selection. I**t **is difficult to reconcile such a requirement with Article 76(1)(b) of the Regulation establishing the Fund, which in turn reiterates the well-known rule from the previous two programming periods that no single interest group may dominate decision-making at the LAG level**. The relationship between these two provisions, and how LDS are supposed to be implemented "*under the responsibility of the relevant territorial or urban authorities*," is unclear.

    Therefore, the extent to which Article 75 of the Regulation establishing the Fund, in particular paragraph 3 of that Article, applies in the context of CLLD, requires clarification and possibly amendment. In my view, this is an issue that LAGs should strongly emphasise. Otherwise, public authorities will receive a provision enabling them to exert binding influence on LDS implementation. At the same time, this will give rise to interpretative doubts at the stage of designing national rules for CLLD delivery. It seems that the current Regulation 2021/1060 has adopted a better solution – Article 32 of that Regulation comprehensively regulates the content of LDS and establishes rules for their selection, and it is beyond doubt that it applies exclusively to CLLD.

17. As indicated above, Article 77 of the Regulation establishing the Fund refers exclusively to the LEADER instrument, as mentioned in Article 18 of the CAP

[26] Art. 75 (1): *Support for territorial development shall be based on integrated territorial development strategies, **including via community-led local development** (...).*

Implementation Regulation. It lays down the rules for financing operations under this instrument.

According to its provisions, support granted under the LEADER approach shall be subject to the following requirements:

a) the use of simplified cost options shall be mandatory for the costs of operation of the LEADER local action groups;

b) support for projects carried out in accordance with the LEADER local development strategies not exceeding EUR 20 000 shall be provided in the form of lump sums and may be differentiated in accordance with objective and non-discriminatory criteria;

c) support to rural business start-ups for non-agricultural activities in rural areas may be provided in the form of lump sums up to maximum EUR 100 000 and may be differentiated in accordance with objective and non-discriminatory criteria;

d) the use of simplified cost options shall be encouraged for projects implemented under the LEADER local development strategies

It also provides that support may cover the costs of preparing the LDS, the costs of implementing operations, or a combination thereof.

The analysed acts do not define the details of accounting for "simplified cost options" or lump sums.

18. The above provision requires broader commentary, connected with the earlier-mentioned uncertainty regarding the relationship between CLLD and LEADER.

If it is to remain as it has been so far – namely, that LEADER is simply the name under which CLLD is implemented within the CAP – then it should be pointed out that the **financing facilitations listed above would apply only to the use of CAP funds**. If, under the LDS, funds from other policies were also to be available, these simplifications would not apply (although possibly the Member State could have the discretion to apply them, but this is not clear). Such a solution seems illogical and contrary to the general principle expressed in the recitals of the Regulation establishing the Fund, which is to harmonise the rules for financing operations under the Fund, not to multiply exceptions to the rules, and to reduce administrative burdens.

Meanwhile, the adopted solution would mean that – depending on the purpose for which aid is granted under the LDS and to which beneficiary it goes – different financing rules would apply to operations. It also means that if – hypothetically – the operating costs of LAGs were covered not only from CAP funds, different accounting rules would apply depending on which "pocket" of the Plan the resources come from. Such a solution appears highly impractical.

VI. Conclusions

A. In the next financial perspective, significant simplification and harmonization of programming and implementation of operations are expected. It is foreseen that there will be a single Fund covering support for a range of policies, including the CAP. Each Member State will therefore prepare one Plan (rather than, as at present, multiple operational programs), covering the use of the Fund's resources, including those allocated for financing the CAP.

B. The implementation of the Plan in Member States will be more flexible than before. A number of mechanisms in the Regulation establishing the Fund provide instruments that allow for the reallocation of resources – withdrawing them from areas of support where they are not needed or do not contribute to the achievement of the set objectives – and reallocating them to other areas.

C. The provisions require mandatory implementation of the LEADER instrument within CAP funding. The implementation of this instrument under other policies is not mandatory.

D. There is no ring-fencing for LEADER. Member States will independently determine in their Plan how much funding will be allocated to the CLLD instrument and to LEADER within the CAP.

E. The relation between CLLD and LEADER remains unclear due to inconsistently used terms in the Regulation establishing the Fund and the fact that some provisions of this Regulation apply exclusively to LEADER within the CAP, even though they regulate issues essential for the implementation of LDSs, regardless of the source of funding.

   It is worth calling for clarification of the relation between CLLD and LEADER to avoid divergent interpretations of the provisions at the national level.

F. The scope of LDSs implemented by LAGs under the CAP will be significantly limited due to the narrowing of the definition of a beneficiary within the CAP solely to a farmer as defined in Art. 4(3) of the Regulation establishing the Fund. If the implementation of CLLD by a Member State is possible only from CAP resources (and not, for example, from regional development policy funds), such a definition of beneficiary will hinder, if not prevent, the establishment or maintenance of a tripartite partnership. Within LEADER, it will not be possible to support beneficiaries who are not farmers.

   It is therefore necessary to monitor the work on the definition of a CAP beneficiary in order to avoid excessive narrowing of the eligible group, or alternatively, to ensure that the Member State provides for the implementation of CLLD within the instruments regulated in the ERDF and Cohesion Fund Regulations, including in rural areas.

G. In the absence of ring-fencing and with the risk that fewer resources will be allocated to the LEADER instrument than at present, there is a risk of reducing the territorial coverage of the country by the LAG network, also in view of the fact that Art. 18(2) of the CAP Strategic Plan Regulation indicates that support must be provided "*at least*" to rural areas with specific difficulties identified in the national Plan.

H. Articles 74–77 relating to CLLD and LEADER require amendment or at least clarification by the European Commission, as they are less clear than the current regulations. For example, the relationship between CLLD and LEADER remains unclear (there is no provision analogous to Art. 3(15) of Regulation (EU) No. 2021/2115), as well as the consistency between Art. 76(1)(b) and Art. 75(3) of the Regulation establishing the Fund.

I. Art. 75(3) of the Regulation establishing the Fund suggests that public authorities will have greater influence than before on the implementation of LDSs, including the selection of operations.

J. The competences of LAGs provided for in Art. 76(3) of the Regulation establishing the Fund are defined more narrowly compared to the competences currently laid down in Regulation (EU) 2021/1060. LAGs are not given the competence to prepare and publish calls for proposals, nor to determine the amount of support for operations.

K. Significant simplifications in the financing of LDSs are envisaged under LEADER. However, the simplified cost options under LEADER most likely apply only to CAP funds. Where a national Plan provides for financing of LDS implementation not only from the CAP, there will be a risk of dual accounting methods.

L. LAGs should actively participate in the process of preparing the Plan and monitoring its implementation, so that their interests can be taken into account. Art. 6(1) of the Regulation establishing the Fund provides that the preparation of the Plan should involve a partnership organized by the Member State concerned. This partnership should include, among others, representatives of civil society. Partners involved in the preparation of the Plan should also be invited to participate in the Monitoring Committee (Art. 55(1) of the Regulation establishing the Fund).

M. It is advisable to establish lasting cross-sectoral partnerships with entities outside agriculture to strengthen the influence of LAGs on the shape of the Plan and to safeguard the possibility of implementing projects from other EU policies.