



Fraudulent use of the funds of the European Agricultural Fund for Rural Development

3.



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Foreword

David Smolej

The burning issue of fraudulent use of funds acquired from different European funds has also affected the field of agriculture and rural development. In the past, several irregularities have been detected in the use of funds from the European Agricultural Fund for Rural Development. The modes of criminal offences relating to fraud to the detriment of the EU in agriculture are similar, mostly concerned with misuse use of funds and inconsistencies in operation implementation. The handling of the issue is of primary concern for the purpose of identifying risks of fraud on the basis of previous experience, since in the new programming period 2014–2020 Slovenia has been allocated EUR 1.1 billion for the Programme of Rural Development of the Republic of Slovenia.

Based on our past experience, we will be better equipped to identify the risk factors arising in the new programming period, since the environment of criminal activity has not changed markedly in recent years. Therefore, this journal presents the competent authority dealing with the implementation of measures in direct payments for rural development, fisheries, agricultural markets and the tasks of the marketing and information system. Additionally, it describes the control mechanisms safeguarding the use of funds acquired from the European Agricultural Fund for Rural Development. The criminal offence of fraud to the detriment of the European Union is normally a result of previous criminal activity, which was caused by the inconsistency with which certain authorities performed their duties, e.g. control, in order to obtain personal benefits. It is therefore vital that corruption risks in the discussed area are also taken into account. The views on the prevention of fraud, from the perspective of a foreign country and a non-government organisation, help Slovenia's experts take a wider view of the issue and increase their efficiency in combating fraud to the detriment of the European Union.

David Smolej
Editor

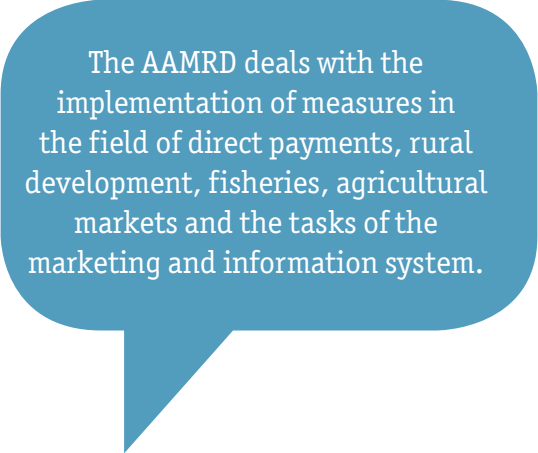
The European Agricultural Fund for Rural Development

Janja Zupan Novak, MSc

The Republic of Slovenia's Agency for Agricultural Markets and Rural Development (hereinafter: AAMRD) is an administrative authority managed by the Ministry of Agriculture, Forestry and Food. It has the status of a paying agency, which is responsible for the allocation and payment of funds from the EU agricultural and fisheries funds.

The AAMRD is led by a Director General and divided into three sectors (Agricultural Markets Sector, Direct Payments Sector, Rural Development Sector) and four support services (Financial Service, Control Service, General Affairs Service, Information Management Service). The AAMRD deals with the implementation of measures in the field of direct payments, rural development, fisheries, agricultural markets and the tasks of the marketing and information system. It is accredited with carrying out internal control and internal audits, conducting administrative procedures concerning the allocation of funds for agriculture, forestry, fisheries, the food-processing industry and rural development, the review of received aid applications and requests for payment, paying grants to end beneficiaries, and reporting to national and European institutions. The AAMRD conducts administrative and technical reviews of all submitted applications and requests. In processing these applications in accordance with the European legislation, it performs a variety of administrative and on-the-spot verifications. It ensures compliant and regular payments of grants to beneficiaries and makes relevant reports to national and European institutions. In all administrative procedures, the AAMRD acts as the body of first instance and is responsible for making timely and correct payments to farmers and other beneficiaries from the national budget and EU funds. The Regional Agricultural Fund for Rural Development EAFRD supports the EU's rural development policy, which, in future, will be implemented

through the Rural Development Programme 2014–2020 (hereinafter: RDP 2014–2020). The RDP 2014–2020 is the common programme document of EU Member States and the European Commission and reflects the national priorities which the Member States have identified on the basis of the overall situation in agriculture, food-processing industry, and forestry, as well as the inclusion of these industries in the recent developments in rural areas and wider. Unlike in the RDP 2007–2013, all measures proposed within the new programme shall contribute to the development of agriculture, while aiming for greater economic and environmental efficiency, i.e. to produce more with fewer resources and lower environmental impact. In 2014 the AAMRD made payments of EUR 297.1 million, with the number of claims doubling from 2013. Most claims were settled within less than a year. Due to the detection of certain irregularities concerning the use of EU funds, Slovenia paid EUR 27.8 million of funds back into the EU budget. In terms of prevention and detection of fraud, the EAFRD strives to improve Slovenia's fraud risk assessment, raise the awareness of fraud in the general public, and improve the qualifications of officials for fraud prevention and detection.



The AAMRD deals with the implementation of measures in the field of direct payments, rural development, fisheries, agricultural markets and the tasks of the marketing and information system.

Detection of fraud in agriculture and rural development

Matija Miklič

In the new programming period, the Republic of Slovenia's Agency for Agricultural Markets and Rural development (hereinafter: AAMRD) will put special emphasis on combating fraud. The Regulation (EU) No 1306/2013 lays down the rules for protection of the financial interests of the European Union. Member States shall adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Union, and ensure effective prevention against fraud. Member States are also responsible for prevention, detection and correction of irregularities and fraud. According to the fourth paragraph of the Convention on the protection of the European Communities' financial interests, fraud as a criminal offence requires an indication of intent. An act of fraud therefore includes the additional element of subjectivity, i.e. the intent to commit an irregularity, which is otherwise defined as any infringement of a provision of Community law that only focuses on the objective element of the act. The legal effect of an irregularity is the recovery of unlawfully acquired advantages, which is also applied in fraud cases, where the recovery of unlawfully acquired benefits is followed by administrative sanctions. Experience has shown that counterfeiting is related to the following:

- eligibility for payment (false documents, invoices, etc.),
- the value and scope of delivery (the values indicated in requests for reimbursement exceed the actual value of the goods) and
- earmarking of funds (beneficiaries do not wish to use the funds for the purpose for which they were allocated).

The AAMRD has put in place a system of fraud indicators, or 'red flags'. A red flag is a set of circumstances that are unusual in nature or vary from the normal practice. However, the presence of an indicator does not mean that fraud has been, or might be, committed, but warns that the case

should be carefully investigated and monitored. Examples of fraud risk indicators include; an invoice lacking the company logo; identical signatures on different documents that might point to the possibility of counterfeiting using a PC and printer; unspecific description of goods and services; identical supplier and beneficiary addresses, etc. Fraud detection and investigation methods used include risk assessment, cross-checking (official records, internet), on-the-spot verifications, and co-operation with other authorities. The main issues encountered in dealing with fraud cases are fabricated circumstances, associated persons, and conflicts of interest. A case of fraud, in which criminal charges have been brought against the perpetrators on the basis of suspicion of committing a criminal offence of fraud, covered the production of certain clay products. The following fraud risk indicators were present:

- inconsistencies in the address of the issuer of the invoice,
- absence of stamps on pro-forma invoices,
- signatures made using similar handwriting and pen,
- on-the-spot verifications,
- suspicion that the equipment was not new.

A fraud risk indicator or a red flag is a set of circumstances that are unusual in nature or vary from the normal practice.

The detection methods used included risk assessments, cross-checks (official records - Swiss Trade Register, the Internet, communication with issuers of pro-forma invoices), on-the-spot verifications and co-operation with other bodies and authorities (consulate in Switzerland, police, court, Customs Administration of the RS).

Currently, the matter is in the investigation phase. In the future, prevention of fraud measures might include a catalogue of market prices (updating, scope), acquisition of competing offers (prevention of agreements), clearly defined conditions laid down in regulations, etc.

The role of the Budget Supervision Office of the RS in controlling the use of funds

Urška Božič and Irena Zakrajšek

The Budget Supervision Office of the Republic of Slovenia (hereinafter: BSO) is a central body responsible for harmonisation and co-ordination of the public internal financial control system. It acts as an independent body for financial supervision of the use of EU funds. The BSO is organised into sectors, one of them being the Agricultural Funds Audit Sector, which covers:

- the European Agricultural Guarantee Fund (hereinafter: EAGF),
- the European Agricultural Fund for Rural Development (hereinafter: EAFRD), and
- the Fisheries Fund.

The BSO further includes the Cohesion and Structural Funds Audit Sector, the Budgetary Inspection Sector, the Public Internal Financial Control Sector, and the Administrative Service. Within the framework of the European agricultural funds control, and in accordance with the regulations, the Office performs the function of a certification authority for the European Agricultural Funds (EAGF and EAFRD), as well as the function of an audit authority for the Fisheries Fund. EU regulations prescribe that a certification authority can be a public or private audit body designated by the Member State. The audit body should be operationally independent from the paying agency executing payments, as well as from the authority by which the paying agency has been accredited, i.e. the competent authority. The tasks of a certification body are specified directly by European regulations. The audit approach employed by the BSO functioning as the certification body is based on four sets of criteria. The first is expenditure for the Integrated Administrative and Control System (hereinafter: IACS) measures, funded by EAFRD during the period from 16 October of the current year to 15 October of the following year. The second is represented by expenditure for

non-IACS measures, funded by the EAFRD during the period from 16 October of the current year to 15 October of the following year.

The third covers irregularities within the EAFRD pursuant to Annex II to Commission Implementing Regulation (EU) No. 908/2014. The fourth represents other debts within the EAFRD pursuant to Annex III to Commission Implementing Regulation (EU) No. 908/2014, namely debts referring to cross-compliance and multi-annual sanctions.

The certifying authority is to provide, annually, an opinion on:

- the completeness, accuracy and veracity of the annual accounts of the Agency for Agricultural Markets and Rural Development (hereinafter: AAMRD),
- the proper functioning of its internal control system, and
- the legality and regularity of the EAFRD expenditure for which reimbursement has been requested from the Commission.

The certification body also draws up an annual report of its findings, which states:

- whether the AAMRD complies with the accreditation criteria (payment grants – administrative controls, payment grants – on-the-spot controls, payment procedures, accounting procedures, advance and security procedures, etc.) which are specified in the European Regulation,
- whether the AAMRD's procedures were such as to give reasonable assurance that the expenditure charged to the Funds was effected in compliance with the Commission rules,
- whether the annual accounts were kept in accordance with the books and records of AAMRD and
- whether recommendations for system improvements from previous years have been followed up.

The most common irregularities detected by the BSO in previous years are:

- non-compliance with provisions laid out in the European and Slovenian regulations (during audit it was found on several occasions that the AAMRD had mistakenly considered a higher co-financing rate than the one the beneficiary actually requested in the payment application, etc.),
- claims for expenditure which is not eligible (within eligible construction costs the AAMRD also regarded as eligible the costs of project supervision and design, which was not in compliance with the provisions of the invitation to tender, etc.),
- irregularities occurring during the selection of the application – incorrect evaluation of the application according to the criteria for the application selection (the AAMRD awarded an incorrect amount of points for each individual criterion. In such cases it should always be checked whether the application actually meets the threshold level necessary for further consideration),
- non-compliance with legislative provisions (in one instance it was found that in their payment application the beneficiary submitted an invoice for completed construction work which had not been validated by the supervisor, meaning that the quantity and quality of the executed work had not been validated, which is not in accordance with the Construction Act),
- inadequate audit trail (audit trail was found to be inadequate when, for instance, the AAMRD had obtained the relevant documents only during the audit process itself (for example: the final construction situation confirmed by the supervisor, the beneficiary's original invoice)),
- input errors (various input errors discovered in the past, e.g. incorrectly cited amounts from invoices attached to the payment claim by the beneficiary in the AAMRD checklist used for the calculation of the conceded value, on the basis of which the AAMRD does the calculation. Therefore, the calculation was wrong.)
- suspected misconduct (the audit procedure includes checking whether beneficiaries are establishing legal persons with the sole purpose of procuring funds, due to the fact that within the framework of EAFRD, the amount of funds per individual is limited for a specified period).

Dealing with corruption in Bosnia and Herzegovina

Vladica Babič

The Agency for the Prevention of Corruption and the Co-ordination of the Fight Against Corruption in Bosnia and Herzegovina (hereinafter: APIK) was established in 2009 and officially started functioning on 1 April 2013. The Agency is independent and appointed by the Parliamentary Assembly of Bosnia and Herzegovina.

APIK is managed by the Director with two Deputy Directors, and is further organised into three sectors: the Prevention of Corruption Sector, the Co-ordination of the Fight against Corruption Sector, and the Financial and Legal Support Sector. APIK's objectives are to identify any causes of corruption, prevent corruption-related criminal acts, ensure corruption prevention rights and obligations, and educate and raise society's awareness about the effects and impact of corruption. APIK has adopted an Action Plan for the implementation of the strategy for combating corruption (2015-2019). The Action Plan objectives are the upgrade of institutional capacities, the strengthening of the legal framework in the fight against corruption, and the development, promotion and implementation of preventive anti-corruption activities in the public and private sectors. One of the Action Plan mechanisms is the improvement of the functioning of the

judiciary and law enforcement agencies in the area of the fight against corruption.

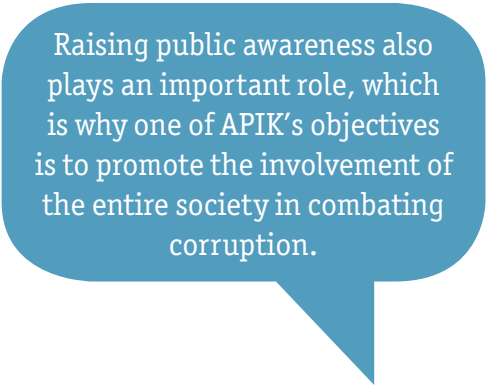
APIK is an independent body appointed by the Parliamentary Assembly of Bosnia and Herzegovina.

Raising public awareness also plays an important role, which is why one of APIK's objectives is to promote the

involvement of the entire society in combating corruption. Efficient mechanisms for co-ordination in the fight against corrup-

tion should be established, as well as mechanisms for the monitoring and evaluation of the implementation of the strategy.

During the two years of its existence, APIK has managed to fully implement 11% of the planned measures and partially implement 34% of the measures planned in the Action Plan. APIK strives for corruption prevention by adopting a code of ethics and integrity plans. By implementing the measures from integrity plans, a system on an organisational level is to be established to reduce the opportunities for acts of corruption, and also a system to support the integrity of public officials and civil servants. On a personal level, the knowledge, skills and determination of individuals to act in accordance with the rules as well as in the public interest is to be provided. In 2014 APIK received 114 reports of corruption-related acts. In its fight against corruption, APIK co-operates with different international bodies such as the European Anti-Fraud Office (OLAF), the Organisation for Economic Co-operation and Development (OECD), the United Nations Convention against Corruption (UNCAC) and others.



Raising public awareness also plays an important role, which is why one of APIK's objectives is to promote the involvement of the entire society in combating corruption.

Corruption prevention and the integrity pact

Živa Gobbo

Transparency International Slovenia is a voluntary, non-governmental, non-political and non-profit organisation established in 2009. It is a full member of the largest international non-governmental organisation in the fight against corruption. The mission and objectives of the organisation are the fight against corruption, corruption prevention and the promotion of integrity, transparency and accountability.

The problem of corruption (in the area of public procurement) has been detected by different institutions, including the Court of Audit, the Ministry of Finance and the European Commission. The areas that have been most affected by acts of corruption are the construction sector, the public health sector, the area of investments, supply of materials, innovations and infrastructure. Corruption impacts society across various areas (political, economic, social, environmental) and in a multitude of ways. It affects people's freedom, health and finances, and, in the worst cases, it can cost lives. Due to its complex and secretive nature, the scale of corruption is difficult to measure as well as expose. The effects of corruption, such as fear and malaise, are also difficult to evaluate. The perceptions of state analysts, business people and the general public serve as the basis of the corruption indices, the Corruption Perceptions Index and the World Corruption Barometer used by Transparency International. The biggest challenge in preventing corruption is the exposure of dishonest and illegal practices. One of the most direct and important ways of exposing corruption is to report it. Reports of corruption in the area of public procurement received by Transparency International Slovenia reveal that there is a problem of fear of the potential on the part of the whistleblower when perceiving irregularities, due to the perception of the limited business space, the fast spreading of the information about the report being made, and the desire for future participation in invitations to tender (not

wanting to “close the door”). Among other instances, the occurrence of envy has also been detected – when whistleblowers abuse legal remedies resulting from their not having been selected or not even competing in invitations to tender.

Whistleblowers are subject to degrading name-calling, for example, being labelled as “informants” or “traitors”, which prevents personal risk-taking on the part of whistleblowers. Internal, as well as external, protection mechanisms should therefore be put in place. Whistleblowing protection thus plays a key role in promoting and strengthening of the exposure, prevention and rooting out of unethical activities.

Transparency International Slovenia is committed to encouraging people to demonstrate their civil courage more frequently and decisively, pointing to occurrences which threaten human dignity and harm society as a whole. For that reason, the Speak Up project was launched. The project aims to help all citizens expose misconduct in an easier, safer and more informed way, which is backed by legal counsel, thus contributing to greater transparency and higher integrity within society. Another aim is to recover important data on corruption hotspots and find solutions to systemic problems. The Speak Up project represents the basis for Integrity Pacts (hereinafter: IP). IPs do not advocate amendments to legislation, but provide a monitoring system, led by experts, during the execution of a project. The process begins with the invitation to tender, continues with the tendering procedure and later with the contractor. The expert issues a non-binding opinion which does not exclude the established mechanisms. The aim is to monitor and point to potential irregularities.

According to Transparency International Slovenia, fear of exposure upon detection of irregularities is commonly reported by whistleblowers exposing public procurement corruption.

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This image shows a blank sheet of white paper with horizontal ruling lines. On the far left, there is a vertical blue strip representing a binder or folder edge. The paper itself has several thin, dark grey horizontal lines spaced evenly apart, providing a guide for writing.

NOTES

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