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ORIGINAL ARTICLE

Enforceability of decisions of the Agricultural Paying Agency in matters of direct payments

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Abstract: Since its inception, the Common Agricultural Policy has been the largest among all common European policies. The main objective of the Common agricultural policy is food sovereignty in the European Union, stabilization of farmers' incomes and, at present, support for non-production functions of agriculture and environmental protection. Given the rising input prices and the time mismatch between supply and demand for agricultural products, the first pillar of the CAP has become a key tool for sustaining the desired competitiveness of agricultural products in the EU Member States.

Direct payments have become an important tool for Slovak farmers, and therefore their effective implementation is essential for their continued existence or development. The aim of the paper was to point out the weak enforceability of direct payments to eligible users of agricultural land if there is a conflicting legal entitlement to provide a direct payment in accordance with §28 and §29 of Act no. 280/2017 Coll. and the resulting problems for eligible applicants

Key words: Agricultural Paying agency, Agriculture, Common Agricultural Policy, Direct payment, Judicial Decision

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INTRODUCTION

Although agriculture plays only a small role in terms of its impact on the overall performance of the economies of European countries¹, it nevertheless has its irreplaceable and indispensable place in every, even the most advanced economy.

By joining the European Union (hereinafter referred to as the "EU"), the Slovak Republic has assumed the obligations arising from the Common Agricultural Policy (hereinafter referred to as the "CAP"). Due to the effective administrative implementation of the CAP, in accordance with Act No. 473/2003 Coll. on the Agricultural Paying Agency, on farming subsidization and on amending and supplementing certain laws, the Agricultural Paying Agency (hereinafter

referred to as "APA") was established with effect from 1.1.2004. The current status of the APA is determined by Act No. 280/2017 Coll. on the provision of support and subsidies in agriculture and rural development and on the amendment of Act No. 292/2014 Coll. on the contribution provided from the European Structural and Investment Funds and on the amendment of certain laws as amended (hereinafter referred to as "AoPS").

Pursuant to § 9 et seq. the Act on the contribution, the APA acts and decides on the provision of support and subsidies in the field of agriculture, including direct payments. Although the interpretation of EU legislation on direct payments does not cause major problems for farmers, in practice it is possible to encounter incorrect APA decision-making practice regarding the granting of direct payments in case of disputed

¹ Statistical Factsheet European union www.ec.europa.eu

declared entitlements. Research into the legal issue of enforceability and failure of the system of assigning direct payments has not yet been scientifically addressed in Slovakia, which in practice means frequent arbitrage of the APA in deciding on direct payments. Several lawful decisions of administrative courts are relatively ambiguous and their enforceability is often not feasible. For this reason, the submitted paper aims point out the weak enforceability of the application of direct payments to eligible users of agricultural land in the event of a conflicting legal right to the provision of direct payment within the meaning of § 29 of the AoPS.

ECONOMIC IMPORTANCE OF DIRECT PAYMENTS FOR FARMERS

Direct payments are one of the most important economic instruments for supporting agriculture in the European area. They have different forms²:

The scheme of decoupled direct payments,

The scheme of coupled direct payments,

The support given under rural development programme measures,

The form of transitional national aid.

Within the scheme of decoupled payments, we find one of the most important and today the most monitored direct payments, namely a single area payment. The conditions for eligibility are given by European and national legislation, where one of the decisive criteria is the size of the area and the minimum amount of the contribution.

The overall system of direct payments maintains the very competitiveness of agriculture in its current form, and despite the questionability of such an instrument to promote the competitiveness of national and European agricultural interests, the fact remains that without this instrument many actors would no longer be able to face competitive pressure from outside Europe.

The CAP represents a key financial instrument for farmers within the EU today. The problem is that more and more agricultural entities face financial problems despite financial support. The new budget approved for the period of time 2021-2027 also incorporates new rules and support schemes for EU farmers. The Figure 1 shows new distribution of direct payments per hectare among all Member states in year 2021. The main aim is easing of disparities among the EU farmers. We see that all Visegrad group countries lie below the average of the EU but values between these countries are comparable. On the other hand, farmers in “old” EU Member states (for example Italy, Netherlands and Belgium) will experience higher direct payments. Malta and Greece will experience highest amount of direct payments among all Member states while on the other scale we will find Baltic countries. If we

compare the total difference in direct payments planned for year 2021, we will observe a difference of 323%. Despite economic differences between observed countries we think that these rules still prefer disproportion among EU Member states.

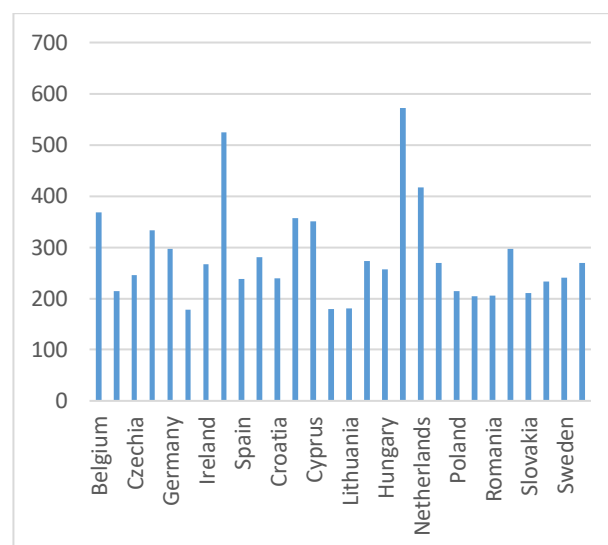


Fig. 1: The direct payments values for EU-27 Member States in 2021. Source: Volkov et. al, 2019³

LEGAL ANALYSIS

The legal regulation of direct payments the 1st pillar of the CAP is divided into the European level and the national level. This is only a simplification, as these two units are interconnected as provided by the EU Founding Treaties, the Constitution of the Slovak Republic and other relevant legal norms of the Slovak Republic.

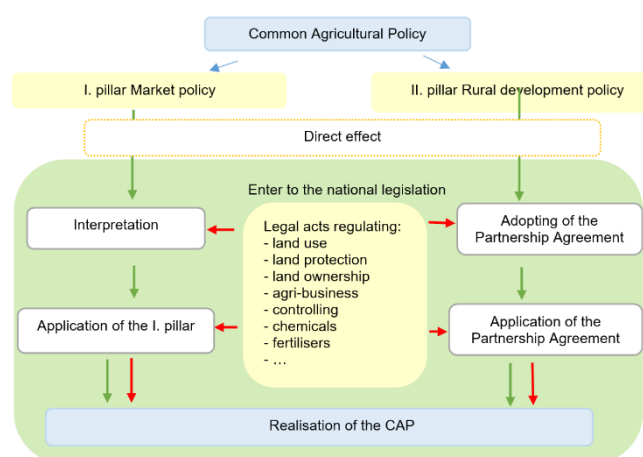


Fig. 2: Application and realisation of the CAP in national legislation of the EU member states. Source: Paľšová, L., 2020⁴

² Agricultural Paying Agency www.apa.sk

³ Volkov, A. et al. 2019. In a Search for Equity: Do Direct Payments under the Common Agricultural Policy Induce Convergence in the European Union? *Sustainability*, 11(12), 3462.

⁴ Paľšová, L. 2020. Agricultural land – conflict of interests. Manuscript. Research conducted by the Department of Law, faculty of European Studies and Regional Development, Slovak University of Agriculture in Nitra.

From the point of view of the EU primary law, the Treaty on the Functioning of the European Union (hereinafter referred to as "TFEU") is decisive, especially from the point of view of Art. 4 par. 2 letter d) and Art. 39. Art. 4 TFEU defines the EU's competences in the field of agriculture and fisheries (excluding the protection of marine biological resources) as a joint competence of the EU and the Member States. From this point of view, the mutual responsibility of the EU and the Member States for shaping agricultural policy must be emphasized. Due to this "common" nature of competences, there is still (at least to some extent) an open space for Member States to use national funds to support agriculture.

Pursuant to Art. 39 TFEU, the objectives of the CAP are defined as follows:

- a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour; Official Journal C 326, 26/10/2012 P. 0001 – 0390;
- b) thus, to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
- c) to stabilise markets;
- d) to assure the availability of supplies;
- e) to ensure that supplies reach consumers at reasonable prices.

The regulation of the 1st pillar of the CAP for the programming period 2014-2020 is regulated in detail by the Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (hereinafter referred to as "Regulation No. 1307/2013").

The Regulation unifies the basic concepts crucial for the eligibility for direct payments, ^{defining the farmer⁵}, agricultural activity⁶, agricultural area⁷, etc.

In the in Art. 9 par. 1, the Regulation negatively defines the so-called "Active farmer"; it is not considered an active farmer:

- whose agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and who do not carry out on those areas the minimum activity,
- who operates airports, railway services, waterworks, real estate services, permanent sport and recreational grounds.

⁵ Farmer - a natural or legal person, or a group of natural or legal persons, regardless of the legal status granted to such group and its members by national law

⁶ Agricultural activity - production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes; maintaining an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action; carrying out a minimum activity on agricultural areas naturally kept in a state suitable for grazing or cultivation.

At the same time, the regulation provides for the possibility for Member States to introduce stricter criteria for defining an active farmer.

Country	Limit for the EUR threshold	Limit for the hectare threshold
Reg. no. 1307/2013	100	1
Czech Republic	200	5
Hungary	200	4
Poland	200	0,5
Slovak republic	200	2

Tab. 1: Minimum requirements for receiving direct payments for the V4 countries. Source: Regulation No. 1307/2013

The key to the eligibility of direct payments is to set minimum requirements for receiving direct payments⁸. These limits are set as follows:

- minimum amount of payment (EUR),
- at least in the form of minimum area (in hectares).

For a clear comparison of different conditions, we have prepared an overview of the conditions within the V4 countries (Table 1). If the minimum value in the form of the amount of direct payment is set at EUR 100 under the regulation we are monitoring, then all Member States have this threshold set uniformly at EUR 200. On the other hand, when comparing the minimum area in the form of acreage of agricultural land, we find more significant differences between individual V4 countries. In the case of the Slovak Republic, the minimum area is set at the level of 2 ha⁹, which represents twice the amount of the minimum area defined in Art. 10 par. 2 of the Regulation No. 1307/2013. The highest required area for claiming direct payment is set within the monitored countries in the Czech Republic (5 ha) and at the same time the lowest required area is set in Poland (0.5 ha). It can be seen that we also find significant differences between countries linked by geographical proximity and economic maturity, when the amount of the minimum land area for the eligibility of direct payments represents a tenfold difference. At the same time, the Czech Republic, together with Denmark and the United Kingdom, has set the highest level of the required acreage rate at the level of 5 ha in the entire EU.

Within the national legislation, the issue of direct payments is regulated by a targeted group of legal regulations¹⁰. One of

⁷ Agricultural area - any area taken up by arable land, permanent grassland and permanent pasture, or permanent crops.

⁸ Article. 10 of the Regulation No. 1307/2013

⁹ Annex IV of the Regulation No. 1307/2013

¹⁰ E.g.

Act No. 280/2017 Coll. on providing support and subsidies in agriculture and rural development and on amending Act No. 292/2014 Coll. on the contribution from the European Structural and Investment Funds

the central legal regulations governing legal relations arising in connection with the eligibility and drawing of direct payments is the AoPS. In addition to the definition of basic terms, which refer mainly to EU legislation, the AoPS contains key preconditions for the proper functioning of direct payments, the competence of state authorities, conditions for providing direct payments, direct payment proceedings and liability for breach of obligations under this law. At this point, it is necessary to point out the legislative definition of support and subsidies. The difference itself lies in the fact that the aid, unlike the subsidy, includes full or partial co-financing from EU resources¹¹.

The state administration bodies in providing support and subsidies are:

- Ministry of Agriculture and Rural Development of the Slovak Republic (hereinafter referred to as “MPaRV SR“,
- APA.

Proceedings in the case of direct payments are initiated on the basis of a written or electronic¹² application by the applicant¹³ to the APA, on the basis of a published invitation. The APA is the only body deciding on the application at first instance¹⁴, which applies a special procedure and in principle does not proceed on the basis of Act no. 162/2015 Coll. Administrative Court Procedure Code as amended. The sole party to the proceedings is the applicant himself¹⁵.

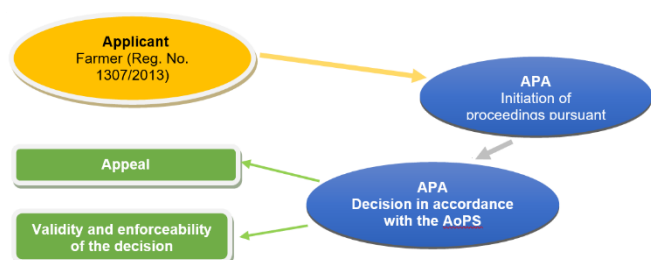


Fig. 3: The system of proceeding on aid in accordance with the AoPS. Source: own based on the AoPS.

Act No. 19/2002 Coll. laying down conditions for issuing approximation government regulations, as amended
Slovak Government Regulation No. 342/2014, laying down rules for granting support in agriculture in the context of decoupled direct payment schemes

Slovak Government Regulation No. 75/2015 Coll. laying down the rules for the provision of support in connection with the measures of the rural development program, as amended by the Slovak Government Regulation No. 163/2015 Coll. as amended

Slovak Government Regulation No. 36/2015 Coll. laying down the rules for granting aid in agriculture in respect of coupled direct payment schemes, as amended

¹¹ §2 par. 1 and 2 of the Act No. 280/2017 Coll., as amended

¹² If the application is submitted in electronic form without a guaranteed signature, it must be accompanied by a written application within three working days.

¹³ Definition in accordance with Art. 4 par. 1 letter a) of the Regulation No. 1307/2013

The eligibility of the application by the applicant is verified by the PPA in accordance with special regulations¹⁶. The decision (or part of the opinion) becomes valid when it cannot be appealed. Enforceability of the decision becomes effective when it cannot be appealed against or the appeal has no suspensory effect in the given case¹⁷.

The appeal is submitted by the applicant to the APA itself within 15 days of receipt of the decision¹⁸. In addition to the rejection of the appeal in exhaustively defined cases¹⁹, the legal regulation also allows the withdrawal of the decision by the APA. In other cases, it is obliged to forward the appeal against the decision within 30 days to the second-instance body, which is the MPaRV SR.

MPaRV SR will decide on the appeal within 30 resp. in particularly serious cases within 60 working days²⁰. It is not possible to file an appeal against the decision of the Ministry. In this case, it is only possible to use the possibility of review of the decision by the court²².

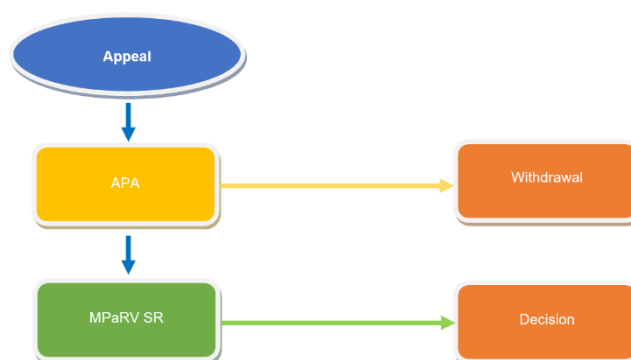


Fig. 4: Appeal procedure in respect of an application for support from the applicant under the AoPS. Source: own based on the AoPS.

§28 and §29 of the AoPS deal separately with a situation where several applicants have submitted an application for direct area payments for the same agricultural area. In such a case, the APA shall invite them to prove within the

¹⁴ §10 par. 1 letter a) Act No. 280/2017 Coll., as amended

¹⁵ §24 par. 1 Act No. 280/2017 Coll., as amended

¹⁶ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008

¹⁷ §33 par. 1 a 2 Act No. 280/2017 Coll. as amended

¹⁸ §34 par. 2 Act No. 280/2017 Coll. as amended

¹⁹ §34 par. 8 Act No. 280/2017 Coll. as amended

²⁰ §35 par. 10 Act No. 280/2017 Coll. as amended

²¹ §35 par. 10 Act No. 280/2017 Coll. as amended also allows for an extension of the time limit by special decision of the Minister

²² Pursuant to §26 par. 14 of the Act No. 280/2017 Coll. as amended, any instruction as an integral part of the institution's decision must also include information on the possibility of review of the decision by a court

determined time period the compliance with the conditions²³ and the right of use of the agricultural area; the right to use the agricultural area by law means the right to use the agricultural area as an owner²⁴, tenant²⁵ or for another legal reason²⁶. If, on the basis of the APA's findings, it proves that only one applicant has the right to use the agricultural area, the acting authority shall decide on its application in accordance with the conditions laid down in special regulations. If the APA finds that the applicants' right to use the agricultural area is in dispute, the acting authority shall not designate the designated agricultural area on the disputed area and shall not allocate direct payments in the disputed agricultural area to any of the applicants. The remedy is not admissible against this part of the decision verdict.

It follows from the above that the APA has the statutory competence to assess the ownership / use right to the declared agricultural area and is therefore obliged to interpret the document submitted by the applicant proving the legal title to the use of the declared agricultural land. From the analysis of the applications submitted to the APA, it was found that the APA does not make such an interpretation during the administrative proceedings, as in the opinion of the APA, APA's proceedings are not covered by the Act No. 162/1995 Coll. on the Real Estate Cadastre and the Entries of Ownership and Other Rights to the Real Estates (The Cadastre Act). The APA derives its conduct from §40 par. 3 AoPS, which stipulates that the cadastral law does not apply to the keeping of records of land blocks and parts of land blocks.

Land blocks and parts of land blocks are part of the Land Parcel Identification System (LPIS), a system set up for the Integrated Administration and Control System for the provision of direct payments, with plots showing and quantifying the type of agricultural land in the LPIS and drawing in a simplified form parts of land blocks, which rather correspond to the geographical arrangement into large land blocks. LPIS land maps do not show parcel numbers in the sense of the cadastral law, and therefore it is not possible to assign a specific part of the land block to a specific owner / user on the basis of such maps. From the point of view of the purpose for which the LPIS register is created, it is justified that the legal regulation does not stipulate the obligation to keep the parts of the land block records according to the cadastral law.

Therefore, on the basis of the LPIS land register, it is not possible to identify the ownership / use relationship of any applicant for the single area payment. On the other hand, legal acts establishing a legal title authorizing the use of a specific agricultural land requires the identification of real estate in terms of the Civil Code and the Cadastre Act. It follows from

the above that only the cadastral map is able to identify the ownership and use rights to the land.

In this sense, the provision of §28 AoPS seems to be impracticable by the APA. While the eligible applicant fairly expects an assessment of his application as to the eligibility of the agricultural land declared by him, the APA will decide, regardless of the ownership / usage right, on the dispute of the conflicting agricultural land according to §29 AoPS. In this sense, we consider that the APA does not comply with the legal obligation to examine the ownership / use resp. another legal title within the meaning of the relevant legal regulations.

The APA procedure seems to be problematic with regard to §29 par. 2 AoPS, where the law excludes a remedy in the case of the verdict part in which the APA decides on the dispute. Despite the statutory provision, the APA will instruct the applicant on the possibility of the remedy.

In practice, it was possible to encounter two court proceedings:

1. The APA did not point out that it had wrongly instructed the applicant to submit the remedy - the competent regional court had initiated proceedings and remitted the case to the APA for further proceedings, committing the APA itself to assessing the ownership or use relationship. The APA re-examined the case, but did not change the decision, as it is convinced that it cannot assess the legitimacy of the ownership / use relationship under the relevant provisions. Cases of this type are returned cyclically to the regional courts, as it is not possible to force the APA to act in accordance with §28 AoPS.

2. In accordance with its obligation to instruct, the PPA pointed out that the applicant should have first use the remedy. There is no court ruling in this regard yet. However, it is settled case-law²⁷ that an error in informing a party that a remedy may be brought against a decision of an administrative authority does not render the remedy admissible where its admissibility is excluded ex lege.

In that regard, the AoPS refers to the possibility for the applicants concerned to bring an action for a declaration to the court to determine the right of ownership and use, even in cases where the APA can decide on the basis of the documents submitted. With this APA procedure, the courts can be burdened with the cases. If the applicant also proves his / her right of ownership / use on the basis of a valid court decision, the application for the allocation of direct payments will be examined by the MPA^{RV} SR outside the appeal proceedings. Pursuant to §36 par. 2 AoPS, however, the deadline for filing a complaint is seven years.

²³ E.g. Art. 9 and 12 of the Regulation No. 1307/2013

²⁴ §123 et seq. Act No. 40/1964 Coll. the Civil Code as amended

²⁵ The first and the second part of the Act No. 504/2003 Coll. on the lease of agricultural land, agricultural holding and forest land and on the amendment of certain laws as amended

²⁶ Legal relations resulting from simplified land consolidation, which last after the repealed §15 of the Act No. 330/1991 Coll. on Land Consolidation, Land Property Arrangements, Land Offices, Land Fund and Land Associations as amended

²⁷ E.g. 3Sžp/20/2011, 5SžF/47/2010

CONCLUSIONS

For Slovak farmers, direct payments represent a tool for stabilizing their incomes, and therefore it is necessary that applicants for direct payments have the conditions for obtaining them guaranteed by their enforceability by the state. In practice, however, it is possible to encounter situations where it is almost impossible for the applicant to direct payments to the declared land, although he can prove that all the conditions required by law are met. The APA refuses to determine the eligibility of the ownership / use title for the declared land under the Cadastre Act. In this sense, we propose that the APA in the future links the LPIS maps to the cadastral map in order to determine the legitimacy of the ownership / use relationship, which would reduce the burden of courts with regard to actions for a declaration or cassation complaints.

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Agricultural Paying Agency
<https://www.apa.sk>

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Act No. 504/2003 Coll. on the lease of agricultural land, agricultural holding and forest land and on the amendment of certain laws as amended

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