

# FOOD FRAUD: CRIMINOLOGICAL PERSPECTIVE AND LIMITS OF PENAL RESPONSE IN POLAND

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## 1. FOOD FRAUD PHENOMENON

Agricultural and food production is one of the biggest economic sectors in the European Union, which provides over 44 million work places and is worth 715 billion euros annually.<sup>1</sup> Because of that, it is one of the areas that are most vulnerable to fraud, i.e. forfeiture of food products and beverages as well as other fraudulent practices. The problem of counterfeit food afflicts the European Union to a greater and greater extent, despite high standards of the EU regulations that are in force in the field of food and nutrition. There are no statistical data that make it possible to precisely determine the scale of actual fraud in the sector, however, according to all the available data, the phenomenon is escalating.<sup>2</sup>

Fraud in the food sector often remains undetected, especially if it does not inflict direct threat to health or life and does not result in incidents drawing the public attention. On average, consumers do not devote much attention to food products they buy, they do not analyse their characteristics and do not use them for a long period as in case of clothes or electronic equipment. Most often, they only decide whether a given product is tasty or not, and only detailed examination may confirm the product contents and its potential counterfeiting. Due to that, detection of fraudulent practices in this industry, like in the pharmaceutical industry, is much more difficult than in other sectors.

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<sup>1</sup> European Parliament, *Report on the food crisis, fraud in the food chain and the control thereof (2013/2091(INI))*, 2013, p. 4.

<sup>2</sup> *Ibid.*, pp. 5 and 7.

The phenomenon referred to as food fraud covers a series of different practices. The most important ones include: counterfeiting of food, i.e. branding food of poorer quality (most often its packaging) with a forged or original trademark that a seller is not authorised to use or unauthorised branding of products with a geographical indication; using cheaper or poorer substitutes, or even dangerous substances, for the right ingredients (often the key ones); inappropriate labelling consisting in misinformation about the ingredients by skipping information about the use of some of them; inappropriate labelling of animal species used in meat and seafood products; inappropriate information about weight; selling standard food as organic; unauthorised use of a quality symbol specifying, e.g. the animal origin or well-being; labelling fish as originating from their natural environment or selling a worse type of fish species as a higher category or a more expensive species as well as providing a false “best before” or expiry date and selling food fraudulently labelled, often after its expiry date.<sup>3</sup>

## 2. COUNTERFEITING OF FOOD IN THE EU CUSTOMS AUTHORITIES' STATISTICS

It is estimated that global turnover of counterfeit foodstuff and beverages that infringe intellectual property rights, including first of all the protection of the rights to trademarks and geographical indications, is worth 49 billion dollars annually.<sup>4</sup> However, there is a lack of data determining the scale of the phenomenon in the European Union. However, the European Commission reports on the customs authorities' operations in the field of exercising intellectual property rights at the EU borders that make it possible to analyse current regional trends concerning the phenomenon.

In 2017, the EU countries' customs authorities arrested over eight million counterfeit food products and beverages at their borders. This means that foodstuff constituted the biggest group (24%) of all arrested counterfeit products. Other products fell behind: toys (11%), cigarettes (9%) and clothes (7%). The figures show a new alarming trend because earlier, the most abundant categories of counterfeit goods arrested at the EU borders included clothes, footwear and accessories, while since 2016 a dynamic growth in counterfeit foodstuff and beverages, and cigarettes has been observed.<sup>5</sup>

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<sup>3</sup> *Ibid.*, p. 7. Compare N. Martín, L. Quackelbeen, M. Simonato, *Food Regulation and Criminal Justice*, Maklu Publ. 2016, p. 120 et seq.; M.R. McGuire, T.J. Holt, *The Routledge Handbook of Technology, Crime and Justice*, London 2017, p. 295 et seq.

<sup>4</sup> European Union Intellectual Property Office (EUIPO), *Counterfeiting of foodstuff, beverages and agricultural products*, 2016, p. 3.

<sup>5</sup> European Commission, *Report on the EU customs enforcement of intellectual property rights: results at the EU border 2017*, Luxembourg 2018, p. 6.

**Table 1. Food products and beverages arrested by customs authorities at the EU borders in 2017 by their number and market value**

Category	Number of arrested goods	Market value of original counterparts (in euro)
Food products	7,519,574	2,274,866
Alcohol	415,670	237,654
Other beverages	97,171	90,572

Source: European Commission, *Report on the EU customs enforcement of intellectual property rights: results at the EU border 2017*, Luxembourg 2018, p. 20.

China is the main country of origin of counterfeit foodstuff (as in case of other categories of counterfeit products), which accounts for 88% of all products arrested at the EU borders annually.<sup>6</sup> However, a surprisingly big amount of counterfeit foodstuff arrested at the EU borders in 2017 originated from Syria (these were mostly sweets).<sup>7</sup> It is hard to unambiguously determine whether Syria is really the place of production, which might seem to be difficult due to the political and economic situation in this country, or it served as a transit country for the transportation of counterfeit products with forged trade documents.

**Table 2. Food products and beverages arrested by customs authorities at the EU borders in 2017 by countries of origin**

Category	Number of products that were not released, in %, by country of origin		
Food products	China 79.87%	Hong Kong 8.19%	Syria 7.02%
Alcohol	Moldova 90.40%	Ukraine 6.29%	unknown 2%
Other beverages	US 100%		

Source: European Commission, *Report on the EU customs enforcement of intellectual property rights: results at the EU border 2017*, Luxembourg 2018, p. 23.

The big amount of counterfeit food arrested at the EU borders in 2017 shows what changes took place in the procedure of counterfeiting products in the food industry. Small-scale activities, mainly consisting in illegal manufacturing of alcohol, changed into a sophisticated large-scale industry.

Most of the counterfeit food is produced outside the European Union, mainly in China. However, arrests of illegal food products and beverages exported from Africa or South America show that the problem is not limited to one geographical region. Depending on the country of origin, various methods of transporting counterfeit goods to the EU are used. For example, China exports big amounts of goods divided

<sup>6</sup> Due to its special status, Hong Kong is listed as separate from China in the EU statistics.

<sup>7</sup> European Commission, *supra* n. 5, p. 15.

into consignments of small unit value. On the other hand, Panama exports relatively small amount of goods in consignments of big unit value. However, the analysis of arrests shows that an absolute majority of mass consignments of counterfeit food are shipped by sea or land.<sup>8</sup>

Counterfeiters often change transport routes from Asia and Middle East to Europe in order to limit the risk. For that purpose, counterfeit food is transported via a few states and entry points to Europe are often selected in countries where customs control is easier to go through, e.g. Italy or Central and Eastern Europe, including Poland. In addition, goods are most often provided with falsified trade documents. In many cases, the same shipping companies are used to transport legal and illegal goods. International criminal groups provide them with permanent and high income and, at the same time, influence the standards those companies meet, e.g. in the field of product control and documents connected with them.<sup>9</sup>

In recent years, the production of counterfeit foodstuff has also increased in Europe. It results from the fact that, regardless of higher risk at the stage of production, the costs of its transport, distribution and risk are much lower. Production sites are usually small factories hidden, e.g. in forests, and illegal immigrants are often the workforce employed in them.<sup>10</sup>

### 3. COUNTERFEIT FOOD DISTRIBUTION

Counterfeit food distribution is possible on the primary and secondary markets. In case of the primary market, consumers are misinformed in such a way that they are convinced that they buy original, high-quality products of full value, etc.<sup>11</sup> To achieve that, counterfeit food must resemble the original to the greatest extent possible and be distributed through such distribution channels that do not raise potential buyers' doubts concerning their nature, i.e. for example in shops (traditional and online ones). However, online trade is one of the main reasons for dynamic growth in the phenomenon of food counterfeiting. Buying a product online, a consumer cannot assess the features of the product. On the other hand, the sites of online shops (or other Internet points of sale) often look very professional and do not raise any suspicions of a potential buyer.<sup>12</sup>

On the secondary market, on the other hand, counterfeiters do not cheat customers on originality or quality of products and do not hide their nature.<sup>13</sup> However, foodstuff and alcohol are not very popular on such a market. It is hard to imagine reasons why consumers would voluntarily and consciously buy counterfeit food. As a result, most of such foodstuff and beverages must at some stage get to the legal

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<sup>8</sup> European Union Intellectual Property Office (EUIPO), *supra* n. 4, p. 3.

<sup>9</sup> *Ibid.* p. 11.

<sup>10</sup> *Ibid.* p. 4.

<sup>11</sup> N. Daško, *Prawnokarna ochrona znaków towarowych*, Warszawa 2017, p. 37.

<sup>12</sup> *Ibid.*, pp. 60–62.

<sup>13</sup> *Ibid.*, p. 37.

supply chain.<sup>14</sup> For the purpose of that, counterfeit food has high quality labels and packaging, often identical to original products because these are the elements that first of all can raise suspicions of a potential buyer. It is less often the taste and quality of the product. Moreover, buying everyday products such as food and alcohol, consumers do not pay so much attention to the assessment of a product as, e.g. in the case of luxury goods, which a client, because of their price, checks many times and does it carefully.

In addition, counterfeiters choose such places of distribution that are more vulnerable to counterfeit food penetration, which are characterised especially by multilevel structure of the supply chain facilitating infiltration. In the case of food and beverages, restaurants, bars, street-food stands and night clubs are such points of sale because consumers do not have access to product packaging there and have a prepared dish or a drink served and cannot assess their originality or the quality of particular ingredients.<sup>15</sup>

#### 4. INVOLVEMENT OF ORGANISED CRIME

The production and distribution of counterfeit foodstuff is mainly the activity in which organised criminal groups are involved. They form strong hierarchical structures, such as e.g. the mafia and loose criminal networks that often cooperate. Due to the nature of the business, the cooperation is international. Law enforcement agencies and organisations involved in the fight against food counterfeiting identify a series of links between criminal groups from various countries. Chinese, Italian and Turkish criminal groups that cooperate with local criminal structures in the territory of particular states play a major role in the operations.<sup>16</sup>

Huge profit is the reason behind criminal groups' great interest in counterfeiting food. The analysis of various areas of their operations shows that profits obtained by criminal organisations from counterfeiting food products (of all categories) exceed those from drug trafficking.<sup>17</sup>

Due to criminal groups' strong position in Italy, counterfeiting food is a special problem there. According to Coldiretti (farmers' union) report, based on the findings of the investigations conducted by specialist agencies for the fight against crime committed in the field of production and sale of food, the number of detected crimes connected with counterfeiting food increased by 59% in 2018. Total counterfeit food turnover of organised criminal groups is estimated to be 24 billion euros annually.<sup>18</sup>

<sup>14</sup> European Union Intellectual Property Office (EUIPO), *supra* n. 4, p. 3.

<sup>15</sup> *Ibid.*, p. 7.

<sup>16</sup> *Ibid.*, p. 19.

<sup>17</sup> N. Daško, *supra* n. 11, pp. 85–86; European Union Intellectual Property Office (EUIPO), *supra* n. 4, p. 19.

<sup>18</sup> A. Mandel, *We Włoszech żywność fałszowana jest na potęgę*, [https://www.rp.pl/Przemysl-spozywczy/190219560-We-Wloszech-zywnosc-falszowana-jest-na-potege.html?fbclid=IwAR09\\_NiVg75KZqoyBhViMLb1Mpx7Mhq1fBUj5d-OfjVCpPjbV-X5NHqRAKs](https://www.rp.pl/Przemysl-spozywczy/190219560-We-Wloszech-zywnosc-falszowana-jest-na-potege.html?fbclid=IwAR09_NiVg75KZqoyBhViMLb1Mpx7Mhq1fBUj5d-OfjVCpPjbV-X5NHqRAKs) (accessed 18.02.2019).

According to another report prepared by the Ansa agency, Cosa Nostra alone earns 14 billion euros annually on counterfeiting food.<sup>19</sup>

Criminal groups' involvement in the food counterfeiting operations does not result only from the opportunity to obtain huge profits but also from the fact that the operations are connected with much lower risk because criminality connected with counterfeiting products, including counterfeiting foodstuff, attracts less attention of law enforcement agencies in comparison with other areas of organised crime groups' activity. What is more, the business provides organised crime groups with an opportunity of money laundering, which is next reinvested in legal business activities.<sup>20</sup>

The criminal groups' *modus operandi* in recent years concerns, in particular, the process of decreasing the risk of actual operations and making it possible to freely reinvest money in other illegal operations. Such food processing businesses controlled by organised crime may compete with legal businesses, and other entities, e.g. supermarkets, buy food products from them as they are convinced that the goods are legal, originating from legal companies. The case of the Mozzarella King, G. Mandara, is an example of the pattern of the operations. According to the law enforcement agencies, the Mandara Group, the biggest Italian producer of *mozzarelli di bufala* has been controlled by the Camorra mafia since 1983. The case of a milk producer, Euromilk, which was purchased by the mafia for the purpose of creating a distribution chain, i.e. in order to supply counterfeit milk to supermarkets, received equally widespread media coverage.<sup>21</sup>

## 5. MOST FREQUENTLY COUNTERFEITED FOODSTUFF CATEGORIES

The food that is most frequently subject to counterfeiting practices include: olive oil, fish, organic products, cereals, honey, coffee, tea, spices, wine, some fruit juices, milk and meat.<sup>22</sup>

The first famous case that drew the attention of public opinion as well as the EU law enforcement agencies to the scale of the phenomenon of food counterfeiting was the horse meat scandal in Europe in 2013. Beef counterfeiting was revealed when horse meat was found in hamburgers in Ireland and the United Kingdom. The investigation conducted on a large scale revealed that horse meat was added to beef in other European countries, including Poland. Most often these were intermediaries that counterfeited the foodstuff. Companies that bought meat from slaughterhouses counterfeited it and sold it to manufacturers of various meat products.<sup>23</sup> It is worth highlighting that horse meat quite often appears in cases concerning food counterfeiting.

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<sup>19</sup> N. Daško, *supra* n. 11, p. 101.

<sup>20</sup> *Ibid.*, pp. 90–93.

<sup>21</sup> European Union Intellectual Property Office (EUIPO), *supra* n. 4, p. 19.

<sup>22</sup> European Parliament, *supra* n. 1, p. 7.

<sup>23</sup> *Afera z koniną: poważne kłopoty przedsiębiorców*, <https://www.polskieradio.pl/7/1691/Artykul/792304,Afera-z-konina-powazne-klopoty-przedsiębiorców> (accessed 11.02.2019).

iting because one of the fraudulent practices in this area is the introduction of horse meat treated with phenylbutazone to sale as edible horse meat.<sup>24</sup>

The Fipronil contamination was another famous case in the field of food counterfeiting. In 2017, Fipronil contamination of eggs and poultry caused by the use of the chemical to combat feather mites among chicken was detected in 15 European Union countries, Switzerland and Hong Kong.<sup>25</sup>

Fraudulent practices on a big scale were also reported in fish industry in 2016. Due to the scale of the phenomenon, the European Commission also monitored the case. One of the commonly used illegal practices in this industry consists in the sale of tuna as fresh, while it should be sold as processed. Only tuna that was caught by ships capable of freezing it in the temperature of -18°C and maintaining that temperature until arrival at the destination, may be sold as fresh. On the other hand, tuna that is kept in brine (-9°C) should be canned. Another common illegal practice consists in the change of tuna colour with the use of additives (legal substances such as, e.g. vegetable extract and salt, or illegal ones such as carbon monoxide). Those additives change the fish colour so that it can be sold as fresh. The EU Directorate-General for Health and Food Safety estimates that the profit generated thanks to those practices amounts to 200 million euros annually.<sup>26</sup>

The problem of large-scale counterfeiting also concerns honey, which is one of the most often counterfeited products. In 2017, after numerous reports of the detection of honey counterfeited with the use of paraffin and stearin, and allergies and health complications resulting from that, the European Commission dealt with the phenomenon.<sup>27</sup>

Fraud connected with the trend to maintain healthy eating habits based on organic food is developing dynamically. Since 2015, a fast growth has been observed in unauthorised labelling of products as “eco”, “bio” and “organic”, and selling them at higher retail prices while, in fact, they do not meet the standards for such products.<sup>28</sup> It concerns, inter alia, vegetables, fruit, oil, flour, and especially eggs sold as organic ones.<sup>29</sup>

Other examples of fraud that is popular include selling road salt as table salt, using dioxin-contaminated fats in the production of animal fodder, and erroneous labelling of fish and seafood products.<sup>30</sup>

The alcohol market is a large field of fraud in food processing industry. One of the common and most dangerous types of fraud in this area consists in the use of methyl alcohol in spirit. The use of original alcohol producers' bottles and filling them with alcohol of lower quality is another example. Illegal production of alcohol based on this method in three illegal factories counterfeiting well-known alcohol

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<sup>24</sup> European Parliament, *supra* n. 1, p. 4.

<sup>25</sup> European Commission, *The EU Food Fraud Network and the System for Administrative Assistance & Food Fraud, Annual Report 2017*, p. 15.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, p. 16.

<sup>28</sup> *2017 Situation Report on Counterfeiting and Piracy in the European Union. A joint project between Europol and the European Union Intellectual Property Office*, p. 49.

<sup>29</sup> European Parliament, *supra* n. 1, p. 4.

<sup>30</sup> *Ibid.*



brands was detected in Greece in 2016. The alcohol was produced in Greece and original empty bottles were smuggled from Bulgaria. Law enforcement agencies arrested 7,439 bottles and 4,000 labels. The criminal group involved in the operations cooperated with another criminal network managed by a deputy director of an off-licence shop chain. The alcohol, mainly whisky and vodka, was sold in bars and nightclubs in the region of Attica.<sup>31</sup>

Since 2011, Europol in cooperation with Interpol has been regularly conducting the OPSON operations, which aim to combat products that are counterfeit and do not meet the requirements for foodstuff. 65 countries (22 EU member states and 43 non-EU countries) and 20 private partners took part in the latest edition of the operation, OPSON VI, conducted from December 2016 to March 2017. In the course of OPSON VI, 13,407.60 tonnes, 26,336,305.3 litres and 11,118,832 items of food and beverages counterfeit or not matching norms were arrested. The total value of illegal products reached ca. 236 million euros. Activities within OPSON VI resulted in the elimination of seven organised crime groups involved in illegal production of food and smuggling. Alcohol was the number one product arrested during the operation (in the former edition, OPSON V, these were additives such as oil, spices and sauces). Law enforcement agencies closed at least 183 illegal distilleries and arrested production materials from special filling machines to manufacture excise stamps, bottle tops and labels. The second most abundant category of arrested products was meat (over 5 tonnes).<sup>32</sup>

## 6. CONSEQUENCES FOR CONSUMERS

Counterfeit foodstuff does not meet any quality criteria and poses a risk to customers' health and safety. Counterfeit food is produced and distributed in conditions that do not meet adequate norms; they are often places that do not meet any sanitary norms, have no necessary equipment for the production of food, do not ensure adequate storage temperature, etc.

Counterfeit food may be sold after the expiry date, may contain toxic ingredients, contaminants or other substances that are not edible. Counterfeit foodstuff may cause death, poisoning, irreversible damage to health, allergies and other complications.

## 7. NEED OF PENAL RESPONSE

The above-presented picture of the functioning of counterfeit food market and the phenomena accompanying it result in the need to consider a potential penal response to them. Thus, an analysis of national normative solutions seems to be necessary in order to establish whether they can constitute a sufficient and efficient

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<sup>31</sup> 2017 Situation Report, *supra* n. 28, p. 50.

<sup>32</sup> Europol&Interpol, *Operation OPSON VI. Targeting counterfeit and substandard foodstuff and beverage. December 2016–March 2017*, p. 3.



mechanism of preventing and combating the discussed phenomenon. First of all, it may be signalled that the repressive legal response towards perpetrators of food fraud in Poland is based on the constructs of the types of offences, misdemeanours and administrative torts.

Among many categories of the discussed conduct, the most common are those consisting in labelling particular products with a forged or original trademark. Perpetrators are not authorised to use such trademarks. Unauthorised labelling of products with a geographical indication is similar in nature. In Polish legislation, there is a certain group of regulations mainly laid down in the Act of 30 June 2000: Industrial Property Law.<sup>33</sup>

From the point of view of the presented issues, Article 305 paras 1–3 IPL should be recognised as the most important provision. In accordance with it, it is forbidden to label a product with a forged trademark, including the European Union forged trademark, registered trademark or the European Union registered trademark by a perpetrator that is not authorised to use it or the one that is involved in the trade in products labelled with such trademarks. What is important, such a perpetrator must each time act to introduce such a product to the market. Such activities carry a penalty of a fine, limitation of liberty or deprivation of liberty for up to two years (Article 305 para. 1 IPL). If a perpetrator treats the commission of this crime as a permanent source of income or commits it against a product of big value, he/she is subject to a penalty of deprivation of liberty for a period of six months to five years (Article 305 para. 3 IPL). A case of lesser significance carrying a penalty of a fine was also introduced (Article 305 para. 2 IPL). If a perpetrator of an act under Article 305 para. 3 is convicted, a court adjudicates the forfeiture of materials and tools as well as technical measures that served or were designed to commit the crime. If such materials, tools or technical measures were not a perpetrator's property, a court can adjudicate their forfeiture. The measure is also optional in the case of conviction under Article 305 paras 1 and 2 IPL. In such a case, materials, tools and technical measures used or designed to commit crime are subject to forfeiture even if they were not a perpetrator's property (Article 306 paras 1 and 2 IPL).

However, an analysis of the practice of the administration of justice in cases concerning offences under Article 305 of the above-mentioned Act shows that the business of counterfeiting products in Poland is getting out of control of law enforcement agencies.<sup>34</sup> Indeed, they focus on combating trafficking in counterfeit products and their production is of no interest to them. In addition, symbolic fines ruled by national courts do not deter perpetrators from committing those offences, especially as organised crime groups are often involved in them. What is also important, the above-mentioned offence is subject to prosecution at the request of the aggrieved (Article 310 IPL).<sup>35</sup>

The legislator recognises the above-discussed categories of conduct as offences also based on the provisions of the Criminal Code (henceforth CC). Article 306 CC

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<sup>33</sup> Consolidated text, Dz.U. 2017, item 776; henceforth IPL.

<sup>34</sup> See N. Daško, *supra* n. 11, p. 227 et seq.

<sup>35</sup> *Ibid.*, pp. 193–195.

draws most attention in this respect. In accordance with it, acts connected with counterfeiting or altering identification marks are subject to punishment. Such acts carry a penalty of deprivation of liberty for up to three years. It should be explained that identification marks include trademarks. Thus, the classification of such cases can be cumulative under Article 306 CC and Article 305 IPL.<sup>36</sup>

The conduct connected with counterfeiting foodstuff by means of labelling it with a forged trademark can be also classified as selected types of misdemeanour. First of all, it concerns the regulation expressed in Article 24 of the Act of 16 April 1993 on combating unfair competition.<sup>37</sup> In accordance with this provision, it is forbidden to use technical reproduction measures to copy external forms of a product or introduce such a copied product to the market, and this way deceive customers about the identity of the producer or product, which causes serious harm to the entrepreneur concerned. Thus, the essence of such an act consists in copying other producers' foodstuff and using their reputation, market position, effects of work, etc. Such conduct carries a penalty of a fine, limitation of liberty or deprivation of liberty for up to two years. It is subject to prosecution at the request of the aggrieved.

Thus, the above-presented situation shows that the national legislator's penal response to labelling foodstuff with forged trademarks is relatively extensive. It covers various types of offences as well as misdemeanours. However, if the scale of the illegal business and the nature of entities involved (i.e. the fact that these are much more often organised crime groups than individual perpetrators) are taken into account, one can be critical of not only the efficiency of prosecution but also the penalties and the mode of prosecution for some types of such conduct.<sup>38</sup>

Another extensive group of acts connected with food fraud consists mainly in deceiving about products' origin, their quality, amount and substitution of cheaper or poorer alternatives for food ingredients, inappropriate labelling with respect to contents, etc. The Polish legislator's penal response to this conduct is quite complex.

As far as penal response to the types of offences in this field is concerned, the legislator specified a wide range of prohibited acts in the provisions of the Act of 25 August 2006 on the safety of food and nutrition (ASFN).<sup>39</sup> Conduct connected with the production or sale of consumption substances harmful to human health or life as well as substances for special consumption purposes, diet supplements or new foodstuff is subject to punishment. Such acts constitute offences (Article 96 paras 1–4). A perpetrator that produces or sells foodstuff which is spoilt or counterfeit is subject to a penalty of a fine, limitation of liberty or deprivation of liberty. A perpetrator who commits the above-mentioned offence in relation to foodstuff of big value is subject to a penalty of deprivation of liberty for six months to three

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<sup>36</sup> See M. Gałązka, [in:] A. Grześkowiak, K. Wiak (ed.), *Kodeks karny. Komentarz*, Warszawa 2019, p. 1428 et seq.

<sup>37</sup> Consolidated text, Dz.U. 2018, item 419; henceforth ACUC.

<sup>38</sup> For more, see W. Pływaczewski, R. Płocki (eds), *Nielegalny rynek żywności. Skala zjawiska i możliwości przeciwdziałania*, Szczytno 2013.

<sup>39</sup> Consolidated text, Dz.U. 2018, item 1541; for more, see M. Szejwowska, E. Zębek, M. Kurzyński, *Uwarunkowania unijne oraz karnoprawne produkcji lub wprowadzania do obrotu żywności niebezpiecznej: część pierwsza*, *Studia Prawnoustrojowe* No. 29, 2015, p. 19 et seq.

years (Article 97 paras 1–2). A wide catalogue of misdemeanours is also laid down in Article 100 paras 1–2 ASFN, where the use of foodstuff in production or selling it after the “best before” date expires is prohibited.<sup>40</sup>

One can realise now what matches the features of the offence under the above-mentioned Article 306 CC. It penalises deleting, counterfeiting or altering the date of food production and food expiry date. As it has been mentioned above, the offence carries a penalty of deprivation of liberty for up to three years. It is hard to fail to notice that this type of a perpetrator’s conduct may pose danger to human life and health so their criminal liability can be revised based on, inter alia, Article 160 §§ 1–3 CC, Article 165 § 1(2) CC, Articles 156–157 CC.

If the above-described conduct can be fraudulent in nature, it can in addition match the features of the offence of fraud under Article 286 § 1 CC. However, if a perpetrator selling goods or providing services deceives a buyer of food with respect of amount, weight, measure, class, sort or price and a buyer has incurred or could have incurred loss exceeding PLN 100, the act will be subject to liability for misdemeanour under Article 134 § 1 of the Misdemeanour Code (henceforth MC). Such an act carries a penalty of detention, limitation of liberty or a fine. The legislator also stipulated liability for an attempt, inciting, and aiding and abetting (Article 134 § 3 MC).

In addition, the response to the above-discussed forms of conduct concerns misdemeanours specified in the above-mentioned Act on combating unfair competition. As far as this is concerned, a type of misdemeanour consisting in deceptive labelling of products draws special attention (Article 25 para. 1 ACUC). Such an error may be connected with foodstuff origin (e.g. the country of production), its quantity (e.g. the number of items), ingredients (e.g. the amount of vegetable fat), etc. In accordance with Article 25 ACUC, a perpetrator that, labelling or not labelling products or services regardless of the obligation to do so, misinforms customers about the country of origin, quantity, quality, ingredients, the method of production, expiry date, the possibility of application, repairs, maintenance or other important product or service features or does not inform about the risk connected with the use of them, and this way exposes customers to loss, is subject to a penalty of a fine or detention. However, the usefulness of this normative construct seems to be unsatisfactory in the field of combating food fraud efficiently, in particular, if it is taken into account that penalties are not severe and do not play a preventive role, and those offences are prosecuted at the request of the aggrieved (Article 27 ACUC).

What draws attention in the light of the above is the fact that those types of prohibited acts, the features of which clearly indicate food fraud, are classified as misdemeanours. For obvious reasons, such penal response seems to be insufficient.

Finally, apart from the two above-mentioned types of conduct connected with food fraud, penal response focuses on the regulations of special statutes. It is indeed varied.

In accordance with the Act of 18 October 2006 on the production of alcoholic beverages and registering and protecting geographical indications of alcoholic

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<sup>40</sup> See C. Kałol, *Prawnokarne aspekty ustawy o bezpieczeństwie żywności i żywienia*, Prokuratura i Prawo No. 7–8, 2010, p. 304 et seq.

beverages,<sup>41</sup> three types of offences that can be fraudulent in nature were specified. These are, *inter alia*, connected with:

- selling alcoholic beverages with geographical indications that a perpetrator is not authorised to use (Article 41 paras 1–4);
- producing alcoholic beverages in the conditions that are not in conformity with production methods, technological requirements and quality parameters (Article 42 paras 1–3);
- labelling alcoholic beverages in the way that does not meet the requirements concerning their definition or description, or presentation, or introduction to the market (Article 43 paras 1–3).

On the other hand, the Act of 21 December 2000 on the trade quality of agricultural products and foodstuff<sup>42</sup> stipulates penalisation of an extremely complex types of conduct that can sometimes be fraudulent in nature (Article 40 paras 1–5). However, they constitute misdemeanours that carry a penalty of a fine. The same can be said about penal regulations of the Act of 12 May 2011 on the manufacturing and bottling of wine, selling wine and organising wine market,<sup>43</sup> where some types of fraudulent conduct connected with wine industry are treated as misdemeanours.

Thus, it is difficult to find the legislator's concept concerning the scope of the mode and form of penal response to the above-discussed conduct. It seems that the adopted model has strikingly accidental solutions to what should be recognised as offences and misdemeanours, what penalties they should carry or what mode of prosecution should be applied. What can also confirm this is the fact that the legislator recognises a series of other, but quite similar in nature, types of conduct as administrative torts. It can be exemplified by conduct stipulated in Article 25 paras 1–2 of the Act of 25 June 2009 on organic agriculture<sup>44</sup> and Article 58b paras 1–5 of the Act of 17 December 2004 on the registration and protection of agricultural products and foodstuff names and indications, and on traditional products.<sup>45</sup>

Finally, it should be clearly emphasised that the above-presented national penal system in general does not take into account the construct of prohibited acts directly connected with import of counterfeit foodstuff to the Republic of Poland. However, as it has been indicated above, the scale of this illegal business, *inter alia* in relation to products originating from the Asian market, is enormous.

## 8. CONCLUSIONS

In the light of the above considerations, it should not be surprising that there is a need of penal response to the phenomenon of food fraud. Penal solutions that are binding in Poland and can be tools in combating it are indeed complex in nature, but they are strikingly selective and lack a well-thought-over conception. The legi-

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<sup>41</sup> Consolidated text, Dz.U. 2019, item 268.

<sup>42</sup> Consolidated text, Dz.U. 2018, item 2164.

<sup>43</sup> Consolidated text, Dz.U. 2018, item 1159.

<sup>44</sup> Consolidated text, Dz.U. 2017, item 1054.

<sup>45</sup> Consolidated text, Dz.U. 2017, item 1168.

slator's decision to recognise particular conduct connected with counterfeiting food as offences, misdemeanours or administrative torts seems to be absolutely accidental. The classification of this type of conduct as misdemeanour in order to combat it is undoubtedly an insufficient solution. The fact that businesses and organised crime groups are involved in food fraud fully supports such a statement. A perpetrator of the above-described acts faces penalties that are so symbolic that it is hard to speak about their preventive effect. Practices used by law enforcement agencies are also an obstacle to efficiently combat the phenomenon.

The fact that at present it is also hard to speak about efficient fight against food fraud in other European countries is little consolation. The scale of fraud on the food market in Europe continues to grow.<sup>46</sup> National legislators are not able to develop an adequate system of legal response measures, including penal ones, and an efficiently operating law enforcement system.<sup>47</sup>

## BIBLIOGRAPHY

- 2017 *Situation Report on Counterfeiting and Piracy in the European Union. A joint project between Europol and the European Union Intellectual Property Office.*
- Daško N., *Prawnokarna ochrona znaków towarowych*, Warszawa 2017.
- European Commission, *The EU Food Fraud Network and the System for Administrative Assistance & Food Fraud, Annual Report 2017.*
- European Commission, *Report on the EU customs enforcement of intellectual property rights: results at the EU border 2017*, Luxembourg 2018.
- European Parliament, *Report on the food crisis, fraud in the food chain and the control thereof (2013/2091(INI))*, 2013.
- European Union Intellectual Property Office (EUIPO), *Counterfeiting of foodstuff, beverages and agricultural products*, 2016.
- Europol&Interpol, *Operation OPSON VI. Targeting counterfeit and substandard foodstuff and beverage. December 2016–March 2017.*
- Gałązka M., [in:] A. Grześkowiak, K. Wiak (ed.), *Kodeks karny. Komentarz*, Warszawa 2019.
- Kąkol C., *Prawnokarne aspekty ustawy o bezpieczeństwie żywności i żywienia*, Prokuratura i Prawo No. 7–8, 2010.
- Martín N., Quackelbeen L., Simonato M., *Food Regulation and Criminal Justice*, Maklu Publ. 2016.
- McGuire R., Holt T.J., *The Routledge Handbook of Technology, Crime and Justice*, London 2017.
- Lord N., Flores Elizondo C.J., Spencer J., *The Dynamics of Food Fraud: The Interactions Between Criminal Opportunity and Market (Dys)functionality in Legitimate Business*, *Criminology and Criminal Justice* Vol. 17, Issue 5, 2017.
- Pływaczewski W., Płocki R. (eds), *Nielegalny rynek żywności. Skala zjawiska i możliwości przeciwdziałania*, Szczytno 2013.

<sup>46</sup> [https://www.foodnavigator.com/Article/2019/03/05/Food-fraud-It-takes-scandals-higher-penalties-and-greater-surveillance-to-catch-cheats?utm\\_source=copyright&utm\\_medium=OnSite&utm\\_campaign=copyright](https://www.foodnavigator.com/Article/2019/03/05/Food-fraud-It-takes-scandals-higher-penalties-and-greater-surveillance-to-catch-cheats?utm_source=copyright&utm_medium=OnSite&utm_campaign=copyright) (accessed 28.03.2019).

<sup>47</sup> See European Commission, *The EU Food Fraud*, *supra* n. 28; compare N. Lord, C.J. Flores Elizondo, J. Spencer, *The Dynamics of Food Fraud: The Interactions Between Criminal Opportunity and Market (Dys)functionality in Legitimate Business*, *Criminology and Criminal Justice* Vol. 17, Issue 5, 2017, pp. 605–623.

Szwejkowska M., Zębek E., Kurzyński M., *Uwarunkowania unijne oraz karnoprawne produkcji lub wprowadzania do obrotu żywności niebezpiecznej: część pierwsza*, *Studia Prawnoustrojowe* No. 29, 2015.

#### Internet sources

Mandel A., *We Włoszech żywność fałszowana jest na potęgę*, [https://www.rp.pl/Przemysl-spozywczy/190219560-We-Wloszech-zywnosc-falszowana-jest-na-potege.html?fbclid=IwAR09\\_NiVG7SKZqoyBhViMLb1Mpx7Mhq1fBUj5d-OfjVCpPjV-X5NHqRAKs](https://www.rp.pl/Przemysl-spozywczy/190219560-We-Wloszech-zywnosc-falszowana-jest-na-potege.html?fbclid=IwAR09_NiVG7SKZqoyBhViMLb1Mpx7Mhq1fBUj5d-OfjVCpPjV-X5NHqRAKs) (accessed 18.02.2019).

<https://www.polskieradio.pl/7/1691/Artykul/792304,Afera-z-konina-powazne-klopoty-przed-siebiorcow> (accessed 11.02.2019).

[https://www.foodnavigator.com/Article/2019/03/05/Food-fraud-It-takes-scandals-higher-penalties-and-greater-surveillance-to-catch-cheats?utm\\_source=copyright&utm\\_medium=OnSite&utm\\_campaign=copyright](https://www.foodnavigator.com/Article/2019/03/05/Food-fraud-It-takes-scandals-higher-penalties-and-greater-surveillance-to-catch-cheats?utm_source=copyright&utm_medium=OnSite&utm_campaign=copyright) (accessed 28.03.2019).

## FOOD FRAUD: CRIMINOLOGICAL PERSPECTIVE AND LIMITS OF PENAL RESPONSE IN POLAND

### Summary

The agriculture and food industry, which is one of the biggest sectors of the European Union economy, is extremely vulnerable to fraud connected with counterfeiting foodstuff and beverages as well as other fraudulent practices concerning nutrition. Regardless of the high EU standards of regulations in the field of food and nutrition safety, the scale of fraud in this area is constantly growing. The spectrum of potential fraudulent practices is very wide and at the same time covers, inter alia, labelling poorer quality products with a forged or original trademark, substituting cheaper ingredients and dangerous substances for the necessary ones, inappropriate labelling with respect to contents, e.g. by skipping some ingredients, inappropriate labelling of weight or types of animal meat used in meat products or seafood, or selling traditional food as organic. At present national legislators in the European Union member states still show little interest in combating those activities with the use of penal repression instruments. The analysis of Polish normative solutions confirms this observation. On the European scale, the problem also consists in law enforcement agencies' little interest in efficient prosecution of this type of crime.

Keywords: food, food industry, customer, fraud, criminal liability

## FOOD FRAUD – PERSPEKTYWA KRYMINOLOGICZNA I GRANICE REAKCJI KARNEJ W POLSCE

### Streszczenie

Sektor rolno-spożywczy – jako jeden z największych sektorów gospodarczych w Unii Europejskiej – należy do niezwykle podatnych na nadużycia związane z fałszowaniem produktów spożywczych i napojów oraz inne oszukańcze praktyki żywnościowe. Pomimo wysokich stan-

dardów unijnych regulacji w obszarze bezpieczeństwa żywności i żywienia, skala nadużyć w tym obszarze systematycznie rośnie. Spektrum możliwych oszukańczych praktyk w tym zakresie jest zarazem niezwykle szerokie i obejmuje między innymi oznaczanie gorszej jakości produktów podrobionym lub oryginalnym znakiem towarowym, zastępowanie składników tańszymi lub substancjami niebezpiecznymi, niewłaściwe etykietowanie w zakresie składu, np. poprzez pominięcie jakichś składników, niewłaściwe etykietowanie wagi lub gatunków zwierząt wykorzystywanych w produktach mięsnych lub owocach morza czy też sprzedaż zwykłej żywności jako ekologicznej. Zainteresowanie ustawodawców krajowych w państwach Europy zwalczaniem tego procederu przy zastosowaniu instrumentarium represji karnej jest jak dotąd niewielkie. Analiza polskich rozwiązań normatywnych istotnie potwierdza takie spostrzeżenie. W skali europejskiej problemem pozostaje także znikome zainteresowanie organów ścigania efektywnym zwalczaniem tego typu przestępczości.

Słowa kluczowe: żywność, branża spożywcza, konsument, fałszerstwo, odpowiedzialność karna

## FOOD FRAUD – PERSPECTIVA CRIMINOLÓGICA Y LÍMITES DE REACCIÓN PENAL EN POLONIA

### Resumen

El sector agrario y alimenticio – como uno de los más grandes sectores económicos en la Unión Europea – resulta muy susceptible de abusos relacionados con la falsificación de productos alimenticios y bebidas, así como de otras prácticas alimenticias fraudulentas. A pesar de alto estándar de regulaciones comunitarias sobre seguridad de alimentos y alimentación, la escala de abusos en esta área está creciendo sistemáticamente. El abanico de posibles prácticas fraudulentas en este ámbito es muy amplio e incluye, entre otras, etiquetar productos de peor calidad con marca registrada original o falsa, sustituir ingredientes por más baratos o por sustancias peligrosas, etiquetar indebidamente la composición, p. ej. mediante la eliminación de algunos ingredientes, etiquetar impropriadamente el peso o clase de animales utilizados en productos cárnicos o marisco, o bien vender productos normales como ecológicos. El interés de legisladores nacionales en los países de Europa en luchar contra este fenómeno con el uso de herramientas de represión penal de momento no es elevado. El análisis de soluciones normativas polacas confirma tal conclusión. En la escala europea el problema interesa poco a los órganos de persecución para luchar contra este tipo de delincuencia.

Palabras claves: alimentos, sector alimenticio, consumidor, falsedad, responsabilidad penal

## КОНТРАФАКЦИЯ ПРОДУКТОВ ПИТАНИЯ: УГОЛОВНО-ПРАВОВОЙ АСПЕКТ И ГРАНИЦЫ УГОЛОВНОЙ ОТВЕТСТВЕННОСТИ В ПОЛЬШЕ

### Резюме

Агропродовольственный сектор, являющийся одним из крупнейших секторов экономики Европейского союза, чрезвычайно уязвим для мошенничества, связанного с подделкой продуктов питания и напитков либо введением потребителя в заблуждение. Несмотря на высокие стандарты законодательства ЕС, касающегося безопасности питания и пищевых продуктов, масштабы



мошенничества в этой сфере неуклонно растут. При этом спектр возможных мошеннических действий чрезвычайно широк и включает в себя, в частности, маркировку менее качественной продукции поддельными или оригинальными товарными знаками, замену ингредиентов более дешевыми аналогами или опасными для здоровья веществами, указание состава, не соответствующего действительности (например, сознательный пропуск определенных ингредиентов), неправильная маркировка веса либо указание ложной информации о видах животных, используемых при производстве мясных продуктов или морепродуктов, либо продажа обычных продуктов питания как органических. К сожалению, интерес национальных законодателей европейских стран к борьбе с этим явлением с привлечением уголовно-правовых инструментов не высок. Анализ нормативных решений, существующих в Польше, в основном, подтверждает правильность этого наблюдения. В общеевропейском масштабе сохраняется также проблема незначительного интереса правоохранительных органов к обеспечению эффективной борьбы с этим видом преступности.

Ключевые слова: продукты питания, пищевая промышленность, потребитель, контрафакция, уголовная ответственность

## FOOD FRAUD – EINE KRIMINOLOGISCHE PERSPEKTIVE UND DIE GRENZEN DER STRAFRECHTLICHEN REAKTION IN POLEN

### Zusammenfassung

Der Agrar- und Ernährungssektor gehört – als einer der größten Wirtschaftszweige in der Europäischen Union – im Zusammenhang mit der Fälschung von Lebensmitteln und Getränken und anderen betrügerischen Lebensmittelpraktiken zu den betrugsanfälligsten Branchen. Trotz der strengen europäischen Standards der Lebensmittelsicherheit und Ernährung steigt das Ausmaß des Betrugs in diesem Sektor systematisch an. Das Spektrum der gängigen Betrugspraktiken in diesem Bereich ist gleichwohl äußerst breit und schließt unter anderem die Kennzeichnung von Produkten minderer Qualität mit gefälschten oder originale Marken, den Ersatz hochwertiger und hochpreisiger Inhaltsstoffe durch billigere Inhaltsstoffe oder gefährliche Stoffe, die falsche Kennzeichnung der Zusammensetzung, beispielsweise durch Auslassen von Inhaltsstoffen, eine falsche Angabe des Gewichts oder der in Fleisch oder Meeresfrüchten verwendeten tierischen Ausgangsstoffe oder auch den Verkauf konventionell erzeugter Nahrungsmittel als Bio-Lebensmittel aus ökologischer Landwirtschaft ein. Das Interesse der nationalen europäischen Gesetzgeber, diese Praxis mit Instrumenten der strafrechtlichen Verfolgung zu bekämpfen, ist bislang allerdings gering. Durch eine Analyse der polnischen gesetzgeberischen Entscheidungen wird dieser Eindruck noch bestätigt. Auf europäischer Ebene ist und bleibt das geringe Interesse der Strafverfolgungsbehörden an einer wirksamen Bekämpfung dieser Straftaten ein Problem.

Schlüsselwörter: Lebensmittel, Lebensmittelindustrie, Verbraucher, Betrug, strafrechtliche Verantwortlichkeit

## FRAUDE ALIMENTAIRE – PERSPECTIVE CRIMINOLOGIQUE ET LIMITES DE LA RÉPONSE PÉNALE EN POLOGNE

### Résumé

Le secteur agroalimentaire – en tant que l'un des plus importants secteurs économiques de l'Union européenne – est extrêmement vulnérable à la fraude liée à la falsification de produits alimentaires et de boissons et à d'autres pratiques alimentaires frauduleuses. Malgré les normes strictes de la réglementation européenne en matière de sécurité alimentaire et de nutrition, l'ampleur de la fraude dans ce domaine augmente systématiquement. L'éventail des pratiques frauduleuses possibles dans ce domaine est extrêmement vaste et comprend, entre autres, l'étiquetage de produits de qualité inférieure avec une marque contrefaite ou d'origine, le remplacement d'ingrédients par des substances moins chères ou dangereuses, un étiquetage incorrect en termes de composition, par exemple en omettant certains ingrédients, un étiquetage incorrect du poids ou de l'espèce d'animaux utilisés dans les produits à base de viande ou de fruits de mer, ou la vente d'aliments ordinaires en tant que produits biologiques. L'intérêt des législateurs nationaux des pays européens de lutter contre ces pratiques à l'aide d'instruments de répression pénale est jusqu'à présent insignifiant. L'analyse des solutions normatives polonaises confirme significativement cette observation. À l'échelle européenne, l'intérêt des services répressifs à lutter efficacement contre ce type de criminalité reste problématique.

Mots-clés: alimentation, industrie alimentaire, consommateur, contrefaçon, responsabilité pénale

## FOOD FRAUD: PROSPETTIVA CRIMINOLOGICA E CONFINI DELLA REAZIONE PENALE IN POLONIA

### Sintesi

Il settore agroalimentare, in quanto uno dei maggiori settori economici dell'Unione Europea, è estremamente soggetto ad abusi legati alla falsificazione di prodotti alimentari e bevande, nonché ad altre pratiche alimentari fraudolente. Nonostante gli standard elevati delle regolamentazioni comunitarie nel settore della sicurezza alimentare e nutrizionale, la scala degli abusi in questo settore cresce sistematicamente. Lo spettro delle possibili pratiche fraudolente in questo ambito è estremamente ampio e comprende tra l'altro l'etichettatura di prodotti di peggior qualità con marchi di qualità imitati o originali, la sostituzione con ingredienti più economici o con sostanze pericolose, la scorretta etichettatura sulla composizione, ad esempio omettendo qualche ingrediente, la scorretta indicazione del peso o del tipo di animale utilizzato in prodotti di carne o di frutti di mare oppure la vendita di alimenti normali come biologici. L'impegno dei legislatori nazionali negli stati dell'Europa nella lotta contro questi meccanismi utilizzando strumenti di repressione penale è finora molto ridotto. L'analisi delle soluzioni normative polacche conferma essenzialmente questa osservazione. Su scala europea rimane un problema il marginale impegno delle forze dell'ordine nella lotta efficace contro questo tipo di criminalità.

Parole chiave: alimenti, settore alimentare, consumatore, falsificazione, responsabilità penale

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