

# LEGAL REGULATION OF DIRECT PAYMENTS IN EU AND SLOVAK REPUBLIC IN PROGRAMMING PERIOD 2014-2020

## PRÁVNÁ ÚPRAVA PRIAMÝCH PLATIEB V EÚ A SLOVENSKEJ REPUBLIKE V PROGRAMOVOM OBDOBÍ 2014-2020

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### I. Introduction

Harvey, D. – Jambor, A. (2010)<sup>(1)</sup> stated that in the last 20 years, CAP expenditures were reduced from 75% of the total EU budget to 45%, so that today represent 0.4% of EU GDP.

Direct payments have been one of the main support instruments of EU agricultural sector from the beginning of 90's, but their nature has significantly changed. In frame of the reform in 1992 (McSharry) direct payments were presented as coupled payments linked to the area or animals, compensating farmers for reduction of price support. In 2003, direct payments were decoupled from production (Schwarcz, P. et al., 2012)<sup>(2)</sup>.

In the new programming period (2014-2020) there is a transition from full decoupling to targeting. The system of decoupling of agricultural support providing the general in-

come support, which began in 2003, is now changing to a new system in which each component is linked to a specific purpose or function, the reference periods of the past will no longer play any role, except in certain cases in some Member States (Regulation EC 1307/2013).

Structure of support has been significantly changed from the 90's when export refunds and other market support mechanisms were dominant (Fig. 1). Gradually direct payments have become the most preferred support mechanism representing the system of income support (in particular modifications – coupled, decoupled support, etc.). Rural development policy has also increased its importance especially in environmental protection measures.

### II. Legal regulation of direct payments at EU level

Legal regulation of direct payments for the new programming period is included in 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

#### Abstract (EN)

Direct payments belong to one of the main supporting instruments of EU agricultural sector representing the support of farmers' income. In the new programming period (2014-2020) there is a transition from full decoupling to targeting of direct payments. Strong emphasis will be given especially on environmental aspects representing by „greening“. The aim of the paper is to describe and review the Legal regulation of direct payments at both EU and Slovak republic level. Comparison of the amount of direct payments in 2007-2013 and 2014-2020 is also being presented. Finally selected problems in direct payments implementation are introduced and discussed.

#### Keywords (EN)

Common Agricultural Policy, Direct Payments, Legal Regulation, Environment

#### Abstrakt (SK)

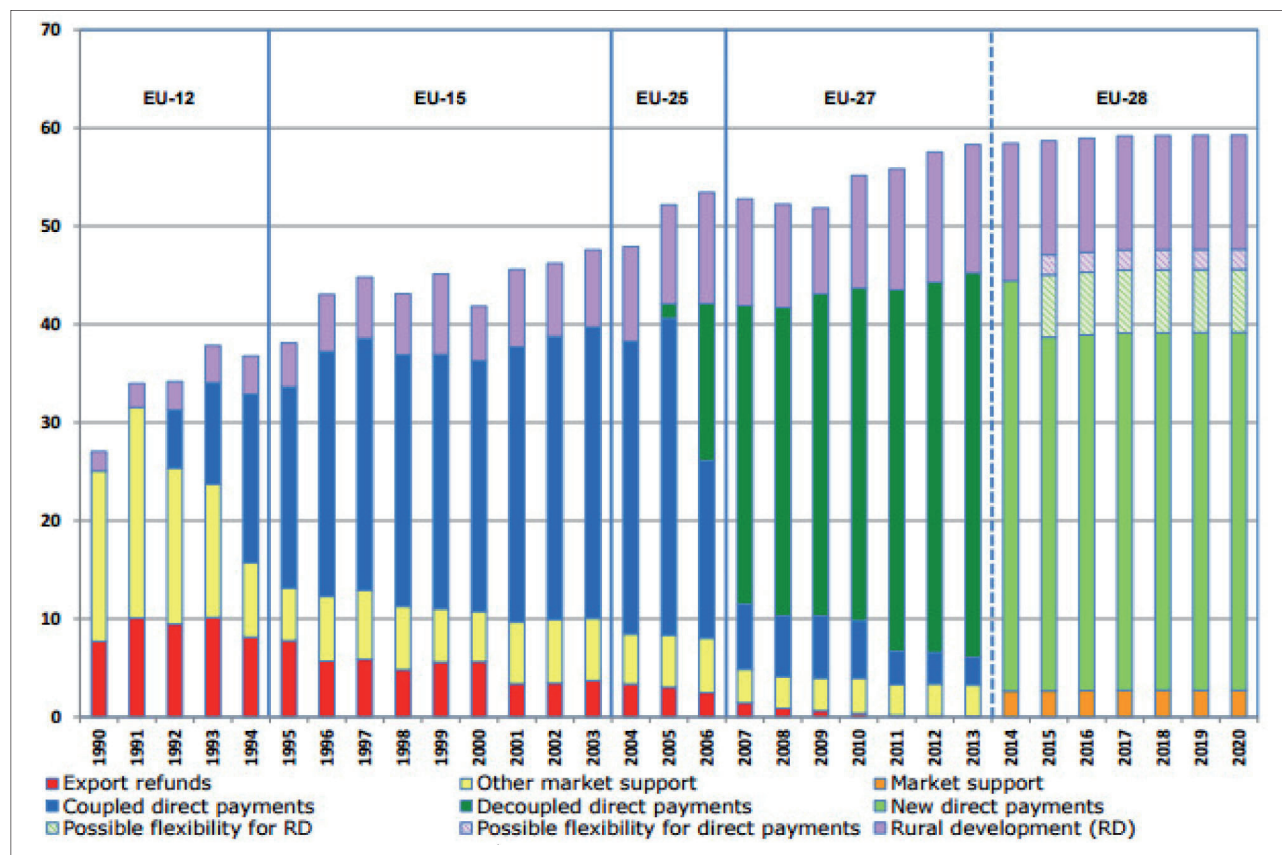
Priame platby patria k jedným z hlavných podporných nástrojov poľnohospodárskeho sektora v EÚ, pričom predstavujú príjmovú podporu poľnohospodárov. V novom programovom období (2014-2020) dochádza k prechodu od úplného oddelenia platieb od produkcie k tzv. zacieleniu priamych platieb. Silný dôraz sa bude klásť predovšetkým na environmentálne aspekty, ktoré sú súčasťou konceptu „ozelenenia“. Cieľom článku je popísať a recenzovať právnu úpravu priamych platieb na úrovni EÚ aj SR. Ďalej je zhodnotené porovnanie výšky priamych platieb v rokoch 2007-2013 a 2014-2020. V závere sú priblížené a diskutované vybrané problémy v systéme implementácie priamych platieb.

#### Kľúčové slová (SK)

spoločná poľnohospodárska politika, priame platby, právna úprava, životné prostredie

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Fig 1: Structure of CAP expenditures (in billion of EUR)



Source: European Commission (EUROPEAN COMMISSION (2013) *Agricultural Policy Perspectives Brief N°5\** / December 2013. Overview of CAP Reform 2014-2020)

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 the EU regulation). Although EU regulation entered into force on 1 January 2014, since member states had short preparation time for the implementation of EU Regulation, the point 66 provided the option for member states to decide to implement the system of direct payments in 2014 within the meaning of Regulation (EC) No 73/2009<sup>(3)</sup>. So EU regulation in general started to be implemented from January 1, 2015.

The EU Regulation as directly effective legal act of the Union represents the complex rules for direct payments to all EU Member States. In the non-essential parts in order to supplement or amend the EU Regulation, the Commission was delegated the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

In accordance with Article 1 of EU regulation establishes:

a) common rules on payments granted directly to farmers

under the support schemes listed in Annex I (direct payments);

b) specific rules concerning:

- i. a basic payment for farmers (the basic payment scheme and a transitional simplified scheme, the single area payment scheme);
- ii. voluntary transitional national aid for farmers;
- iii. a voluntary redistributive payment;
- iv. a payment for farmers observing agricultural practices beneficial for the climate and the environment;
- v. a voluntary payment for farmers in areas with natural constraints;
- vi. a payment for young farmers commencing their agricultural activity;
- vii. a voluntary coupled support scheme;
- viii. a crop-specific payment for cotton;
- ix. a voluntary simplified scheme for small farmers;
- x. a framework within which Bulgaria, Croatia and Romania may complement direct payments

<sup>(3)</sup> Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003

EU Regulation merges previous EU support mechanisms into a single scheme of decoupled direct payments. The programming period 2014–2020 has introduced into a system of direct payments several changes, while one of the objectives of the new CAP is the enhancement of environmental performance through a mandatory component of direct payments

– greening, supporting agricultural practices beneficial for the climate and the environment applicable throughout the EU. As stated in point 37 of the EU regulation, Member States shall use part of their national ceilings for direct payments, to provide additionally to the basic payment an annual payment for compulsory practices of farmers, in which they can take into account the internal convergence in the member state or region. Priority is the fulfillment of objectives of environmental and climate policies beyond the cross-compliance, which are linked to agriculture such as crop diversification, maintenance of permanent grassland, which includes traditional orchards where fruit trees are sparsely planted on grasslands and the establishment of ecological focus areas.

The system of direct payments in the Slovak Republic is in the programming period 2014–2020 again based on the single area payment scheme. In accordance with Article 36 of the EU regulation member states which in 2014 applied the single area payment scheme set up in Title V Chapter 2 of Regulation (EC) No 73/2009, may under the conditions laid down in this Regulation, to continue to apply this scheme by December 31, 2020. The Commission was informed latest August 1, 2014 on their decision, as well as the final date of application of the single area payment scheme.

The financing of direct payments is regulated by 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. Article 3 of the Regulation introduces for the programming period 2014–2020 funds which ensure the fulfillment of the Common agricultural policy goals:

1. The European Agricultural Guidance and Guarantee Fund;
2. The European Agricultural Fund for Rural Development.

Both funds are part of the general budget of the European Union.

### III. Legal regulation of direct payments at national level

Although EU regulation is directly binding in all of EU member states, the Slovak Republic adopted a number of generally binding legal regulations that both specify parts of EU regulations that are binding for Slovakia and also define the elements of direct payments, where EU regulation provided an option to member state. For the programming period 2014–2020 Slovak Republic provides the following types of direct payments:

#### 1. from the European Agricultural Guarantee Fund (EAGF) – I. pillar of CAP

- Single Area Payment;
- Payment for agricultural practices beneficial for the climate and the environment;
- Payment for young farmers;
- Payment for the cultivation of sugar beet;

- Payment for the cultivation of hops;
- Payment for the cultivation of selected species of fruits with high labor input;
- Payment for the cultivation of selected species of fruits with very high labor input;
- Payment for the cultivation of selected species of vegetables with high labor input;
- Payment for the cultivation of selected species of vegetables with very high labor input;
- Payment for the cultivation of tomatoes;
- Payment for breeding of ewes, ewe lambs and goats;
- Payment on fattening of selected categories of cattle;
- Payment on cows bred in the system of market milk production.

#### 2. from the European Agricultural Fund for Rural Development (EAFRD) – II. pillar of CAP

- Payment for areas with natural or other specific constraints
- Support for agri-environment-climate measures;
- Organic Farming;
- Payments within Natura 2000;
- Support for the animal welfare measures;
- Payments for forest environmental and climate services and forest protection.

#### 3. from the state budget – transitional national payments (2015):

- The complementary national area payments;
- The complementary national payment for hops;
- The complementary national payment for livestock units.

The legal regulation of direct payments financed by the EAGF is in the Slovak legislation specified in the following generally binding legal regulations:

1. *Government Regulation of SR No 342/2014 Coll. that lays down the rules for granting support in agriculture in the context of decoupled direct payment schemes as amended*

Government Regulation No 342/2014 Coll. lays down the rules for granting support in agriculture in relation to the schemes of decoupled direct payments, which are:

- a) The transitional simplified scheme of basic payment (single area payment).
- b) Payment for agricultural practices beneficial for the climate and the environment.
- c) Payment for young farmers.

Par. 2 of Government Regulation No 342/2014 Coll. lays down the basic conditions for applicants of direct payments. General requirements for the applicant's agricultural area are:

- a) agricultural area registered in LPIS (Land parcel identification system) amounts to at least 1 hectare, and this area can be represented by several contiguous land blocks parts of the species agricultural land with an area of at least 0,3 hectare farmed by one applicant; in agricultural area within the meaning of Article 4 Section 1 point. e)

of the EU Regulation is considered any area taken up by arable land, permanent grassland and permanent pasture or permanent crops;

- b) it is available as of 31 May of the relevant year; The applicant shall demonstrate a disposition in addition to the physical disposition of the area declared to May 31 of the concerned year, in case of APA request by ownership, rental or other user relations to the area.
- c) a clearly marked boundaries, if not naturally defined,
- d) used to fast growing tree species is planted by tree species which are listed in the Annex 1, including compliance with a maximum harvest cycle,
- e) used for the production of hemp seed is sown varieties under special regulation.

Direct payments shall be granted at the request of an applicant who:

- a) meets the requirements for active farmer whose predominant activity comes from agricultural activity (Par. 3 of Government Regulation No 342/2014 Coll); a farmer within the meaning of Article 4 Section 1 letter a) of EU regulations means a natural or legal person or group of natural or legal persons, irrespective of the legal status of such a group or its members by national law, whose holding is located in a territorial application of EU primary law;
- b) complies with the rules of cross-compliance according to Par. 4 of Government Regulation No 342/2014 Coll. which consist of statutory management requirements and standards for good agricultural and environmental conditions, which are divided into three areas:
  - Environment, climate change, good agricultural condition of land;
  - Public health and animal and plant health;
  - Animal welfare;
- c) carries out an agricultural activity within the meaning of Par. 4 Section 1 letter c) of the EU Regulation, which is:
  - The production, breeding or growing of agricultural products;
  - Maintaining the agricultural area in a status which is suitable for grazing or cultivation without any preparatory activities beyond using conventional agricultural techniques and machinery on the basis of criteria set by the Member States on the basis of the framework set by the Commission;
- d) maintains agricultural area, depending on the type of an agricultural area in land block. The applicant for payment in the year in which the application is submitted is required to implement:
  - In the case of arable land to ensure that arable land used for growing of crops is cultivated in accordance with agricultural practices and production orientation of the applicant and the area suitable for growing crops, but left fallow, is cultivated (eg., the applicant prevents the spread of self-seeding trees, removes invasive plant species, etc.);
  - In the case of permanent grassland maintaining all surfaces mowing, grazing and additionally the mulch;
  - In the case of permanent grassland to farm (eg. Treatment of plantings, etc.).

As in the previous also in the new programming period shall be submitted application for direct payments till May 15 of the calendar year to the regional office of the Agricultural Paying Agency. Single area payment is flat decoupled payment while as in the previous programming period is provided on an annual basis for each eligible hectare, and that the applicant declared in the application for payment.

The new programming period involves into the system of direct payments environmental requirements, which are reflected in the fact that any applicant of single area payment must simultaneously be the applicant for greening payment. Payment for greening is flat decoupled payment as well requested by applicant for notified hectares of arable land, permanent grassland or permanent crops.

Payment for greening is granted to an applicant who is entitled to single area payment and maintains the agricultural practices beneficial for the climate and the environment, involving the following procedures:

- Diversification of crops,
- The maintenance of existing permanent grassland,
- The existence of ecological focus areas.

Programming period brings a change in the terms of payment for young farmers, for which eligible is the applicant who is entitled to the single area payment and who for the first time establishes an agricultural holding as head of the holding or has such an establishment founded during the five years preceding the first submission of application the single area payment and does not have in the first year of application of more than 40 years. Since payment is not operating support for established businesses, payment shall be granted for a maximum period of five years.

*2. Government Regulation No 36/2015 Coll. that lays down the rules for granting support in agriculture in relation to the coupled scheme of direct payments.*

Within the meaning of § 1 of Government Regulation No 36/2015 Coll. subject of regulation is setting up rules for granting support in agriculture in relation to the coupled scheme of direct payments, which in the Slovak conditions are:

- a) Payment for the cultivation of sugar beet;
- b) Payment for the cultivation of hops;
- c) Payment for the cultivation of selected species of fruits with high labor input;
- d) Payment for the cultivation of selected species of fruits with very high labor input;
- e) Payment for the cultivation of selected species of vegetables with high labor input;
- f) Payment for the cultivation of selected species of vegetables with very high labor input;
- g) Payment for the cultivation of tomatoes;
- h) Payment for breeding of ewes, ewe lambs and goats;
- i) Payment on fattening of selected categories of cattle;
- j) Payment on cows bred in the system of market milk production.

Payment is related to applications for direct payments to the Agricultural Paying Agency done by farmer within the meaning of Article 4 Section 1 letter a) EU regulation who carries



Fig. 2: Comparison of unit amount of direct payments in 2007–2013 and 2014–2020 (in billion of Eur)

	IU	2007–2013	2014–2020	Index 2014–2020/2007–2013
SAPS + ANC	ha	210	253	120.48 %
Single area payment	ha	138	130	94.20 %
Greening payment	ha	n.a.	70	n.a.
Payments for areas with natural constraints (ANC)	ha	72	53	73.61 %
Redistributive payment	ha	n.a.	n.a.	n.a.
Payment for young farmers	ha	n.a.	60	n.a.

Source: Ministry of Agriculture and Rural Development of SR, 2015<sup>(4)</sup>

out an agricultural activity, as provided in Government Regulation No 342/2014 Coll., the applicant is also subject to the following requirements:

- the active farmer within the meaning of Par. 3 of Government Regulation No 342/2014 Coll.;
- cross-compliance in accordance with Par. 4 of Government Regulation No 342/2014 Coll. ;
- agricultural area of crop registered in LPIS reaches the area of at least 0,3 hectares, the whole agricultural area of the applicant achieves at least 1 hectare;

3. Government Regulation No 152/2013 Coll. on the conditions for granting subsidies in agriculture in the form of transitional national payments, as amended.

Government Regulation lays down the conditions for granting support in agriculture in the form of transitional national payments which are:

- additional area payment; the applicant shall be provided a payment if agricultural area:
  - was cultivated on June 30, 2003;
  - has at least 1 ha; this condition is fulfilled if the area comprises of several contiguous land blocks parts of the land species with an area at least 0.3 hectares farmed by one applicant;
  - has clearly identified and defined borders, unless the border is naturally bounded.
 Additional area payment may be granted to an applicant cultivating an arable land, vineyards, orchards and hop gardens registered in LPIS.
- payment for hops; the applicant shall receive payment for area registered in the LPIS to 31 December, 2006, if it has reached at least of 0,3 ha;
- payment per livestock unit; the applicant shall be granted payment for at least one livestock unit

<sup>(4)</sup> JAHNÁTEK, L. (2015). Program rozvoja vidieka: financovanie slovenského poľnohospodárstva, potravinárstva a rozvoja vidieka v programovom období 2014 – 2020. Seminar in Nitra, 6.3.2015

## IV. Amount of direct payments in 2007–2013 and 2014–2020

Figure 2 shows a comparison of predicted amount of unit direct payments in the programming period 2014–2020 and compares it to the period 2007–2013. Average unit amount of decoupled payments as single area payment, greening payment and payments for areas with natural constraints (ANC) shall be at 120.48% of the level in programming period 2007–2013. In addition there is a possibility for young farmers to receive the support through payment for young farmers in amount of 60 Eur per hectare (applicable for the first 28 hectares in the farm).

## V. Selected problems in process of direct payments implementation in programming period 2014–2020

In terms of changes in direct payments system some problems have occurred. Confusing for Slovak farmers is particularly the manner in which the requirements for the greening payment will be applied. As a negative can be considered the point that the Ministry of Agriculture and Rural Development of SR within its jurisdiction in accordance with Par. 3 Section 2 letter b) Act No 543/2007 Coll. on the competence of state administration authorities in providing support for agriculture and rural development as amended, issued „guidelines“ to Government Regulation No 342/2014 Coll.<sup>(5)</sup> only on March 17, 2015. Until then, the EU Regulation was interpreted in several ways, which evoked uncertainty in implementation of the requirements for direct payments. The purpose of the guidelines is to uniform interpretation of Government Regulations No 342/2014 Coll., endeavoring to interpret the basic requirements for the application for direct payments.

<sup>(5)</sup> Government Regulation No 342/2014 Coll. that lays down the rules for granting support in agriculture in relation to the schemes of decoupled direct payment as amended

Since the guidelines were issued already in the period of first field works, it means that applicants for direct payments had minimum period for studying, preparation and implementation of relatively complicated requirements in accordance with the Regulation. Therefore, the errors made by farmers, cannot be ruled out in the implementation of Government Regulation No. 342/2014 Coll. To avoid the problems, Ministry of Agriculture and Rural Development of SR issued a notice to applicants in relation to the greening payment (in particular the procedure for the existence of ecological focus areas) to set in an application more elements for the case where applicants incorrectly implemented the requirements for this procedure.

Since the first verification of requirements fulfillment under Government Regulation No 342/2014 Coll. will run in autumn 2015 can not yet be evaluated the qualitative aspect of the requirements application for direct payments, or its individual elements. It can be assumed that the Slovak farmers will apply the requirements in the greening payment process as simple as possible. For that reason, no effect of the common agricultural policy principles in relation to environmental requirements for applicants for direct payments can be evaluated.

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