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AFRADE Project - National Legal Report (Italy)

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Introduction

The current European legal framework establishes rules on checks and reporting of irregularities and suspected frauds in agricultural matters. However, evaluation strategies and tools for detecting red flags still highly vary among Member States (ECA SR n. 01/2019). This lack in uniformity undermines cooperation among national and supranational investigative bodies, as well as horizontal cooperation among Member States themselves.

AFRADE project seeks to fill this gap by proposing a comparative analysis on rules and practices concerning agri-fraud detection and reporting in five critical Member States (Italy, Bulgaria, Poland, Romania, Slovakia), adopting a multidisciplinary and comparative approach. Through this comparative analysis, AFRADE aims at improving the analytical capability in agri-fraud detection at supranational level to fight against fraudulent schemes that significantly affect EU financial interests.

The present report is one of the documents supporting this comparative study. It delves into the characteristic of the Italian system, drawing on data collected through both desk research and meetings and interviews with experts, practitioners and academics.

The report is structured in three sections plus an annex of preliminary conclusions and recommendations. The first section is dedicated to the analysis of the payment mechanisms concerning agricultural subsidies. Moving from the definition of CAP shared management funds and the condition of eligibility to access them, it analyses the activity of the paying agencies and the mechanism of irregularity and fraud detection and reporting. The second section turns then to tackling the substantial criminal law side and the phenomenology of fraudulent activities. Finally, the third part deals with procedural and investigative aspects.

I Section: Payment Mechanisms

1. Shared Management CAP Funds: What are them and how do they work?

The EU's common agricultural policy (CAP) is a common policy for all EU countries managed and funded at European level[1]. First launched in 1962, it is periodically updated[2].

The CAP is financed through two funds as part of the EU budget[3]:
1) the **European Agricultural Guarantee Fund** (**EAGF**) which provides direct support for farmers and funds market measures and
2) the **European Fund for Rural Development** (**EAFRD**) which finances rural development.

According to Regulation (EC) No 1290/2005 (repealed by Regulation (EU) No 1306/2013 and, more recently, by the Regulation (EU) No 2021/2116)[4] payments deriving from both funds are **managed at national level by each EU country**. Therefore, **MS must take all the necessary measures to protect the financial interests of the Union** (i.e., setting up a

[1] https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/cap-glance_en
According to art. 39 of the TFEU, the objectives of the common agricultural policy (CAP) are:
- 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;
- to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
- to stabilise markets;
- to assure the availability of supplies;
- to ensure that supplies reach consumers at reasonable prices.

[2] The latest common agricultural policy (CAP) 2023-27 entered into force on 1 January 2023 (Legal basis: Reg (EU) No 2021/2116; Reg. (EU) No 2021/2115; Reg. (EU) No 2021/2117; Reg. (EU) No 2022/1317). This marked the beginning of the implementation of the 28 approved CAP Strategic Plans in 27 EU countries. https://agriculture.ec.europa.eu/cap-my-country/cap-strategic-plans_en.
AFRADE's Proposal was presented in Oct. 2021 and was planned to cover 24 months from August 2022 to August 2024 for research activities related to the previous period (2021-2022). Giving that our activities are starting now and that we have to rely on consolidated information, our analysis will still concern the last period of the old CAP (from Oct. 2021 to 2023). But we should at least examine if the new CAP brought changes in detection and reporting of suspected frauds and irregularities in payments of shared management funds (that actually seem to be the same as before).

[3] Both instituted by the *Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy*, now repealed by the *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.*

[4] See also above, nt. 3.

management and control system for payments that complies with EU regulations; ensuring that this system functions effectively and is capable of preventing, detecting, and correcting irregularities; using IT systems to collect and report on the performance data for the expenditure under the CAP Strategic Plans)[5].

To carry out these activities, each MS designates its own accredited (according to detailed criteria laid down by the Commission) **paying agencies and coordinating bodies**[6]**.** They must ensure the eligibility of all fund applications and the correct execution of payments to farmers and other CAP beneficiaries, as well as firstly execute payments to beneficiaries. Although they may assign aspects of its work to delegated bodies, the execution of payments must be undertaken directly by the paying agency itself. Furthermore, they must provide sufficient guarantees that: a claim is authorized for payment only after sufficient checks have been carried out to ensure compliance with EU rules; payments are correctly and fully recorded in the accounts; requested documentation is submitted within deadlines and in accordance with EU rules[7].

1.1 The EAGF in detail

The EAGF supports EU farmers through different types of interventions taking the form of decoupled and coupled direct payments. Decoupled payments cover:

[5] https://agriculture.ec.europa.eu/common-agricultural-policy/financing-cap/cap-funds_en

[6] For the definition of paying agencies and coordinating bodies see Art. 7, Regulation (EU) No 1306/2013 and now art. 9, Reg, 2021/2116. Further legal bases: Regulation (EU) 2021/2116 on the financing, management and monitoring of the common agricultural policy; Regulation (EU) 2021/2115 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD); Regulation (EU) 2021/2117 amending Regulations (EU) 1308/2013 – establishing a common organisation of the markets in agricultural products, (EU) 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications or aromatized wine products and (EU) 228/2013 laying down specific measures for agriculture in the outermost regions of the Union

[7] Concretely, paying agencies, after carrying out checks, pay the amounts due to the beneficiaries and declares those amounts to the Commission that reimburses them on a monthly basis for the EAGF and on a quarterly basis in the case of the EAFRD. Finally, all expenditure is recorded in the paying agencies' annual accounts and is subject to further levels of control, checks and audit under the financial clearance process. Source: https://agriculture.ec.europa.eu/common-agricultural-policy/financing-cap/cap-paying-agencies_en

- the basic income support for sustainability,
- the complementary redistributive income support for sustainability,
- the complementary income support for young farmers and the schemes for the climate,
- the environment and animal welfare.

Decoupling thus means that aid is paid regardless of the quantity/type of agricultural products obtained. Coupled payments cover the coupled income support and the crop-specific payment for cotton[8].

According to the Italian National Strategic Plan 2023-2027[9], the interventions funded through the EAGF are divided into two main types of aid: direct and sectorial aides[10].

Direct aids are granted to farmers in the form of basic income support based on the number of hectares cultivated. This so-called "basic payment" is complemented by a number of other support schemes targeting specific objectives or types of farmers: a "green" direct payment (so-called. Greening), a payment to young farmers, a redistributive payment to provide better support to small and medium-sized farms, payments for areas with natural constraints (Anc), a scheme for small farmers and voluntary coupled production support (Vcs) to help some sectors in difficulty[11].

[8] https://agriculture.ec.europa.eu/common-agricultural-policy/financing-cap/cap-funds_en. Legal basis: art. 3, *Regulation (EU) No 1306/2013* now repealed by art. 5, Reg. (EU) 2021/2116

[9] Italy CAP Strategic Plan - C(2023)6990, approved on 23 ott 2023, https://www.reterurale.it/downloads/Piano_Strategico_della_PAC_23-27_v.2.1.pdf

[10] Source: www.reterurale.it

[11] Corte dei Conti, Sezione di controllo per gli affari europei e internazionali, *Relazione annuale 2023. I rapporti finanziari con l'Unione europea e l'utilizzazione dei Fondi europei*, p. 240, available here https://www.corteconti.it/Download?id=1694c03c-1425-434a-8867-f256830fbbe7

In detail, currently direct aids are:

- **Basic support**

Basic income support for sustainability (BISS)

The objective of the BISS is to address the need for income support for farmers. The main purpose of the support is to try to bridge the gap between average farm income to that of the rest of the economy.

Support is paid to farmers (in business who own payment entitlements and activate them on the corresponding eligible hectares available to them) in the form of an annual decoupled payment based on the value of the payment entitlements they hold in ownership or lease.

- **Redistributive support**

Complementary redistributive income support for sustainability (CRISS).

Ten percent of the annual budget for direct payments is allocated to complementary income support. The beneficiary is the active farmer eligible for the BISS payment whose farm size is between 0.5 and 50 eligible

Sectorial aids, on the other hand, comprise initiatives geared toward a structured intervention involving the entire supply chain[12].

1.2 The EAFRD in detail

The EAFRD finances the CAP's contribution to sustainable development of rural areas through three long-term objectives:

a) Fostering the competitiveness of agriculture and forestry;

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hectares. The supplementary payment is paid on all eligible hectares available to the farmer (up to the first 14 hectares), even if not covered by payment entitlements.

- **Youth support**

Supplementary income support for young farmers (CIS YF).

Beneficiaries are, up to a maximum of 90 hectares, "young farmers" who have been established as head of the farm for no more than five years since first submitting an application under CISYF.

The age requirement of 40 years must be met by the farmer in the first year of submission of the relevant application or application for the young farmer payment under Regulation (EU) 1307/2013. If all other requirements are met, the farmer is entitled to receive complementary support for young farmers (CIS YF) for up to five years, net of the years for which he or she received the payment for young farmers under Regulation (EU) 1307/2013, even if he or she is over 40 years of age.

- **Eco-schemes**

A new element introduced in the 2023-2027 programming with the aim of providing farmers, also under Pillar I, with the opportunity to make more ambitious environmental, climate and animal welfare commitments. The CAP Strategic Plan includes the following 5 ecoschemes:

1. the improvement of animal welfare through the reduction of antibiotic use (level 1) and adherence to the national quality system for animal welfare by providing for the introduction of grazing or semi-wild farming systems (level 2) (ECO1);
2. the grassing and related management of permanent tree crops, with related commitments to soil management, grassing, and limiting the use of herbicides and pesticides (ECO 2);
3. the preservation of olive trees of special landscape and historical value, on which specific commitments regarding at least biennial pruning of crowns and prohibition of on-site burning of pruning residues are met (ECO3);
4. the rotation of extensive forage systems with commitments relating to the cultivation of grain or forage legumes or other forage or renovation crops and the non-use of plant protection products and chemical herbicides (ECO 4);
5. the protection of pollinators, through commitments related to the cultivation of disposable crops of melliferous interest and the commitment not to use herbicides and chemical herbicides (ECO 5).

- **Coupled support**

Support for farmers who raise specific categories of animals or grow certain plant products. It comprises:

a) Coupled support for animal husbandry.

A support for those who own cattle, sheep and goat species animals, identified and registered in the National Livestock Database (BDN)

b) Area-based coupled income support

An aid based on the area cultivated with certain crops and subject to a maximum hectare limit. For some crops, the farm must have an agreement with the processing industry

Source: https://www.agea.gov.it/portale-agea/aiuti-e-bandi/pagamenti-diretti

[12] They specifically regard these areas: Viticulture; Horticultural; Potatical; Olive-oil; Beekeeping.

b) Ensuring the sustainable management of natural resources and climate action;

c) Achieving a balanced territorial development of rural economies and communities.

Under the CAP Strategic Plans, these objectives are pursued through interventions which are co-financed by the EAFRD and the national budgets of EU countries. The EAFRD can also provide investment support for rural enterprises and projects through financial instruments, such as loans, guarantees, or equity[13].

2. Responsible Bodies for Payment in Italy and their main activities

Italian paying agencies are 10: a center-based one, the **AGEA** (Agenzia per le erogazioni in agricoltura – Agricultural Disbursement Agency)[14] and 9 regional-based agencies[15].

AGEA is responsible for payment of national relevance, as well as for those of regions lacking in regional-based agencies[16]. Moreover, it is a **coordination-body**: it is the sole representative

[13] https://agriculture.ec.europa.eu/common-agricultural-policy/financing-cap/cap-funds_en.
Legal basis: art. 5, *Regulation (EU) No 1306/2013*, now art. 6, Reg. 2021/2116.
According to the Italian National Strategic Plan 2023-2027, the interventions co-funded through the EAFRD are:
SRA | Environment and Climate
SRB | Natural constraints allowance
SRC | Allowance for disadvantages mandatory requirements
SRD | Investments
SRE | Youth
SRF | Risk management
SRG | Cooperation
SRH | AKIS
TR | Transition Expenditures
AT | Technical Assistance
RRN | National Rural Network

[14] Established by decree n. 145/1999, it is a non-economic public law body subject to the supervision of the Ministry of Agriculture, Food Sovereignty and Forestry (MASAF)

[15] Accreditated through a decree of the Ministry for agricultural policies, the actual regional agencys are: ARPEA (Agenzia Regionale Piemontese per le erogazioni in agricoltura); APPAG (Agenzia Provinciale per i pagamenti, provincia autonoma di Trento); L'Organismo pagatore della Provincia autonoma di Bolzano (OPPAB); ARCEA (Agenzia regionale Calabria per le erogazioni in agricoltura); ARGEA (Agenzia per la gestione e l'erogazione degli aiuti in agricoltura, Sardegna); Agenzia Regionale della Basilicata per le Erogazioni in Agricoltura (ARBEA); AVEPA (Agenzia veneta per i pagamenti); OPLO (Organismo Pagatore regionale Lombardia); AGREA (Agenzia regionale per le erogazioni in agricoltura Emilia Romagna); ARTEA (Agenzia regionale toscana per le erogazioni in agricoltura); Organismo pagatore regionale del Friuli Venezia Giulia.

[16] In this connection, AGEA has three basic functions: Payment Authorisation (to calculate the amount to be paid to claimants); Payment Execution; Payment Accounting, which is necessary to record the payments made in the 'ledgers' and keep track of the expenditure for later reporting to the Commission via the Coordinating

of the Italian State towards the European Commission with regard to the EAGF and EAFRD funds. It is thus responsible for reporting to the EU on the payments made by the accredited Paying Agencies (Pos). Against this backdrop, AGEA promotes the application of Community regulations and procedures for the authorization, disbursement and accounting of Community aid by the Pos. It also monitors the correct application of EU legislation to ensure full compliance with it[17].

3. Accessing CAP Funds in Italy: What are the eligibility conditions? How does the adjudication procedures work? How are conditions evaluated?

3.1. Eligibility Conditions

As seen above (paragraph 1.1. and 1.2), the adjudication of each specific kind of fund is based on different requirements depending on the type of intervention[18]. Anyway, all direct payments are granted only to **active farmers**[19].

In order to be considered an Active Farmer, the applicant must carry out a minimum level of agricultural activity. This activity consists of carrying out at least one annual cultivation

Body. https://www.agea.gov.it/portale-agea/agenzia.

[17] https://www.agea.gov.it/portale-agea/agenzia. Among the internal normative sources, see, in particular, Legislative Decree No 165 of 27 May 1999 "Abolition of the AIMA and setting up of the Agenzia per le erogazioni in agricoltura (AGEA) agriculture (AGEA), pursuant to Article 11 of Law No. 59" and decree n. 74 of 2018.

[18] To give an idea, the EAGF *Area-based income-coupled support -Protein crops -Legumes except soybean*, for example, is a support for farmers who sow and grow protein legumes, except soybeans, on each hectare of eligible land, using normal cultivation techniques. Its adjudication requires thus that crops are maintained in good condition until full seed maturity in the case of grain legumes and until the beginning of flowering in the case of annual grasses. *Area Coupled Income Support - Oleaginous Sunflower and Rapeseed,* on the other hand, can only be given to those who conduct land sown and cultivated with sunflower or rapeseed, excluding table sunflower crops. Crops must follow normal cultivation practices. It is essential that the farmer applying for the aid agrees to enter into a supply contract with a processing, seed or feed industry. Etc. Source https://www.agea.gov.it/portale-agea/aiuti-e-bandi/pagamenti-diretti/sostegno-accoppiato-al-reddito-per-superficie-colture-proteiche-leguminose-eccetto-soia

[19] Article 7(2) of DM Dec. 23, 2022, No. 660087. A farmer is A natural or legal person or a group of natural or legal persons, regardless of the legal personality conferred by national law on that group and its members, whose holding is located within the territorial scope of the Treaties within the meaning of Article 52 of the Treaty on European Union in conjunction with Articles 349 and 355 of the Treaty on the Functioning of the European Union (TFEU) and which carries out an agricultural activity as determined in Article 3, Paragraph 1(c) of Ministerial Decree 660087 of 12/23/2022, pursuant to Article 4, paragraph 2 of Reg. (EU) No. 2021/2115.

practice for the maintenance of agricultural land or the achievement of agricultural production.

In addition, to be considered "in activity" at the time of submission of the application (single application) the farmer must possess AT LEAST ONE of the following requirements:
1) in the year preceding the year of application, received direct payments in an amount not exceeding 5,000 euros (in the absence of the previous year's application, the amount will be calculated with the eligible area by the average amount per hectare of direct payments in the previous year);
2) registration in the special section of the Register of Enterprises as an ACTIVE agricultural enterprise as a small entrepreneur or direct farmer;
3) enrollment in the Agricultural Social Security (INPS) as a direct grower, professional agricultural entrepreneur (IAP), settler or sharecropper;
4) possession of an active VAT number in the agricultural field, with an annual VAT declaration, or communication of VAT-relevant transactions, for the year preceding the submission of the application, showing the performance of agricultural activity. For farms with more than 50 percent of their farmland located in mountainous and/or disadvantaged areas, as well as for farmers who start farming in the year of application, possession of an active VAT number in agriculture is sufficient[20].

3.2. How does the adjudication procedures work? How are conditions evaluated?

To apply for both funds, the applicant must establish, update and validate the **farm file** (fascicolo aziendale)[21].

[20] https://www.greenagricoltura.it/2023/01/la-nuova-pac-agricoltore-in-attivita-o-agricoltore-attivo/?cn-reloaded=1
Art. 3, DM 23 dicembre 2022 n. 660087.
For definitions at the EU level: https://agriculture.ec.europa.eu/system/files/2024-01/direct-payments-eligibility-conditions_en.pdf
[21] DM Decrees No. 162 of January 12, 2015 and DM 99707 of March 1, 2021. Article 4 of Ministerial Decree No. 162 of January 12, 2015, specifically regulates the requirements for the management of the farm registry and for the establishment and updating of the farm file. (prot APPAG, p. 10)

The establishment and/or updating of the farm file must be done at Paying Agencies or at one of the **Authorized Agricultural Assistance Centers** (CAA) (Centri autorizzati di Assistenza Agricola) operating in the region, which are delegated by the regional Paying Agency to carry out this activity for agricultural enterprises[22].

The farm file is compiled and uploaded on the **SIAN (national agricultural information system)** portal, or on the similar portals of individual regional bodies, through which the single application is also submitted. The set of information that makes up the farm file is checked and certified with the information in the databases of the Public Administration and in particular of the SIAN, including those of the **Integrated Administration and Control System (IACS)**[23], established pursuant to Article 65 of EU Reg. 2021/2116 with the elements referred to in Article 66 of the same Regulation[24].

The file contains the information constituting the productive assets of the farm rendered in declarative form and signed by the farmer[25]. It is mandatory for registration in the agricultural registry. It thus assumes strategic importance in the management and control system of the SIAN because all administrative acts and interventions to support farmers depend on it. National legislation also requires that the data in the farm file be used by other public administrations.

The farmer is obliged to declare in the farm file all the resulting plots at his or her available, regardless of the legal title of ownership. However, the farmer is obliged to produce a copy of the title to the areas declared in his or her farm file, in order to avoid public subsidies being

[22] With regard to aid for area-based interventions listed in Title III, Chapters II and IV of Regulation (EU) 2021/2115 and for interventions implemented under CAP strategic plans, Article 69 of Reg. (EU) No. 2021/2116 imposes the obligation to adopt the geospatial application form provided by the competent authority, Ibid. See also: Agea, *Istruzioni operative n. 26, Gestione del Fascicolo Aziendale campagna 2024*, available at https://www.ruminantia.it/wp-content/uploads/2024/03/AGEA-2024-0022453-Allegato-IstruzioniOperative2024_FascicoloAziendale_DEF_signed.pdf

[23] Integrated Administration and Control System (IACS): Council Regulation (EC) No. 1782/03 established an integrated administration and control system for certain Community aid schemes in order to use technical means and management and control methods appropriate to the complexity and number of aid applications, confirmed by Regulation (EC) No. 73/2009 et seq, ivi, p. 11.

[24] Ivi, p. 4.

[25] Constituent elements of the farm filesin detail: ivi, p. 15.

disbursed to persons not entitled to them[26].

Each farm file must contain a **Graphical cultivation plan** (piano di coltivazione grafico), a document containing whole-farm land-use planning[27] declared and signed by the farmer[28]. It is also aimed at administrative control over compliance with commitments under Reg. (EU) 2021/2115 and, for each farm area, includes the information necessary for such control[29]. In relation to area-based aid interventions, the Cultivation Plan is thus an indispensable and mandatory element for the receipt of disbursements. In addition, it forms the basis for carrying out the checks related to.

Article 69 of Regulation (EU) 2021/2116 provides that for area-based interventions referred to in Article 65(2) and interventions implemented under their CAP strategic plans, the application shall be submitted through the **geospatial application form** provided by the competent authority. The geospatial application is pre-filled in accordance with par.3 of Art. 69 of EU Reg. 2116/2021 with the information deduced from the elements of the Integrated Administration and Control System, present in the farm file.

Pursuant to Article 6(2) of Reg. (EU) 2022/1173, the application shall contain at least:
(a) **identity of the beneficiary**, including, where applicable, identification of the group in which they participate, as defined in Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council, as established by Article 59(4) of Reg. (EU) 2021/2116 and for which the information minimum set forth in Article 44 of Reg. (EU) 2022/128;
(b) the **required interventions** and their detailed information;

[26] DM January 12, 2015 No. 162, in Annex A, under (a.3)(c)(3)
[27] Article 3(1)(c) of DM Dec. 23, 2022 No. 660087 stipulates, including the reference to Article 4(2) of Reg. (EU) No. 2021/2115, that agricultural activity includes the following activities:
1. the production of agricultural products listed in Annex I of the TFEU, with the exception of fishery products, including the actions of cultivation, including by means of paludiculture for the production of products not included in Annex I of the TFEU, harvesting, milking, breeding, grazing and keeping of animals for agricultural purposes, as well as the cultivation of short rotation coppice and cotton. Any agronomic or animal husbandry practice suitable for obtaining the crop or livestock productions is considered a production activity;
2. the maintenance of the agricultural area in a state suitable for grazing or cultivation, by carrying out, at least one ordinary cultivation practice per year that, in compliance with cross-compliance criteria, ensures the accessibility of the same area, respectively, for grazing or for carrying out ordinary cultivation operations, without preparatory work beyond the use of ordinary agricultural methods and machinery.
[28] DM 12 gennaio 2015, n. 162 del Ministero delle Politiche Agricole Alimentari e Forestali.
[29] art. 37 del DM 23 dicembre 2022 n. 660087

(c) **supporting documents** necessary to establish the eligibility conditions and other relevant requirements for the intervention being applied for;

(d) information relevant to **cross-compliance**;

(e) information necessary to extract **relevant data for proper reporting** on output indicators and results referred to in Article 66(2) of Reg. (EU) 2021/2116 in relation to the intervention that is the subject of the of the application[30].

Regulation (EU) 2021/2116, requires Member States to establish an **area monitoring system**, **(AMS)** operational as of January 1, 2023. In relation to the technical complexity of AMS development, Regulation (EU) 2021/2116 allows Member States a phased introduction of controls through monitoring, on a limited number of interventions, however with the requirement to make it fully operational by January 1, 2024.

This system is used to observe, track and assess agricultural activities and practices on agricultural land, making use of information provided by the Sentinel satellites of the European Copernicus program, supplemented by that of EGNOS/Galileo with automated processing.

The AMS procedure is activated continuously and systematically on the areas subject to aid with the validation of the farm file and the submission of the geospatial application[31].

The AMS procedure returns cyclically to the Paying Agencies the results of the examination for each plot included in the premium parcel, in the form of "conclusive indicators" and "non conclusive." Possible classifications of the outcomes derived from the AMS for the "plot" level

[30] Source: https://www.arpea.piemonte.it/sites/default/files/documentazione/documento/233549250710_OManualeProcedureControllieSanzioni_InterventiSIGC_SviluppoRurale23-27.pdf

[31] The control over the plots declared by the farms is carried out through an automated processing of information derived from satellites that draws support from, among other things, the processing of specific indices and the spectral signature of crops: specifically, indicators are identified that make it possible to verify, for each plot contained in a premium plot, the presence of plowing, seeding, regular crop growth, harvesting/sprouting, vegetation, and confirmation of a spectral signature consistent with the declared crop. With regard to permanent crops and permanent pastures with tares, verification of maintenance is carried out in the manner routinely provided by the AGEA-refresh GIS multi-temporal image update system. Sentinel images are used to verify the presence of vegetative activity.

are represented by "flags" that can take the following colors[32]:

1. White: plot not evaluated

2. Green: plot evaluated and confirmed as compliant (final outcome)[33]

3. Red: plot evaluated and confirmed as nonconforming (conclusive outcome)[34].

4. Yellow: plot evaluated, but evidence is insufficient either to confirm with certainty the conformity of the declaration or to assign a nonconformity (inconclusive outcome)[35].

In the case of a final non-compliant outcome, the company may:

a) Submit a modification request[36],

b) Activate the Back Office procedure for the review of the area[37].

4. Detection and reporting of irregularities and suspected frauds: How do detection and reporting work in practice?

Administrative checks verify the declarations made along with the aid application. Article 72 of Regulation (EU) No. 2116/2021 establishes that Paying Agencies shall annually conduct

[32] Source https://www.arpea.piemonte.it/sites/default/files/documentazione/documento/233549250710__OManualeProcedureControllieSanzioni_InterventiSIGC_SviluppoRurale23-27.pdf p. 19.

[33] The plot evaluated and confirmed as compliant will no longer be subject to further assessments by the AMS and will be considered eligible for payment under the relevant intervention scheme, provided that these areas have passed all checks as part of the administrative controls and are consistent and identifiable in the SIPA.

[34] Cases of non-compliant plots will be communicated to the companies and made visible on SIAP, with details of the plot and the aid scheme involved. To allow the company concerned to exercise its right to a hearing in the administrative procedure and to reduce potential disputes, review procedures will be ensured for the areas affected by this outcome.

[35] The PA will proceed to notify agricultural companies of the status of the flags detected within the AMS on the plots of land subject to their declarations for the requested interventions. - If the evidence obtained from the automated analysis of satellite images is not sufficient to definitively confirm or refute the company's declaration, subsequent "cascading checks" will be applied (e.g., verification with fruit, olive, and wine registries, enhancement of satellite image resolution, etc.)

[36] adjusting its declaration to the outcome provided by the monitoring before the advance payments are made. In this case, the area concerned will be excluded from payment, and no penalties will be applied.

[37] In this case, the company may submit georeferenced photos or, in special cases, additional documentation to support its declaration. The plots will then be subject to evaluation by an expert instructing officer who will examine the declared plots, together with all types of images and tools available to the Administration and the documentation provided by the company. It should be noted that georeferenced photos must be provided using the Agrifoto app, which will be supplied by Agea.
If the company does not take action regarding the non-compliant plot in accordance with the above procedures, the area concerned will not be eligible for payment under the relevant intervention scheme, and the penalties provided by the regulations will be applied

administrative checks on aid applications and payments to ensure their legality and regularity in accordance with Article 59, paragraph 1, letter (a).

They are conducted on 100% of the applications and usually involve **cross-referencing** information from various certified databases, checks on the documentation accompanying the request, or other means. Regarding the use of databases, the execution of administrative checks is carried out through the Integrated Administration and Control System (IACS), to which the National Agricultural Information System (SIAN) and the Agricultural Information System of the regional paying agency contribute, exchanging and cross-referencing certified information with other databases.

On-site checks are conducted on a sample of applications (5%) and involve a visit to the farm to verify the accuracy of the declarations before the full aid amount is paid. These on-site checks also include the so-called conditionality checks, which are performed on a subsample of the on-site inspections. The purpose of these checks is to ensure compliance with mandatory management requirements and good agricultural and environmental conditions.

Ex-post checks apply only to those measures that require the commitments to be maintained after the full contribution has been paid. These checks are conducted on a sample of applications and may include a visit to the farm[38].

Checks are made by employing IT Tools. In particular, the **Agricultural Parcel Identification System** (Sistema di Identificazione delle Parcelle Agricole - SIPA) is a geographic information system established and periodically updated by Member States on the basis of aerial or spatial orthophotos[39]. The LPIS makes it possible to geolocalize, visualize and spatially integrate the constituent data of the Integrated Administration and Control System (IACS) at the agricultural parcel level as well as to determine its land use and maximum eligible areas under the various Union aid schemes.

[38] https://agrea.regione.emilia-romagna.it/settori-di-intervento/sistema-dei-controlli-1/controlli-amministrativi-e-in-loco

[39] Article 68, c. 1, of Reg. (EU) No. 2021/2116.

II Section: Fraudulent schemes and criminal law analysis

1. *Notions of "fraud" and "irregularity" according to the European legislation.*

Frauds in CAP expenditures derive their meaning from the general definition of fraud as provided in Directive (EU) 2017/1371[40] of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.

The Directive establishes minimum rules concerning criminal offences and sanctions. Art 3 (2) (b) of the Directive provides three different types of conduct for committing frauds in procurement related expenditures, at least when committed in order to make an unlawful gain for the perpetrator or another, by causing a loss to the union's financial interests: falsity, non-disclosure, misapplication of funds[41].

[40] Art. 3 (2): *"For the purposes of this Directive, the following shall be regarded as fraud affecting the Union's financial interests: (a) in respect of non-procurement-related expenditure, any act or omission relating to: (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf; (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted; (b) in respect of procurement-related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, any act or omission relating to: (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf; (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests; in respect of revenue other than revenue arising from VAT own resources referred to in point (d), any act or omission relating to: (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf; (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or (iii) misapplication of a legally obtained benefit, with the same effect; in respect of revenue arising from VAT own resources, any act or omission committed in cross-border fraudulent schemes in relation to: (i) the use or presentation of false, incorrect or incomplete VAT-related statements or documents, which has as an effect the diminution of the resources of the Union budget; (ii) non-disclosure of VAT-related information in violation of a specific obligation, with the same effect; or (iii) the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds.".*

[41] *"Any act or omission in relation to: (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the union budget or budgets managed by the union, or on its behalf; (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the union's financial interests".*

Frauds in CAP expenditures should be distinguished from "irregularities" and "suspected frauds" concerning the same funds. The basic distinction between "irregularity" and "fraud" is mainly based on intent: fraud requires intent, while irregularity does not. Instead, "suspected fraud" is an irregularity whose gravity is sufficient to prompt an administrative or a criminal investigation in order to establish intent and knowledge of the offence.

A first notion of "*irregularity*" is entailed in the Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests. According to Art. 1 (2) of the Regulation, "irregularity" shall mean *"any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure".*[42]

The difference between irregularity and fraud has a relevant meaning in respect to the detection criteria, preventive measures and effectiveness of sanctions, since irregularities have an administrative relevance, while frauds are genuine criminal offences.

2. Irregularities and frauds in the Italian legal system in 2022.

According to the most recent report of the Italian COLAF[43] with regard to cases of irregularities and fraud in the Italian legal system, in 2022 a total of 514 notifications were sent to OLAF by the competent national authorities, with a slight increase (+6.86%) compared to the previous year, when there were 481. Of these, most are related to the Common Agricultural Policy with 307 cases, accounting for 59.73% of the total; this is followed by the

[42] This definition is adopted in other legal sources related to financing, management and monitoring of CAP expenditures: e.g. Reg. (EU) n. 1306/2013 of The European Parliament and of the Council, specifically on the financing, management and monitoring of the common agricultural policy, as well as Reg. (EU) n. 1975/2015 setting out the frequency and the format of the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, under Regulation (EU) No 1306/2013 of the European Parliament and of the Council and Reg. (EU) 1971/2015 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development.

[43] Relazione annuale 2022 al Parlamento del Comitato nazionale per la repressione delle frodi nei confronti dell'Unione Europea (COLAF), pp. 129 ss.

Cohesion and Fisheries Policy with 111 reports (21.60% of the total) while 96 (18.68% of the total) are those related to the Own Resources sector. In line with the trend that has emerged at European level, the vast majority of the reports in question concern cases of irregularities (461) - expressing non-intentional and therefore less serious violations - which account for 89.69% of the total number of reports received during the year, while cases of fraud (53) amount to 10.31%. In financial terms, the total amount involved in the reporting of irregularities/fraud cases is € 71,760,055, an increase of +30.32%, compared to € 55,064,480 in 2021.

An increase in the amounts reported is detectable in all the reference sectors, with +33.72% for Cohesion Policy and Fisheries, +25.46% for the Common Agricultural Policy and +32.86% for Own Resources. The increase in the above amounts compared to 2021, was achieved in relation to a slightly higher number of cases compared to the same year, which may indicate an increased ability of the various control and audit bodies to better target their inspection activities, thanks to more effective prior risk analysis and assessment.

Furthermore, extending the view to the last five-year period from 2018 to 2022, the trend, already recorded in previous years, is the following: the total number of cases recorded in 2022, at 514, is still 20.56% below the average value recorded over the last five years, which is 647 cases.

3. Offences concerning CAP expenditures in the Italian legal system[44]

Notwithstanding the aforementioned distinction between "irregularities" and "frauds", as regards the Italian legal system, "frauds" in CAP expenditures could be divided at least in two categories that include both criminally relevant frauds, as well as administrative offences[45]:

a) Offences relating to the unduly receipt of funds;

[44] For a brief analysis of the topic related to the Italian legal system, see, among others, G. ARDIZZONE, *Le frodi a danno dei Fondi Agricoli Europei tra ne bis in idem e proporzionalità,* in *Archiviopenaleweb* 2024 (1), pp. 1 ss.
[45] Derived from the presentation of A. GARGANI, *The penal statutes in the Italian criminal legal system for the purpose of combating agricultural frauds*, AFRADE Seminar 22 April 2024.

b) Offences relating to the distorted use of funds.

The difference between the two categories approximately follows the distinction between falsity and non-disclosure, on the one hand, and misuse of funds, on the other.

3.1 Offences relating to the unduly receipt of funds

The group of relevant offences related to unduly receipt of CAP EU funds includes three principal offences: two of them are entailed in the Italian Criminal Code (c.p.); the third belongs to a different statute, specifically concerning urgent measures on the control of EU aids to olive oil production and administrative and criminal sanctions regarding EU aid to the agricultural sector. Beginning from the latter:

a) False presentation of information for obtaining funds (Art. 2 l. 898/1986)
The offence concerns the conduct of disclosing false data or information, unduly obtaining aids, subsidies, contributions or other disbursements to be sustained in whole or in part by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development for taking a personal advantage or for others. The offence should be punished by imprisonment from 6 months to 3 years.
The punishment shall be imprisonment from 6 months to 4 years when the damage or profit exceeds € 100,000. When the unduly received amount is equal to or less than € 5,000, the offence has no criminal relevance, and only the administrative sanction shall apply.
There is indeed an alternative offence, with administrative relevance, that applies in less serious cases: Art. 3 of the same statute (l. 898/1986).
Art. 3 overlaps with Art. 2, since they share the same structure, but they differ for relevance and gravity. Although the relative sanctions (administrative and criminal) are usually applied together, the cumulative application of sanctions could be considered a manifest violation of the *ne bis in idem* principle.
If the offence disciplined in Art. 2 l. 898/1986 occurs, confiscation can be applied pursuant to Artt. 322-ter and 240-bis of the Italian Criminal Code. In addition, another effect is provided:

according to the Italian statute d.lgs 4 October 2022, n. 156 (so-called PIF "corrective"), the offence produces an obligation for the accused to return the amount paid.
The application of Art. 2 is subject to a specific condition: pursuant to the residual clause entailed in this provision, this offence applies only if other criminal offences do not prevail. In particular, the formula *"other criminal offences"* refers to Art. 640-bis of the Italian Criminal Code that prescribes a more severe punishment, as follows:

b) *Aggravated fraud to obtain public funds* (Art. 640-bis c.p.)

The offence concerns conduct of unduly receipt of grants, financing, subsidies or any similar disbursements, granted or issued by the State, other public entities or by the European Union, obtained by trickeries and fraudulent means created for deceiving the public financing source. The offence should be punished by imprisonment from 2 to 7 years.
As already noted, its application prevails in relation to other offences, because of its gravity. Although there are some uncertainties related to the nature of this offence – since it could be considered an aggravating circumstance, rather than an autonomous crime – its primary relevance can be stated also in relation to the third aforementioned criminal offence entailed in the Italian criminal code: art. 316-bis c.p.

c) *Undue receipt of public funds* (Art. 316-ter c.p.)

The offence is committed when grants, financing, facilitated loans or other similar funds - awarded or granted by the Government, by other public authorities or by the European Community - are obtained using or submitting false statements or documents, or by means of the omission of due information. The offence should be punished by imprisonment from 6 months to 3 years.
According to the discipline, the following use of the fund is not relevant, since the offence is committed simply when the grant is obtained.
Art. 316-ter c.p. is residual with respect to Art. 640-bis c.p., since it can be applied only if the aggravated fraud does not occur. However, in practice there are many uncertainties related to the application of the two offences and to the proper construction of the residual clause.
The clause should grant a more effective punishment to the conducts potentially regarding EU CAP funds. At least if Art. 640-bis c.p. is considered as an autonomous offence. In the

contrary, if Art. 640-bis c.p. were to be regarded as an aggravating circumstance, the effectiveness of the final criminal punishment would be considerably weakened, since its mitigation through the balancing of other circumstances could bring to the practical annihilation of the sanction relative to Art. 640-bis c.p.

3.2 Offences relating to the distorted use of funds

This second category of offences focuses on conducts of use of public funds for purposes different from the ones the funds were destined to. Beginning from the Italian Criminal Code, it entails the misappropriation of public funds.

a) Misappropriation of public funds (Art. 316-bis c.p.)

The offence is committed when funds or grants obtained from the Italian Government or from another public authority or from the European Union are not used for the purposes they were intended for (e.g. the planned activities are not implemented). The offence may also relate to funds obtained in the past and not used for the purposes they had been granted for and is punished with detention from 6 months to 4 years. Confiscation can be applied (according to Artt. 322-bis and 240-bis c.p.) and furthermore the defendant may be submitted to an accessory sanction that prevents her/him from contracting with administrative bodies, pursuant to art. 32-quater c.p.

b) Art. 6 of d.lgs. 42/2023

Although it only represents an administrative irregularity, without criminal relevance, Art. 6 of d.lgs. 42/2023[46] belongs to the category of conducts mainly based on misuse of funds for purposes other than those for which the funds were intended.

Indeed, this offence applies in cases of non-declaration or false declaration of agricultural areas (e.g. if the farmer declares a larger area than the one he effectively owns), like the one entailed in Art. 2 l. 898/1986.

[46] Statute on the financing, management and monitoring of the common agricultural policy, repealing Regulation (EU) No 1306/2013, introducing a sanction mechanism in the form of a reduction of payments to beneficiaries of aid under the common agricultural policy

In fact, Art. 6 of l. 42/2023 and Art. 2 l. 898/1986 tend to overlap. This brings uncertainty in the application of the related practical consequences.

4. Most relevant fraud schemes

CAP frauds can highly vary in relation to the type of EU funds, since the structure of each fund, as well as the changes of CAP in the last decades can highly influence the fraudulent strategies[47]. In particular, while during the first decades of CAP subsidies were mostly related to production rates – on the basis of a quantitative evaluation - the latest reforms on CAP relate funds to the accomplishment of sustainability requirements (according to the conditionality principle)[48].

This shift can directly affect fraudulent schemes and their frequency. Indeed, making the disbursement of funds dependent on the achievement of productive results makes it more difficult to resort to fraudulent strategies because production results are quantifiable data, thus more easily verifiable. On the contrary, declarations of compliance with sustainability requirements imply assessments whose control becomes more problematic.

Reports and studies tend to show that applicants for direct payments may request aid for plots of land they do not have the right to use, on the basis of false agreements or they may artificially create conditions for receiving aid and financial support.

Instead, indirect payments, like rural development funds, can prompt applicants to use false invoices, or declarations of equipment as new, when in fact it is not, manipulated information and false declaration of compliance with conditions for the financing.

Violations and falsity may concern the information the applicant provides in order to be selected, to receive advanced payments or to meet the criteria for submitting requests for aid and access to a support scheme.

[47] See DE LIA, A., *Il momento consumativo nelle fattispecie criminose in materia di agevolazioni finanziarie alle imprese*, in www.archiviopenale.it 2018 (1), pp. 6 ss.

[48] See the report of Prof. E. SIRSI, *From price policy to the 'green architecture' of the CAP 2023-2027: compliance and fraud risks,* Seminar 22 April 2024.

Furthermore, the beneficiary may infringe procurement rules, request reimbursement for inflated costs or even for non-existent transactions, as well as ask for reimbursement of costs already funded elsewhere[49].

In particular, this last scheme recurs very often in cross-border corporate crime, frequently perpetrated by criminal groups and organizations, setting up shell companies, all at the same address and all with their own bank accounts with the same bank, created solely to receive EU subsidies and without any intention of using them for the genuine purposes they were destined to.

Among all these fraudulent strategies the most common criminal patterns related to CAP shared-management funds are falsification or alteration of the conditions requested for the disbursement of agricultural funds (e.g. false declarations regarding the farmers' land or the farmers' personal conditions)[50].

5. Development of CAP frauds in the Italian legal context and possible causes

Fraud on agricultural land has grown significantly since the financing of EU in the field has increased. The reasons have been clearly explained in the outputs of the research contributions.

Firstly, in the last years there had been many EU resolutions directed to discipline CAP expenditures and to invest in agricultural policies, with the consequence that organized crime has become more interested in developing fraud schemes in relation to CAP funds: a great resource to be reinvested in both legal or illegal circuits.

Secondly, national and European regulations on CAP funds can enhance risks of irregularities as well as frauds. As far as it concerns the national legal discipline on CAP payments, it is very complex and not always clear and this lack of clarity encourages the phenomenon of fraud.

[49] Olaf Report 2020, 34th Annual Report on the Protection of the European Union's financial interests and the Fight against fraud, p. 20.

[50] See also Report GREENS/EFA Group of EU Parliament of February 2021 *"Where does the EU money go? An analysis of the implementation of CAP funds in Bulgaria, the Czech Republic, Poland, Slovakia and Romania"*, as also Supervisory Committee, Opinion 1/2021.

As regards the European level, the new requirements for being entitled to receive CAP funds appear to facilitate fraudulent behaviors, because they are not bound to the achievement of certain production results, as it was according to the previous discipline.

Indeed, the current EU regulation on CAP payments links the granting of funds to the declared availability of a certain amount of agricultural land and to the compliance with conditionalities directed to the implementation of European sustainability standards on rural development (maintenance of land, protection of livestock and social policies of agricultural work). Since the requirements for achieving an EU fund are not strictly "quantitative" and objective, they seem to make fraud easier.

Finally, the Italian discipline lacks an adequate discipline directed to shield national paying agencies from other criminal conducts (conflict of interests or corruption) that can favor fraudulent patterns.

6. Effectiveness of criminal measures in the Italian legal system

In relation to the abovementioned issues, the research showed[51] that the Italian punitive system could be insufficient to ensure a proper protection of CAP funds, since the legal offences tend to overlap, generating obstacles in their correct application (even a violation of the *ne bis in idem* principle)[52]. Criminal sanctions are in any case not adequate to prevent complex criminal patterns that are progressively developing cross-border[53].

These factors together lead to believe that other measures may be more effective, like preventive ones. The scientific outputs and contributions of the scholars who actively

[51] See the presentation of Prof. F. CINGARI, *Repression and prevention of fraud on European agricultural funds*, AFRADE Seminar of 22 April 2024.

[52] Some Italian references on the topic: DE LIA, *Le Sezioni unite sul rapporto tra truffa e malversazione. L'interpretazione come "arma letale" per la tutela degli interessi comunitari,* in *Giust. Pen.*, 2017, II, 7-8, 449 ss. GIACONA, *Il delitto d'indebita percezione di pubbliche erogazioni (art. 316-ter c.p.): effetti perversi di una fattispecie mal formulata,* in *Cass. pen.,* 2012, 10, 3402 ss.; BASILE, *Riflessioni de lege ferenda sul recepimento della Direttiva PIF: la repressione delle frodi e lo "strano caso" dell'art. 316-ter c.p.,* in *www.archiviodpc.dirittopenaleuomo.org,* 31 maggio 2019, 8; SCORCIA, *Sulla struttura della malversazione a danno dello Stato: la giurisprudenza fa dietrofront (ma non del tutto),* in *www.archiviopenale.it* 2023 (3).

[53] See the latest ECA reports on the topic: Special Report 2022 *The Commission's response to fraud in the Common Agricultural Policy Time to dig deeper* and

participated in the research meetings (seminars) showed that there are at least three distinct levels to address, in order to improve the fight against CAP frauds.

Firstly, the regulation on access to European CAP funds should be modified in order to make the discipline more transparent (especially as regards the requirements for achieving aid and EU funds). A more complex discipline on administrative checks and payments can facilitate illegal behaviours, especially collusion, corruption and conflict of interests. They can represent the basis for fraudulent schemes and other criminal conducts.

Therefore, one the one hand, the legal discipline on payments and checks should be simplified; on the other hand, Paying Agencies should be structured and disciplined more homogeneously in order to prevent the infiltration of crime, and controls should be enhanced, with the aim of identifying the most recurring risks of fraud before payments.

Furthermore, administrative enforcement measures could be empowered in the fight against CAP funds frauds, rather than criminal one. They mainly consist in pecuniary sanctions and thereby could have a significant impact on companies (as well as individuals) hidden behind the fraudulent structure.

Finally, also companies should be considered. Studies on corporate compliance in CAP sector[54] showed that in this field risk assessment is frequently demanded to private regulation, and does not follow a nomological structure. Furthermore, not every type of fraud can be prevented by compliance. This can lead to gaps in protection or to failures to detect and prevent illegal behaviours in the area of CAP funds.

Although the analysis already focused on some offences with administrative relevance, some details related to the monetary implications of administrative measures should be noted as well.

7. Administrative enforcement measures

There are different levels of administrative sanctions. The first is provided in Reg. UE 2116/2021, that was applied with d.lgs. 42/2023 in the Italian system (see § 1). Indeed, Artt. 84

[54] See, in particular, the presentation of Dr. G. MINICUCCI, *Fighting fraud through compliance,* AFRADE Seminar of 22 April 2024.

and 88 of the d.lgs. 42/2023 provide for an administrative sanction to beneficiaries of direct aid who have not respected the commitments underlying compliance with social conditionality[55].

As regards application and calculation of administrative sanctions, art. 89 provides that they shall be applied by means of reduction or exclusion of the total amount of the payments granted or to be granted to the beneficiary concerned, in respect of aid applications that the beneficiary has submitted or will submit in the course of the calendar year of the finding of the non-compliance.

The reductions or exclusions shall be calculated according to the payments granted or to be granted in the calendar year in which the non-compliance occurred[56].

The d.lgs. 42/2023 also entails a provision specifically dedicated to administrative consequences deriving from violations concerning direct aid and rural development funds. In particular, where the beneficiary declares an agricultural area greater than that for which all the conditions for aid should be fulfilled, and the difference between the two exceeds 50%, the farmer loses entitlement to the payment - which, if obtained, he must repay in full - and is required to pay an additional sum calculated on the basis of the greater area declared.

[55] Article 88 (1) System of administrative penalties for social conditionality. *1. Under the system referred to in Article 87(1), first subparagraph, the paying agency shall be notified at least once a year of cases of non-compliance where enforceable decisions in that respect have been made by the authorities or bodies referred to in Article 87(2). That notification shall include an assessment and grading of the severity, extent, permanence or reoccurrence and intentionality of the non-compliance concerned. Member States may make use of any applicable national grading system of labour sanctions in order to carry out such assessment. The notification to the paying agency shall respect the internal organisation, tasks and procedures of the authorities and bodies referred to in Article 87(2).*

[56] Literally, art. 89: *1. The administrative penalties shall be applied by means of reduction or exclusion of the total amount of the payments listed in Article 83(1) granted or to be granted to the beneficiary concerned in respect of aid applications that the beneficiary has submitted or will submit in the course of the calendar year of the finding of the non-compliance. The reductions or exclusions shall be calculated on the basis of the payments granted or to be granted in the calendar year in which the non-compliance occurred. However, where it is not possible to determine the calendar year in which the noncompliance occurred, the reductions or exclusions shall be calculated on the basis of the payments granted or to be granted in the calendar year of the finding of the non-compliance. For the calculation of those reductions and exclusions, account shall be taken of the severity, extent, permanence or reoccurrence and intentionality of the non-compliance determined, in line with the assessment of the authorities or bodies referred to in Article 87(2). The administrative penalties imposed shall be effective, proportionate and dissuasive. The relevant provisions of Article 85(2), (5) and (6) shall apply mutatis mutandis to the application and calculation of the administrative penalties. 2. In order to ensure a level playing field for Member States and the effectiveness, proportionality and dissuasive effect of the administrative penalties under this Chapter, the Commission is empowered to adopt delegated acts in accordance with Article 102 supplementing this Regulation with detailed rules on the application and calculation of those penalties.*

The same provision applies also in case of declaration related to heads of cattle.

While the administrative measures adopted for social conditionality are considered to be purely and authentically administrative, this second group of measures share some punitive aspects that substantially relate them to criminal sanctions, since they provide a response that is not merely compensatory. This circumstance – that could be considered nothing more than an interpretative matter – could bring to relevant practical consequences, since administrative and criminal measures follow different rules and principles.

A second level of administrative sanctions is to be found, as already illustrated, in the law 898/1986. Art. 3 of this statute provides specific effects in case of false declaration related to EAGF and EARDF. In addition to repayment of the unduly obtained amount, the mentioned provision establishes that, in case of fraud against the EAGF, a fine equal to the aforementioned amount should be applied; in case of rural development aid, on the other hand, the fine is calculated as a percentage of the amount paid, on the basis of various brackets, with a ceiling of €150.000. This administrative offence and the related pecuniary sanction are very frequently applied, and, as already noted, independently from the application of the criminal offence disciplined in Art. 2 of the same statute.

III Section: Procedural aspects related to information-exchange between authorities largely involved in fight against fraud

1. What databases are provided for collecting information on frauds (and irregularities) concerning agricultural funds and how do they work? Does each country have implemented IMS (Irregularity Management System)? If yes, how does this tool work? What authority is in charge of using it?

All institutions responsible for managing European resources make systematic and widespread use of IT resources. Besides those provided by the European Commission - Arachne, EDES, and IMS - there is also a new national platform: the **Integrated Anti-Fraud Platform (PIAF IT)**[57].

Every specific case of damage to the EU's financial interests exceeding €100,000 must be reported to OLAF, including instances of irregularity, suspected fraud[58], or confirmed fraud[59].

For the expenditure sector, reports are submitted through the **IMS (Irregularity Management System)**. The reporting obligation is linked to an initial administrative or judicial report (the first written assessment by a competent administrative or judicial authority, which, based on concrete or specific facts, determines the existence of an irregularity or fraud)[60].

The initial administrative or judicial report must undergo a preliminary assessment to determine whether the elements contained therein are sufficient to substantiate the hypothesis of a violation of an EU rule. Such an assessment is carried out by the paying agencies. The assessment is incorporated into a formal act to be adopted within 60 days of the initial control document. In the case of criminal relevance, the assessment coincides with

[57] Relazione Colaf 2022, p. 100.
[58] i.e., an irregularity that leads to the initiation of an administrative or judicial procedure aimed at determining the existence of intentional misconduct).
[59] i.e., once a competent authority has made a final decision—whether judicial or administrative—that establishes the existence of intentional misconduct
[60] Rapporto Colaf, p. 117.

the act of initiating criminal proceedings. The report must then be submitted through the IMS system within two months following the end of each quarter from the date of the initial report[61].

2. What are the most relevant consequences of national differences related to the aforementioned topics? What impact do they have on information-exchange activities?

The differences among national legal systems directly influence coordination among the authorities in charge of reporting irregularities and frauds on CAP expenditures and exchanging data and information with OLAF and EPPO.

Firstly, criminal offences and irregularities can differ in structure and therefore determine different red flags. Paying Agencies and AFCOS could relate some red flags to specific criminal offences that in some other countries could be considered as mere irregularities or even irrelevant facts.

Secondly, checks on beneficiaries vary among MS, because of the legal discipline, as well as the different exposure of administrative bodies to other illegal behaviours, such as corruption or conflict of interests.

Thirdly, each Member State could recur to specific funds more frequently than others, depending on the national agricultural policy and land availability: as already mentioned, this could bring to different fraudulent schemes and different fraud rates that directly hit detection and reporting activities.

Finally, not every Member State adopted adequate IT Tools for collecting data and improving information exchange strategies: in particular, not all MS implemented ARACHNE (see paragraph 1 of this Section). This circumstance significantly hinders the effective coordination in the investigative activities both at administrative and criminal level.

[61] Ivi, P. 118

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Introduction

In Poland, rural areas and agricultural land cover 85% and 52% of the country's area respectively. Rural areas are inhabited by approximately 15 million people – 38% of Poland's total population. A total of approximately 1.4 million farms are identified. The main sectors are dairy, cereals, pigs, poultry and horticulture.

Before the accession of Poland to the EU on 1 May 2004, the Polish agriculture was fragmented, underinvested and poorly linked to foreign markets. Concerns were expressed about the ability of the Polish agri-food industry to compete with entities from other EU Member States.

After 20 years of the Polish membership in the EU it is clear that the Polish countryside and agriculture have received enormous support from the EU budget. Financial transfers from the EU to Poland from May 2004 to February 2024 amounted to EUR 243.2 billion, of which EUR 78 billion went to rural areas and farmers (EUR 50 billion – direct subsidies, EUR 26 billion – RDP, EUR 1.8 billion – market interventions). The dynamic modernisation of farms after accession to the EU was possible thanks to the entrepreneurship of many farmers and successive investment support programmes, such as SAPARD or Sectoral Operational Programmes, but above all Rural Development Programmes (RDP) and the implementation of direct payments.

However still at present, as mentioned in the Polish Strategic Plan for the CAP, agriculture in Poland is characterized by diversification of production and economic potential – a large share of farms with small economic size. There are significant income disparities. This is largely due to the specificities of the land ownership in Poland. There are two main types of land owners: State Treasury, which owns over 30% of all agricultural land, leased or left fallow, and other entities (individuals and/or legal persons).

The level of organisation of farmers is insufficient. Water shortages, surface water pollution are observed. Despite increasing trends, the use of plant protection products remains below the EU average. Rural areas still lack access to modern social and technical infrastructure. A

progressive ageing of the population is evident. The majority of businesses are linked to the agricultural and forestry services, processing and tourism sectors[62].

At the same time though, the modernization of the Polish agricultural sector is difficult, because the agenda of all political parties includes preserving traditional structure of agricultural sector, avoiding excessive concentration of agricultural land and supporting family farms (below 300 ha). In result, Polish law has provided for severe restrictions in trading in agricultural land. In particular, since 2016 an agricultural property (of more than 1 ha) may be purchased by individual farmers only, whereas an individual farmer is a natural person, possessing the agricultural qualifications, who has personally managed a family farm for at least 5 years and during that period resided in the area of municipality in which at least one real property constituting a part of a holding is located, being an owner, perpetual usufructuary or leaseholder of an agricultural real estate whose the total agricultural area does not exceed 300 ha. The law also stipulates for an additional condition at the purchase according to which the individual farmer is required to farm on the acquired property and not to dispose of the property for 5 years after the purchase. Consequently, an average size of farmland per farm in Poland in 2024 was 11.59 ha.

[62] Strategic Plan for the Common Agricultural Policy 2023-2027, https://www.gov.pl/web/rolnictwo/dokumenty-ps-wpr.

I Section: Payment Mechanisms

1. Shared Management CAP Funds: What are them and how do they work?

The CAP is financed through two funds as part of the EU budget: the **European Agricultural Guarantee Fund** (**EAGF**) which provides direct support for farmers and funds market measures and the **European Fund for Rural Development** (**EAFRD**) which finances rural development.

According to the Polish National Strategic Plan 2023-2027[63], the EAGF funds several types of interventions. Direct payments include the basic income support, which is basic income support based on the number of hectares cultivated. The EAGF also includes redistributive payment, payment to young farmers, 13 production-related income support payments[64].

A new element of the direct payment system, supporting the implementation of practices beneficial for the environment, climate and animal welfare, are the eco-schemes. These are annual, paid practices, adapted to national conditions and needs, to meet the environmental and climate objectives of the new CAP – protection of soil resources, water, climate, animal welfare, biodiversity in agricultural production[65].

In addition, the EAGF support includes agri-environmental-climate interventions, as well as forest and woodland interventions.

The EAFRD (the so-called II pillar of the CAP) supports three types of measures: investment measures, environment-related measures and aid for producer groups, marketing, quality systems. The investment measures include support for investments to improve the welfare of cattle and pigs, on-farm investments in RES and energy efficiency improvements, investments to prevent the spread of ASF and investments contributing to environmental and climate protection. There will also be support in the form of grants and financial instruments

[63] https://www.gov.pl/web/rolnictwo/dokumenty-ps-wpr

[64] These forms of production-related income support include payments for – inter alia: tomatoes, hops, flax, cows, goats, strawberries.

[65] The Strategic Plan provides for 6 types of echo-schemes: Animal welfare; Carbon agriculture and nutrient management; Areas with melliferous plants; Water retention in permanent grassland; Integrated Plant Production; Biological crop protection.

for on-farm investments that increase competitiveness. Measures similar to the current modernisation and restructuring of farms and premiums for young farmers are also planned. The environment-related measures include the protection of valuable habitats and endangered species within and outside Natura 2000 areas, organic farming, extensive use of meadows and pastures in Natura 2000 areas, the preservation of orchards of traditional fruit tree varieties, the conservation of endangered plant and animal genetic resources in agriculture, and biodiversity on arable land. Funds are also provided for afforestation and creation of mid-field shelterbelts, as well as for the development of agricultural and forestry services.

Finally, aid will be provided for the creation and development of producer organisations and agricultural producer groups, as well as for the marketing and development of cooperation concerning food produced under quality systems..

2. Responsible Bodies for Payment in Poland and their main activities

There is just one paying agency in Poland – the Agency for the Restructuring and Modernisation of Agriculture. Pursuant to Art. 10(1) of the Act of 8 February 2023 on the Strategic Plan for the Common Agricultural Policy 2023-2027 , the Agency acts as an accredited paying agency. The tasks of ARiMR are defined in Article 5 and Article 6 of the Act on ARMA.

Some tasks of the Agency, relating to the granting, payment and reimbursement of aid, may be delegated by ARMA to the regional self-government territorial units, according to Art. 10(3) of the Act on the Strategic Plan.

In turn, the so-called Managing Authority within the meaning of Article 123 of Regulation 2021/2115 is the Minister of Agriculture and Rural Development.

3. What are eligibility conditions for beneficiaries in each country? What is the standard procedure in order to advance a funding request? How are these conditions evaluated?

Direct payments are granted to an active farmer if they carry out an agricultural activity and the total area of land covered by an area approved for basic income support held by that farmer is not less than 1 ha.

If the above condition cannot be met, direct payments will be granted if:

- the farmer meets the conditions for the granting of animal production-related payments or a welfare payment and has applied for them, and
- the total amount of direct payments to be granted in a given year to that farmer, before application of penalties, including administrative penalties, amounts to at least the equivalent in PLN of EUR 200.

Direct payments are also granted to the area of an agricultural parcel or unit of non-agricultural land located on land constituting an eligible hectare, of an area of not less than 0,1 ha and no more than the maximum area eligible for payment.

The hectare eligible for intervention in the form of direct payments shall be the agricultural land of the holding for which direct payments are claimed and which during the calendar year is used for agricultural activities or is predominantly used for agricultural activities.

For each reference parcel, a maximum eligible area is defined in the Land Parcel Identification System (LPIS)[66]. Direct payments in a given calendar year are granted up to an area of eligible land not exceeding the maximum eligible area.

The condition for payment is that the land declared for payment on 31 May of the year of application is held under a legal title.

The condition of having the right to use the land may be fulfilled by all legally permissible forms, such as a title deed or a lease agreement, including an oral agreement.

Payments are due to the actual user of the agricultural land who performs all activities necessary for the proper functioning of the farm. These may include organisational and

[66] Currently operating as provided for in Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013.

managerial activities, as well as personal involvement in the direct physical work of the farm, e.g. in determining crop selection, agrotechnical operations and harvesting. A landowner who does not carry out agricultural activity on the land is not entitled to payments,

Payments are only granted to economically active farmers. A farmer will be considered economically active if the amount of direct payments received for the previous year does not exceed €5,000.

Payments are due to the actual user of the agricultural land who performs all activities necessary for the proper functioning of the farm. These may include organisational and managerial activities, as well as personal involvement in the direct physical work of the farm, e.g. in determining crop selection, agrotechnical operations and harvesting. A landowner who does not carry out agricultural activity on the land is not entitled to payments,

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4. Detection and reporting of irregularities and suspected frauds: How do detection and reporting work in practice?

The detection of irregularities is most often a result of the integrated control system, implemented by the Agency for the Restructuring and Modernisation of Agriculture. The system includes on-the-spot checks, carried out in order to verify and cross-check the facts on which the payments are based, to confirm that the data and information contained in the aid applications correspond to the actual situation.

On-the-spot checks are conducted by the Agency for Restructuring and Modernisation of Agriculture or by entities acting on its behalf (called 'control contractors') by two methods:

- **the field inspection method**, which is characterised by inspection of the controlled entity, where control activities are carried out directly at the controlled entity's premises or at the place of implementation of the operation or at the place where the

controlled entity carries out agricultural/non-agricultural activity or on agricultural parcels or units of non-agricultural land,

- **the FOTO method**, which is characterised by the fact that it is carried out only in pre-selected dense areas generally covering one to several municipalities or a group of concessions. The farm inspection consists of inspecting the agricultural parcels requiring control that are part of the selected farm and, if necessary, carrying out the actions necessary to verify the beneficiary's fulfilment of the conditionality requirements. The size of the FOTO field inspection team is an internal matter for the Contractor. In special cases, e.g. control of plots under cloud cover, there may be a need to supplement the FOTO inspection and to carry out, a field inspection.

Controls by the field inspection method are carried out within the framework of all measures implemented by the Agency. In the 2023 control campaign, controls were carried out both by external contractors selected through a tender procedure and by the Agency staff. FOTO inspections are carried out only by external contractors selected through a tender procedure and concern direct payments and areas with natural or other specific limitations.

If this does not jeopardise the purpose of the control, the farmer may be notified of the intention to carry out the control in advance, strictly limited to the minimum necessary, but not earlier than 14 calendar days before the control date. The notice may be given by telephone, in person or by registered letter with acknowledgement of receipt.

The farmer's or their proxy's presence at such checks is essential to carry out documentary checks.

Persons carrying out control activities have the right to:

- enter the land and premises related to the activity to which the aid relates;
- request written or oral information related to the subject matter of the control;
- access to and take copies, extracts or photocopies of documents relating to the subject

of the control and to safeguard such documents;

- establish photographic documentation of the on-site inspection;
- take samples for examination.

However, it should be noted that an inspection carried out in the absence of the farmer, is just as valid as an inspection carried out in their presence. During each control, a report on the control activity is drawn up. The inspected entity has the possibility to submit reasoned comments on the findings of the inspection report. These comments should be addressed to the Director of the Regional Branch – ARMA appropriate to the place of submission of the application.

All of the activities carried out by the Agency for Restructuring and Modernisation of Agriculture are supported by IT tools. The Agency has established an online system for submission of applications (*eWniosekPlus*)[67]. It is supplemented by a special mobile application (*Mobilna ARiMR*)[68], which may be used for sending a geotagged photo of the plot or an object, or a document. Using these tools by a farmer can significantly reduce the processing time of the application.

IT tools are also used for controls. The Agency has set up the Land Parcel Identification System[69], which has been used to determine the boundaries of agricultural parcels. This system is updated annually for half of the country on the basis of much more accurate aerial photographs and other sources of information (including information from farmers, land and building register data, results from on-site inspections). On this basis, the reference parcel boundaries and the maximum eligible areas are updated.

Since 2023, the Agency has also been inspecting the crops declared in applications for payments using satellite systems. This system has been established as required by Article 66(1) of Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and

[67] https://www.gov.pl/web/arimr/ewniosekplus-system (access: 10.09.2024).
[68] https://www.gov.pl/web/arimr/mobilna-arimr (access: 10.09.2024).
[69] https://geoportal.arimr.gov.pl/mapy/apps/sites/#/portal (access: 10.09.2024).

repealing Regulation (EU) No 1306/2013.

AMS is based on the use of satellite imagery (in particular the free ones from the Copernicus Programme from Sentinel-type satellites), which are acquired with high frequency, i.e. every 3-8 days, thanks to which it is possible to conduct systematic long-term observations and analysis of data related to agricultural activity – occurrence of crops, plant vegetation, agrotechnical operations (harvesting, ploughing, mowing) or fallowing. Such an assessment is possible because the arable land in the depictions is distinguished by its colours in relation to the land covered by vegetation (permanent or temporary). The system now allows in particular to verify the eco-schemes that farmers declared in their area applications together with the implementation of specific practices within them.

The Agency however emphasizes that the results of controls are always based on the findings of an ARMA controller who verifies all information at a further stage of the administrative control, including information from alternative data sources (e.g. aerial/satellite orthophotos), on-site inspections or geotagged images sent in the context of the reported eco-schemes.

The Agency for Restructuring and Modernisation of Agriculture cooperates with the other national authorities, in particular with the Ministry of Finance, which is responsible for supervising the Agency. The Agency also reports to the EU institutions.

Whenever an irregularity is detected, the Agency opens administrative investigative proceedings. The aim of these proceedings is to re-verify the amount of aid granted or to establish the amount of aid unduly received payments. In 2023, the Agency conducted 1003 investigative proceedings.

If these proceedings indicate that a criminal offence may have been committed, the Agency notifies the law enforcement authorities of a suspected offence. Then, based on this notification, criminal proceedings are initiated and the information is verified through evidentiary measures collected within the criminal proceedings. If the notification proves well-founded, the proceedings are conducted and an indictment bill is submitted to the court. However, if the law enforcement authorities find that the notification was baseless, the

criminal proceedings are closed.

According to the available statistical data, the magnitude of crime to the detriment of EU financial interests in Poland is small. There are only a few hundred pre-trial proceedings per year in these cases, and at least half of which are discontinued due to the lack of criminal features of the behavior. This is presumably due to discrepancies in assessing the nature of irregularities between administrative and law enforcement authorities[70]. In many cases, the administrative authorities submit a notification of a suspected offence just out of precaution, and it is deemed unfounded by the law enforcement authorities and therefore the criminal proceedings are discontinued.

This is further confirmed by the data collected on the EU level by OLAF. For the years 2019-2023, 5383 irregularities were detected by Polish authorities in the areas of European Structural and Investment Funds and Agriculture and Rural Development Fund and additional 24 irregularities were detected by OLAF. Out of this total number of 5407 irregularities detected, only 18 were transferred to the Polish judicial authorities and out of that only 2 indictment bills were submitted[71].

[70] C. Nowak, *Ochrona interesów finansowych Unii Europejskiej w świetle polskiego prawa karnego*, Warszawa 2023, 259.

[71] See OLAF 2023 Report, https://ec.europa.eu/olaf-report/2023/impact-of-investigations/impact-of-investigations_en.html#judicial (acces: 10.09.2024)

II Section: Fraudulent schemes and criminal law analysis

1. What are the differences between 'irregularity', 'fraud' and 'suspected fraud' at the European level and in the selected countries for the comparative study? What practical consequences derive from this difference (in information-exchange strategies as well as in investigative activities)?

Due to the duality of the legal framework for the protection of the EC's financial interests resulting from the pillar structure of the EU, 'irregularity' is a category covering all types of abuse to the detriment of those interests. On the other hand, within the set of irregularities a subset of frauds may be separated out, where fraud is understood as a more serious irregularity, subject to criminal proceedings.

This broad and diversified understanding of the concept of irregularity is still valid today, as confirmed by official EU documents in which the notion of and the distinction between 'non-fraudulent irregularities' and 'fraudulent irregularities' is commonly applied[72]. Legal instruments in the 3rd pillar as well as the new PIF Directive[73] are dedicated to fraudulent irregularities, while the notion of non-fraudulent irregularities is applied in administrative law instruments.

The Polish law or any official Polish document[74] does not provide for a definition of an irregularity, it refers to the EU law in this regard. For instance, Art. 2 p. 17 of the Act of 28 April 2022 on the rules for the implementation of tasks financed from the European funds in the financial perspective 2021-2027 defines an 'irregularity' as an irregularity as referred to in Article 2(31) of the Regulation (EU) 2021/1060[75], which states that an 'irregularity' means 'any

[72] See, e.g., Report from the Commission to the Council and the European Parliament, '35th Annual Report on the Protection of the European Union's Financial Interests and the Fight against Fraud' (2023), p. 7 et seq., https://anti-fraud.ec.europa.eu/document/download/e600af45-0604-4102-a320-1764987ba220_en?filename=pif-report-2023_en.PDF

[73] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29–41.

[74] See for instance, *Guidelines on the manner of correcting irregularities for 2021-2027*, adopted by the Minister of Funds and Regional Policy in 2023, https://www.funduszeeuropejskie.gov.pl/media/119614/wytyczne_dotyczace_sposobu_korygowania_nieprawidlowosci_na_lata_2021_2027.pdf

[75] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just

breach of applicable law, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the budget of the Union by charging unjustified expenditure to that budget'.

Also, the definition of 'fraud' is not provided for as such in the Polish law. The same applies to the notion of 'suspected fraud'[76].

Fraudulent irregularities, which in fact constitute suspected frauds, give raise to criminal proceedings, while non-fraudulent irregularities are subject to administrative proceedings only. In consequence, there is a clear difference as to the level of procedural guarantees offered to persons of interest in each of these types of proceedings as well as the standard of proof. In criminal proceedings, more strict rules related to safeguards apply. The proceedings are usually carried out by the law enforcement agencies (most often by the Police) and supervised by a public prosecutor. These authorities are entitled to conduct pre-trial proceedings and to collect evidence, as provided for in the Code of Criminal Procedure.

The administrative proceedings do not require the same standard of proof as criminal proceedings, in particular there is no need to prove the guilt. However, on the other hand, they also allow for investigative activities more intrusive from the point of view of human rights.

2. What are the most frequent "red flags"? What are the most common criminal schemes in this sector (according to sectorial reports, or scientific literature)?

In Poland, as mentioned in the introduction, the agricultural land may not be subject to free trade, generally speaking, it may be acquired by farmers only. It is difficult to indicate any criminal schemes in the sector of agriculture in Poland, detrimental to the financial interests of the Union. The scale of irregularities and offences in this sector is relatively small. This is mainly a consequence of the geographical conditions – Poland is predominantly a flat country, which makes controlling activities by the Agency easy. Also, the land ownership structure,

Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, *OJ L 231, 30.6.2021, p. 159–706.*

[76] See below, question No 3.

where land is mainly owned by individual farmers, who know one another, constitutes a natural deterrent.

For instance, concerning the direct payments, in 2023, on the basis of the available results of controls, it was found that the predominant number of irregularities concerned the updating of the Land Parcel Identification System, as well as discrepancies in the area coverage. The following irregularities were the most frequent: enlargement or reduction of the extent of the field, differences between the area declared by the beneficiary and the area found during the check, use of the outer perimeter value for the calculation of the measurement tolerance, finding of at least one crop other than that declared, finding of an area temporarily ineligible for payments, crop boundaries going beyond the boundaries of the reference parcels declared in the application.

Discrepancies in the area coverage and negligence on the part of the farmer to comply with the requirements set forth in a given support scheme were also detected with regard to other forms of support[77].

3. Are the legal definitions of these offences clear enough in order to identify them in practice?

The Polish law does not contain just one provision which would constitute a direct transposition of the definition of fraud as understood in Art. 3 of the PIF Directive, but it provides for several types of offences which contain elements of this definition.

The first type of fraud is simple fraud[78]. Pursuant to Art. 286(1) of the Polish Penal Code of 6 June 1997 (hereinafter referred to as the "PC"[79]) is liable to the penalty of deprivation of liberty for a term of between 6 months and 8 years whoever, acting with the purpose of gaining an economic benefit, caused another person to disadvantageously dispose of his own or someone else's property, by misleading this person, taking advantage of his mistake or inability to

[77] See more in the *2023 Report of the Agency for Restructuring and Modernisation of Agriculture*, p. 196 ff, https://www.gov.pl/web/arimr/sprawozdania-z-dzialalnosci-agencji-restrukturyzacji-i-modernizacji-rolnictwa

[78] More on this type of fraud in T. Oczkowski, Oszustwo in: System prawa karnego. T. 9. Przestępstwa przeciwko mieniu i gospodarcze, R. Zawłocki (ed.), Warsaw 2011, 117-149.

[79] In force from 1 September 1998.

properly understand undertaken actions. If the act was of minor importance, the penalty is mitigated to a fine, limitation of liberty or deprivation of liberty up to 2 years (Art. 286 para 3 PC).

The prohibited behavior consists generally in deceiving another person by any means– the way the perpetrator acts is not relevant for their penal responsibility. Art. 286 PC applies to situations where the funds or property had already been disposed, for instance after the money had been paid to the beneficiary. These provisions apply both to the public and private sector fraud.

If the money have not been disbursed yet, the behavior may constitute the so-called financial fraud, provided for in Art. 297 PC. Pursuant Art. 297(1) PC, shall be liable to the penalty of deprivation of liberty for a term of between 3 months and 5 years whoever, in order to obtain for himself or for another person, from a bank or an organizational unit carrying out similar economic activity on the basis of a statutory act, or from an authority or institution having public funds at their disposal – a credit, a loan, guarantee, letter of credit, grant, subsidy, bank's confirmation of an obligation issuing of a guarantee or a similar pecuniary measure for a specific economic purpose, electronic payment tool or public procurement order, submits a document, which is false, incorrect, incomplete, attesting untruth or unreliable or an unreliable written statement, which are of significance for obtaining such a financial support, payment tool or a public procurement order.

The behavior criminalized in Art. 297(1) PC consists in submitting false, incorrect or incomplete statements or documents. It constitutes a first stage of a criminal scheme and, if not stopped, it may be followed by a payment of funds to the perpetrator or another person or entity. However, the legislator decided to intervene penally at this early stage, without an actual incurrence of expenses, in order to avoid negative economic consequences.

Additionally, Art. 297(2) PC provides for an offence of financial fraud by omission[80]. Pursuant to this provision, anyone who, in breach of their duty, fails to notify the competent body of the emergence of a situation which may have an impact on the suspension or reduction of the amount of the financial support referred to in para 1 or a public contract or on the continued

[80] Ibidem, 544-547.

use of the payment instrument is liable to the same penalty as provided in Art. 297(1) PC. This offence may only be committed by a person having a specific obligation of notification as described in the subject provision. They may be employees of the bank or the authority managing EU funds or the beneficiaries of the EU financial support themselves[81].

Also, the financial interests of the EU may also be protected by the provisions criminalizing offences against the reliability of documents, in particular Art. 270(1) PC which stipulates that whoever, in order to use a document for the purpose of authenticity, counterfeits or falsifies a document or uses such a document as authentic, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

If necessary, other PC provisions may be of use to protect the financial interest of the EU. In particular, provisions criminalizing taking part in activities of an organized criminal group (Art. 258 PC), corruption in the public sector (Art. 228-229 PC) of money laundering (Art. 299 PC) should be mentioned.

All the aforementioned provisions may be used in concurrence with one another. According to the Polish PC, a behavior may constitute fraud and an offence against reliability of documents at the same time. In such event, all of the provisions are enumerated in the indictment bill, but the penalty is applied based on the most severe provision. Furthermore, in some events, the provisions on attempt are also applied, for instance when a person only tried to deceive someone else in order to get funds.

The definitions of these offences usually do not entail interpretation problems in practice. These offences are well established and frequently used by the Polish law enforcement agencies and the courts. However, the scope of criminalisaton is limited. The Polish criminal law does not fully transpose the definition of fraud set forth in the PIF Directive. The most important loophole refers to the behavior consisting in misapplication of funds or assets for purposes other than those for which they were originally granted.

4. Can evidence of these offences always be easily collected?

[81] Ibidem, 546.

The collection of evidence always depends upon the circumstances of the case. In the event of simple frauds, detected in the framework of controls performed by the Agency for Restructuring and Modernisation of Agriculture officials, it seems easier than in case of more complex criminal offences.

III Section: Procedural aspects related to information-exchange between authorities largely involved in fight against fraud

1. What databases are provided for collecting information on frauds (and irregularities) concerning agricultural funds and how do they work? Does each country have implemented IMS (Irregularity Management System)? If yes, how does this tool work? What authority is in charge of using it?

Poland implemented the Irregularity Management System in 2011. It is operated by the Ministry of Finance which fulfills the role of the Polish AFCOS.

2. What are the most relevant consequences of national differences related to the aforementioned topics? What impact do they have on information-exchange activities?

The most problematic aspect of the Polish position in the context of the protection of the financial interest of the UE was related to the Polish governments' reticence towards the participation in the European Public Prosecutor's Office. Due to the decision not to participate in the enhanced cooperation, Poland has been treated as a third country by the EPPO. It was only in in February 2024 that a new Polish government decided to join the enhanced cooperation. However the matter is still pending, the European Prosecutor for Poland has not been appointed yet and the EPPO is not operational in Poland yet.
The non-participation in the EPPO has put Poland in a disadvantaged position, and the protection of the EU financial interest was not a priority for the Polish law enforcement authorities.

4.What solutions can be outlined?

Poland has already joined the EPPO, but the national legislation needs to be amended accordingly.

AFRADE

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AFRADE Project - National Legal Report (Romania)

Author: Dr. Monica Mihaela TUDOR

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I Section: Payment Mechanisms

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- European Agricultural Guarantee Fund (EAGF) and European Agricultural Fund for Rural Development (EAFRD) financing:

  - farming system (Single Area Payment Scheme - SAPS, transitional aids, coupled support for farmers, investments on farm modernization, cooperation, marketing and processing of agricultural products, and eco-schemes) and
  - other rural development measures (diversification of rural economy, rural infrastructure development, LEADER)

2. Since shared-management funds require an active role of States for the paying, what are the bodies responsible for the payment of EU agricultural funds in each country and what are their main activities?

- Agenția de Plăți și Intervenție pentru Agricultură (APIA) [Payments and Intervention Agency for Agriculture] – dealing with funds from both first and second pillar of CAP, namely: SAPS, eco-schemes, transitional aids and coupled support for farmers.
- Agentia pentru Finantarea Investitiilor Rurale (AFIR) [Agency for Financing Rural Investments], https://www.afir.ro/ - dealing with funds from second pillar of CAP, namely: investments on farm modernization, cooperation, marketing and processing of agricultural products, diversification of rural economy, rural infrastructure development, LEADER.

3. What are eligibility conditions for beneficiaries in each country? What is the standard procedure in order to advance a funding request? How are these conditions evaluated?

3.1. What are eligibility conditions for beneficiaries in each country?

There are different eligibility conditions for beneficiaries of EU funds based on the type of support.

A. **Eligibility conditions for subsidies (SAPS, eco-schemes, transitional aid and complementary payments) managed by APIA:**
   - The farmer carries out an agricultural activity on the territory of Romania and is an "active farmer"
   - The farmer exploits an agricultural land with an area of at least 1 ha, the area of the agricultural plot of at least 0.3 ha, and in the case of greenhouses, solariums, vineyards, orchards, hop crops, nurseries, fruit bushes, the area of the agricultural plot must be at least 0.1 ha.
   - For vegetables grown in greenhouses and solariums, which benefit from coupled support, the minimum holding area is 0.3 ha, and the minimum plot area is 0.03 ha.
   - In the case of meadows, they must ensure an animal load of at least 0.3 LSU/ha or carry out at least one annual mowing.

B. **Eligibility conditions for beneficiaries of EU rural development measures / sub-measures** are mentioned in the sheets of each measures and sub-measures of **National Rural Development Program** (PNDR) 2014-2020 in compliance with the provisions of R. no. 1305/2013, with subsequent amendments and additions.

In the period 2021-2023, through PNDR, in Romania, 17 measures were financed from EU funds, most of them having farmers as direct or indirect beneficiaries, namely:

M01 - Knowledge transfer and information actions (Article 14)

M02 - Advisory services, farm management services and on-farm replacement services (Article 15) M04 - Investment in physical assets (Article 17)

M05 - Restoring agricultural production potential affected by natural disasters and catastrophic events and establishing appropriate preventive measures (Article 18)

M06 - Development of farms and enterprises (Article 19)

M07 - Basic services and village renewal in rural areas (Article 20)

M08 - Investments in the development of forested areas and improving the viability of forests (Articles 21-26)

M09 - Establishment of producer groups and organizations in agriculture and forestry (Article 27) M10 - Agro-environment and climate (Article 28)

M11 - Organic farming (Article 29)

M13 - Payments for areas facing natural or other specific constraints (Article 31)

M14 - Animal welfare (Article 33)

M15 - Forest environment services, climate services and forest conservation (Article 34)

M16 - Cooperation (Article 35)

M17 - Risk management (Article 36)

M19 - Support for LEADER local development (CLLD - Local development placed under the responsibility of the community) (art. 35 of Regulation (EU) no. 1303/2013)

M21 - Exceptional temporary support granted to farmers and SMEs that have been particularly affected by the COVID-19 crisis (Article 39b).

Eligibility conditions for beneficiaries of PNDR 2014-2020 are divided into 2 categories:

- **General** eligibility conditions (valid for all measures),
- **Specific** conditions (mentioned in the sheets of each of the measures/sub-measures of PNDR 20140-2020).

General eligibility conditions derived from the applicable relevant definitions used on PNDR 2014-2020, namely:

a. *Agricultural activity*, in accordance with the provisions of art. 4(1)(c) of R no. 1307/2013 and of GEO no. 3/2015 for the approval of the payment schemes that apply in agriculture in the period 2015-2020 and for the amendment of art. 2 of L no. 36/1991 on agricultural companies and other forms of association in agriculture, means as the case may be:

• production, raising or cultivation of agricultural products, including harvesting, milking, reproduction of animals and keeping them for agricultural purposes:

o maintaining an agricultural surface in a state that makes it suitable for grazing or cultivation, without any preparatory action that goes beyond the scope of the usual agricultural methods and equipment, in compliance with the norms of eco-conditionality, or

o carrying out a minimum activity on agricultural surfaces usually maintained in a suitable condition for grazing or cultivation, on arable land by removing vegetation by mowing or discussing or by weeding at least once a year, and on permanent meadows, by grazing with ensuring the equivalent of a minimum load of 0.3 LSU/ha with the animals they exploit or an annual mowing, in accordance with the provisions of the specific legislation in the field of meadows. In the case of permanent meadows, located at altitudes above 1800 m, naturally maintained in a state suitable for grazing, the minimum activity consists of grazing with the provision of a minimum load of 0.3 LSU/ha with the animals that exploit it.
o in the case of vineyards and orchards, the minimum agricultural activity involves at least one annual maintenance cut and at least one annual mowing of the grass between the rows or one annual soil maintenance work.

Starting from 2021, for the transition period, *agricultural activity* is defined by GEO no. 11/2021 as follows:
a) production, growth or cultivation of agricultural products, including harvesting, milking, reproduction of animals and their possession for agricultural purposes;
b) maintaining an agricultural surface in a state that makes it suitable for grazing or cultivation, without any preparatory action that goes beyond the usual agricultural methods and equipment, by carrying out at least one annual activity, as the case may be:
(i) works for the removal of herbaceous and woody plant species, considered invasive or harmful vegetation on agricultural land;
(ii) superficial works on arable land, without overturning the furrow;
(iii) leveling of leeches, removal of dry plant remains and stones, removal of excess water on permanent meadows;
(iv) works to maintain fruit tree plantations and vines in good vegetative conditions and a superficial work to discuss or mow or another specific work on the land occupied with permanent crops. or
c) carrying out a minimal activity on the agricultural surfaces, naturally maintained in a state suitable for grazing or cultivation, as the case may be, by:
(i) harvesting vegetation through mowing works at least once a year on arable land;

(ii) grazing, ensuring a minimum load of 0.3 LSU/ha during the grazing period with the animals the farmer owns, or harvesting the vegetation through at least one annual mowing on the permanent meadows. In the case of permanent meadows located at altitudes above 1,800 m, naturally maintained in a state suitable for grazing, the minimum activity consists of grazing, ensuring a minimum load of 0.3 LSU/ha, during the grazing period, with the animals which the farmer owns.

b. *Forestry* - a branch of the forestry economy that includes the cultivation, development, protection and exploitation of the forest heritage, providing the raw material for the forestry industry;

c. Support for investments - community and national public support granted as non-reimbursable financing and/or through financial instruments;

d. *Processing of agricultural products* - any operation carried out on an agricultural product that results in a product that is also an agricultural product, with the exception of activities carried out on farms that are necessary in order to prepare an animal or vegetable product for the first sale. EAFRD support can also be extended to the processing and marketing of final agricultural products that result in non-Annex I products, provided that it is notified as state aid;

e. *Commercialization of agricultural products* - the possession or display of an agricultural product for the purpose of sale, offering for sale, delivery or any other form of placing on the market, with the exception of the first sale by a primary producer to resellers or processors and any other activities for preparation of the product for this first sale; a sale made by a primary producer to final consumers is considered marketing of agricultural products if it is carried out in separate premises reserved for this activity;

f. *Farmers* - natural or legal persons (under public or private law) or a group of natural or legal persons, regardless of the legal status that such a group and its members have under national legislation, whose holding is located on the territory of RO and carrying out an agricultural activity;

g. *Active farmers* – the definition of a farmer, established by national legislation, based on the provisions of art. 9 of R. (EU) no. 1307/2013;

h. *Small farm* – agricultural holding having an economic size between 4,000 -11,999 SO (value of standard production);

i. *Medium-sized farm (middle)* - agricultural holding having an economic size between 12,000 – 250,000 SO (value of standard production);

j. *Family farm* - the agricultural holding belonging to the family business or legal entity whose associates are exclusively members of the same family. The economic size of the family farm is between 4,000-100,000 SO. The members of the same family mean the husband/wife and relatives up to the third degree inclusive.

Specific eligibility conditions related to beneficiaries and other specific definitions are described in the measures/sub-measures sheets separately[82].

3.2. What is the standard procedure in order to advance a funding request?

The first step: registration in the Unique Identification Register (RUI) managed by APIA to obtain the Unique Identification Code. The assignment of the Unique Identification Code in RUI a necessary (pre)condition for accessing the support measures for agriculture and rural development and could be obtained based on completing and submitting a registration form to APIA only once, for each applicant.

Unique Identification Register (RUI) is electronic database (https://plati.afir.info/), component of the Integrated Administration and Control System (IACS), created and administered by APIA in order to identify farmers who can benefit from national and EU funding support.

The 2nd step is different depending on the payment agency who manage the funds and destination of these funds:

- for the funds managed by APIA (area based), the applicant must submit payment requests for SAPS, agro-environmental measures, transitional aid or coupled payment;

[82] Source: National Rural Development Program for the period 2014 - 2020, version 18.1 (2024), available at: https://www.afir.ro/media/lmppuy3c/pndr_2014-2020_v18_1.pdf

- for the funds managed by AFIR, access to the grants is based on funding requests / projects submitted within the open competitions for each individual measure/sub-measure. The funding requests/projects are then evaluated and ranked based on the eligibility conditions and the selection criterion (quality) of the projects specified on measure call, and those that are eligible and fall within the allocated budget will be selected for financing.

3.3. How are these conditions evaluated?

The area payment requests (SAPS, eco-schemes, transitional aid and complementary payments) are evaluated through the IACS[83] system.

Since the amount of direct payments granted to a farmer depends directly on the land area used, an important role in the IACS is held by the Land Parcel Identification System (LPIS).

LPIS was built on two basis:

- orthophoto plans on which the physical blocks are identified. A system of unique physical blocks identified at the national level was created. These two types of data (orthophoto and physical blocks) came together in a geographic information system (GIS).
- pre-identification of agricultural plots. The farmers registered in the Unique Identification Register were provided with graphic materials (orthophotoplans on which the physical blocks are uniquely identified) and were asked to locate their plots declared in the Farm Register on this material.

Correctness is checked by comparing the data declared by the farmers on their payment requests with a series of reference data stored in the system's databases of IACS. In this sense, the data declared by the farmers in the payment application is entered into the IACS application database. The agricultural area of each physical block is known after the end of the digitization process. The sum of the areas of plots declared by farmers within a physical

[83] IACS consists of a set of components bringing together IT infrastructure, personnel, procedures, computing and telecommunications in order to manage the payment requests submitted by farmers and to verify the correctness of the information declared by them.

block is compared with the reference area of the physical block. If the sum of the areas declared by farmers as agricultural plots used within a physical block is greater than its reference area, it means that one or more farmers have over-declared the areas they use.

Typical flow of operations carried out through IACS for controlling farmers payment application:

1. The farmer completes the application for area payment, in which he declares the number and size of the agricultural plots used and makes a sketch of these plots on the graphic material made available by the representatives of the APIA local and county centers.
2. The application file is submitted by the farmer to the APIA local or county center. Farmers must pay great attention to the correct identification of agricultural plots on the graphic material.
3. At the APIA centers, applications are formally (visually) checked by an APIA official. If there are formal (obvious) errors, the farmer will be asked to correct them. When the application is complete and formally correct, it is accepted and approved by the APIA official.
4. The visually verified request is entered into the IACS request database.
5. At the end of the application submission period, after entering them into the IACS database, an automatic administrative control takes place in the software. This control involves checking the correctness and completeness of the data in the applications and mainly a cross-check with the LPIS database. All farmers in the over-declared physical blocks are notified and called to APIA for clarifications with documents proving the use of the land area for which they request payment per area. It is important that farmers respond to clarification requests sent by APIA and submit supporting documents for clarification in case of over-declaration of the physical block.
6. European regulations provide that a sample of at least 5 % of the total number of requests be effectively controlled on the ground. These farms are chosen through the risk analysis that is done automatically by the software used. These farms are selected cumulatively, both on the basis of some risk factors (the size of the subsidy requested, the size of the agricultural area, the type of crop, etc.) and on the basis of a random selection process. The control sample

at this point is separated into two categories: farms that will be controlled on the spot and farms that will be controlled by remote sensing, using satellite images.

7. APIA employees check the selected farms on site or by remote sensing and draw up control reports that will be entered into the IACS database. It is important that the farmers inspected in the field do not refuse the access to the farm of the APIA inspector who carries out the inspection in the field because they will be excluded from the payment.

8. All these data stored in the IACS database are analyzed, compared with the help of a software that determines exactly for each case of violation the amount of penalties to be applied.

9. The APIA payment authorization structure verifies the lists, the amounts and gives the final approval on making the payment.

10. The list of payments and beneficiaries is sent to the bank and the money is transferred directly to the farmers' accounts[84].

For allocation of rural development funds, AFIR opens calls for projects for each measure/sub-measure using specific applicant guidelines. These guides specify: submission periods, the amount allocated, the indicative value of the projects, the eligibility conditions of the beneficiaries and the selection criteria of the projects, including the points awarded for each selection criterion.

The evaluation of submitted projects is done by AFIR experts, who check:

1. *eligibility criteria* of the project;

a. the eligibility conditions of the beneficiary (for investment projects, field verification is also done)

b. the indicative budget of the project

c. the financial plan

d. the artificial conditions.

[84] Source: APIA, IACS system, https://apia.org.ro/directia-masuri-de-sprijin-i-iasc/sistemul-integrat-de-administrare-si-control-iacs-din-romania1393245798/

2. *selection criteria* of the project (for establishing the score of the project proposal based on th criteria mentioned on the Guide of measure/sub-measure).

3. AFIR procedure also asking for an *over-verification at the level of a surveillance sample (minimum 3% of the total number of eligible applications*, for which the selection score is higher than the funding quality threshold provided in the measure guide). The project verification supervision sample is constituted as follows: 30% of the number of eligible projects are randomly selected; 70% of the number of over-verified eligible projects are selected based on the analysis of risk factors. For randomly established projects, the selection will be made through the electronic system. For the projects included in the surveillance sample based on the analysis of the risk factors, the following will be taken into account: the eligibility conditions specific to the measure/sub-measure; the amount of non-reimbursable support; the number of eligible funding applications.

4. during the implementation of AFIR-financed projects, each reimbursement/payment request is verified by AFIR experts, both from the perspective of the veracity and correctness of the supporting documents which justifies the amounts requested for reimbursement, as well as through field checks of the project implemetation stage, both preceding the actual reimbursement[85].

4. Who is responsible for detection and reporting of irregularities and suspected frauds?

According to the GEO no. 66 of June 29, 2011 regarding the prevention, detection and sanctioning of irregularities arising in the obtaining and use of European funds and/or related national public funds (with subsequent amendments and additions)

[85] Source: AFIR, Manualul de procedură pentru evaluarea si selectarea cererilor de finanțare pentru proiecte aferente sub-măsurilor, măsurilor și schemelor de ajutor de stat sau de minimis aferente Programului Național de Dezvoltare Rurală 2014 – 2020 (Versiunea 21) [The procedure manual for the evaluation and selection of funding requests for projects related to sub-measures, measures and state aid schemes or de minimis related to the National Rural Development Program 2014 – 2020 (Version 21)] https://www.afir.ro/api/file/document?url=/media/otrbwzyd/manual-procedura-evaluare-si-formulare-generale-evaluare_v21.rar&filename=Manual%20Procedura%20Evaluare%20Si%20Formulare%20Generale%20Evaluare%20V21&filetype=rar

Article 3(1) The authorities that manage European funds and their beneficiaries are obliged, in their activity, to develop and apply management and control procedures that ensure the correctness of the granting and use of these funds, as well as compliance with the principles of good financial management, as defined in the EU legislation.

(2) In the activity of selecting and approving projects and payment requests, the management authorities of European funds are obliged to use rules and procedures that ensure compliance with the following principles:

a) good financial management based on the application of the principles of economy, effectiveness and efficiency;

b) compliance with the principles of free competition and equal and non-discriminatory treatment;

c) transparency - making information available to all interested parties regarding the application of the procedure for awarding European funds;

d) preventing the occurrence of conflict of interest situations during the entire selection procedure of the projects to be financed;

e) exclusion of cumulation - the activity that is the subject of the application for funding from European funds cannot benefit from financial support from other sources of non-reimbursable funding, with the exception of the amounts that constitute state aid granted under the law.

Article 4. The public entities that manage European funds or beneficiaries of programs financed in whole or in part from European funds and/or from national public funds have the obligation to organize and carry out activities regarding: internal control, preventive control and identification and management of risks, as well as internal audit, in accordance with the provisions of the national and EU legislation in force, as well as with the International Auditing Standards[86].

[86] Source: GEO no. 66 of June 29, 2011 regarding the prevention, detection and sanctioning of irregularities arising in the obtaining and use of European funds and/or related national public funds - https://legislatie.just.ro/Public/DetaliiDocument/247072

Therefore, the funds Management Authorities are called to control the process of allocating the funds and the correctness of their spending. As in Romania, EU agricultural funds are managed through payment agencies (2 in number), they are the main actors in charge of detection and reporting the irregularities. Organisms with a role in the centralization of anti-fraud reports and national over-control are added to them:

- Payment agencies (APIA and AFIR) based on their own controlling systems
- Department for the fight against fraud (DLAF – AFCOS) – over-control and reporting roles
- Audit authority – over-controlling role
- Certification Authority – certification body for payment agencies.

5. How do detection and reporting work in practice?

The typical verification and reporting process is as follows:

1. The management authorities of the agricultural funds have the obligation to check all payment/reimbursement requests submitted by the beneficiaries, all notifications, as well as to carry out on-site checks.
2. The control bodies of the paying agencies carry out a Fraud Risk Assessment. The analysis is based on the system of fraud indicators established by the European Commission through "Information Note on Fraud Indicators for ERDF, ESF and CF" (COCOF 09/0003/00-RO) available at - https://ec.europa.eu/regional_policy/ro/information/publications/cocof-guidance-documents/2009/information-note-on-fraud-indicators-for-erdf-esf-and-cf
3. For all findings from control actions with financial implications or with possible financial implications and for all notifications, the agri. funds management authorities have the obligation to complete a form, called "Suspected irregularity/Suspected fraud" which are registered in a Register of irregularities kept by the fund management authorities.

4. In all situations where indications of possible fraud/attempted fraud are identified, the control authority has the obligation to notify immediately through the Suspicion of Irregularity/Suspect of Fraud form to:
    a. Department for the fight against fraud - DLAF
    b. Certification Authority[87].

NOTE: The Anti-Fraud Strategy of APIA states who decides on the initiation of the control process of a suspected fraud. The strategy states on page 20 the following: *"Any fraud that is detected or suspected must be reported immediately to APIA management. If there will be sound arguments, the management of APIA will decide to initiate the fraud control process. In order to initiate the control process, a fraud investigation group is established. The nominal composition of the control team and the limits of empowerment are established by mandate of the General Director of APIA."*[88]

6. Are these activities supported by IT-Tools?

YES – IACS system

7. Do administrative offices follow some guideline in order to identify risky situations? Are there common indicators that administrative authorities rely on?

YES, each payment agency has its own guide for risk assessment used for the selection of beneficiaries for over-controlling.
According to application norms for GEO no. 66 of June 29, 2011, all control bodies of the paying agencies carry out a Fraud Risk Assessment. The analysis is based on the system of fraud

[87] Source: application norms for GEO no. 66 of June 29, 2011 regarding the prevention, detection and sanctioning of irregularities arising in the obtaining and use of European funds and/or related national public funds - https://legislatie.just.ro/Public/DetaliiDocumentAfis/137089

[88] Source: APIA. 2023. Strategia de luptă antifraudă a APIA. Disponibilă la https://apia.org.ro/wp-content/uploads/2023/12/Strategia-antifrauda-a-APIA.pdf

indicators established by the European Commission through "Information Note on Fraud Indicators for ERDF, ESF and CF" (COCOF 09/0003/00-RO)[89].

8. Do Paying Agencies provide for a communication system with EC and/or national authorities competent in the fight against fraud (AFCOS)? Once that a suspected fraud or irregularity is detected, what is the standard procedure to be applied?

YES:

1. For all findings from control actions carried out by APIA and AFIR that shown irregularities with financial implications or with possible financial implications and for all notifications, the agri. funds management authorities (APIA & AFIR) have the obligation to complete a form, called "Suspected irregularity/Suspected fraud" which are registered in a Register of irregularities kept by the fund management authorities.
2. In all situations where indications of possible fraud/attempted fraud are identified, the control authority has the obligation to notify immediately through the Suspicion of Irregularity/Suspect of Fraud form to:
    a. Department for the fight against fraud - DLAF
    b. Certification Authority[90].

[89] available at - https://ec.europa.eu/ regional_policy/ro/information/publications/cocof-guidance-documents/2009/information-note-on-fraud-indicators-for-erdf-esf-and-cf

Source: application norms for GEO no. 66 of June 29, 2011 regarding the prevention, detection and sanctioning of irregularities arising in the obtaining and use of European funds and/or related national public funds - https://legislatie.just.ro/Public/DetaliiDocumentAfis/137089

[90] Source: application norms for GEO no. 66 of June 29, 2011 regarding the prevention, detection and sanctioning of irregularities arising in the obtaining and use of European funds and/or related national public funds - https://legislatie.just.ro/Public/DetaliiDocumentAfis/137089

II Section: Fraudulent schemes and criminal law analysis

1.What are the differences between 'irregularity', 'fraud' and 'suspected fraud' at the European level and in the selected countries for the comparative study? What practical consequences derive from this difference (in information-exchange strategies as well as in investigative activities)?

According to the GEO no. 66 of June 29, 2011 regarding the prevention, detection and sanctioning of irregularities arising in the obtaining and use of European funds and/or related national public funds (with subsequent amendments and additions), the flowing deffinitions aplyes in Romania:

- ***irregularity*** - any deviation from legality, regularity and compliance in relation to national and/or European provisions, as well as the provisions of contracts or other legal commitments concluded on the basis of these provisions, resulting from an action or inaction of the beneficiary or the authority with competences in the management of European funds, which has damaged or may damage the budget of the European Union/the budgets of international public donors and/or the national public funds related to them through an amount improperly paid;

[*neregulă - orice abatere de la legalitate, regularitate și conformitate în raport cu dispozițiile naționale și/sau europene, precum și cu prevederile contractelor ori a altor angajamente legal încheiate în baza acestor dispoziții, ce rezultă dintr-o acțiune sau inacțiune a beneficiarului ori a autorității cu competențe în gestionarea fondurilor europene, care a prejudiciat sau care poate prejudicia bugetul Uniunii Europene/bugetele donatorilor publici internaționali și/sau fondurile publice naționale aferente acestora printr-o sumă plătită necuvenit;]*

- ***systemic/system irregularities*** - irregularities generated by the way in which the key requirements of the management and control systems are met, which occur as a result of some deficiencies in the design of the management and control procedures, some systematic errors in the application of the procedures of management and control or

from the non-correlation of the provisions of the national legislation with the community regulations;

[*nereguli cu caracter sistemic/de sistem - nereguli generate de modul în care sunt îndeplinite cerințele-cheie ale sistemelor de management și control care se produc ca urmare a unor deficiențe de proiectare a procedurilor de management și control, a unor erori sistematice de aplicare a procedurilor de management și control sau din necorelarea prevederilor legislației naționale cu reglementările comunitare*;]

- ***fraud*** - the crime committed in relation to obtaining or using European funds and/or related national public funds, criminalized by the Criminal Code or other special laws

[*fraudă - infracțiunea săvârșită în legătură cu obținerea ori utilizarea fondurilor europene și/sau a fondurilor publice naționale aferente acestora, încriminată de Codul penal ori de alte legi speciale*][91]

Also, according to the Irregularity Prevention Guide developed by AFIR for the implementation of PNDR 2014-2020, the following definition applies:

- ***irregularity*** - creating *artificial conditions* for obtaining of funds not intended for them, for increasing the intensity of financial support or for exceeding the support ceilings imposed within the investment measures.

[*neregulă - crearea de condiții artificiale pentru obținerea de fonduri nerambursabile necuvenite, pentru sporirea intensității sprijinului financiar nerambursabil sau pentru depășirea plafoanelor de sprijin impuse în cadrul măsurilor pentru investiții*]

In the same Guide, ***artificial conditions*** are defined as those *eligibility or selection conditions, created voluntarily by applicant*s:

- ineligible applicants with the aim of *creating the appearance of eligible applicants* and/or

- with the aim of *increasing the score* obtained within the selection criteria and/or

[91] Source: GEO no. 66 of June 29, 2011 regarding the prevention, detection and sanctioning of irregularities arising in the obtaining and use of European funds and/or related national public funds - https://legislatie.just.ro/Public/DetaliiDocument/247072

- with the aim of *obtaining higher amounts than due* - beyond the ceiling of the financial aid imposed within the support measures for the category of applicants to which the applicant actually belongs and/or
- in order to *avoid the restrictions* imposed on the maximum number of projects that can be implemented by a single beneficiary at the same time and within the same support measure and/or
- with the aim of *increasing the intensity of financial support*[92].

2. What are the most frequent "red flags"? What are the most common criminal schemes in this sector?

AFIR reported a series of schemes most frequently used by EU funds applicants under ERDP measures on the previous programing period (2007-2013, 2014-2020) through which they create artificial conditions that favor their access to EU funds, as follows:

- *establishment of several commercial companies* (directly or indirectly controlled by a single natural/legal person or group of persons) and the submission of projects in order to obtain financing by each of the established companies and, thereby, obtaining larger total amounts
- *establishment of one or more commercial companies by ineligible natural/legal persons* or with reduced chances of obtaining financing in order to ensure or increase the chances of contracting.
- *artificial fractionation of a property or an investment project* in order to benefit from additional support by submitting several projects – through intermediaries.
- *formal association* of legal entities in order *to obtain undue advantages*, which would not have been received in the absence of the association (example: association in a

[92]Source: AFIR 2015. Irregularity Prevention Guide – Artificial conditions. https://portal.afir.info/Uploads/GHIDUL%20Solicitantului/GS_prevenire_NEREGULI_PNDR2020_Vs_dezbatere.pdf

cooperative without any activity within it) - illegal increase in the intensity of financial support.

- *establishment of new economic operators* to create the appearance of eligible applicants in case the real beneficiary is in a situation of ineligibility (litigation with AFIR, financing contracts terminated/ revoked/ terminated unilaterally by AFIR, status of economic difficulty)
- *formal change of the applicant's shareholder and administrator* before submitting the Financing Application in order to obtain undue advantages.
- *classification of the applicant and the agricultural holding in the "family farms" category*, for which there is a separate financial allocation, in order to easily access funds for investments.
- *formal establishment of enterprises in the rural area* through which to acquire, with FEADR support, machines, machinery and equipment for construction works *whose use will be partially/fully in the urban area*[93].

At the level of APIA, the Anti-Fraud Strategy adopted on December 11, 2023 focuses on acts of corruption that favor fraudsters. Thus, the strategy says that: *"... APIA's anti-fraud measures are aimed at raising awareness of the fact that the institution is guided by the phrase «zero tolerance for corruption»*"

The APIA anti-fraud strategy' action plan stipulates a series of situations that need to be avoided because they can generate the appearance of fraud and which are considered by Direction Anti-fraud, Internal Control of APIA:

a) corruption
b) presentation of forged documents
c) statements that are not in accordance with reality
d) approval of an application that does not meet the eligibility conditions

[93] Source: AFIR 2015. Irregularity Prevention Guide – Artificial conditions. https://portal.afir.info/Uploads/GHIDUL%20Solicitantului/GS_prevenire_NEREGULI_PNDR2020_Vs_dezbatere.pdf

e) backdating payment requests or other documents in order to obtain European funds without applying the penalties established for late submission of documents
f) conditioning the beneficiaries of European funds to carry out certain activities that are not related to the object of the payment request
g) approving documents or performing activities by staff members of APIA who do not have the necessary competence or who have not been authorized in advance in this regard, in writing, by the hierarchical superior
h) the intervention of APIA advisers in the IT system, by changing the initial data, so that farmers become eligible or not registered in the register of European debtors[94].

3. What are the offences that most frequently recur?

LAND GRRABING, especially related to the foreign investments in Romanian agriculture.
In an article published in 2019, it is mentioned that at the end of 2018 there were "793 foreign natural and legal persons" using agricultural land in Romania, and the most numerous came from: "Italy - 194, Germany - 80, France - 33, Austria – 31, Netherlands – 28, Spain – 23, Belgium – 17, Denmark – 16 and Greece - 10 people". Also, the article emphasizes that "during the last year (2018) 154,976.23 ha were sold, almost similar to 2017, i.e. 154,927.46 ha", and "in 2016, 144,350 ha were sold, in 2015 172,353.79 ha, and in 2014 58,875.14 ha".

Table 1. Ten largest agricultural land operators in Romania, registered with APIA for SAPS payment in 2018[95]

	County	Nume	Country of origin	Ha
1.	BR	SC AGRICOST SA	United Arab Emirates	57000
2.	CL	Maria Trading	Lebanon	25000
3.	TM	SC CAMPO D ORO SRL	Denmark	20000

[94] Source: APIA. 2023. Strategia de luptă antifraudă a APIA. Disponibilă la https://apia.org.ro/wp-content/uploads/2023/12/Strategia-antifrauda-a-APIA.pdf

[95] Source: https://financialintelligence.ro/primii-zece-investitori-straini-in-terenurile-agricole-din-romania-detin-circa-180-000-de-hectare/

4.	IL	SA ZIMBRUL SA	Portugal	16500
5.	TL	GOSTNER THOMAS	Italy	13000
6.	IL	SC JD AGRO COCORA SRL	Denmark	12500
7.	TM	MARTINI LUCIANO	Italy	12000
8.	TR	AGRINA TURA SRL	British investment fund	10000
9.	CL	CHARMETANT ARNAUD	France	9000
10.	TM	Ineu SRL	Austria	7500

In Romania, 0.1% of farms exploit areas of over 1000 ha, which, together, add up to 18.5% of the agricultural area covered by the SAPS scheme in 2018.

***FORCING THE INTERPRETATION OF THE ELIGIBILITY CONDITIONS* for land subsidies**:

- inclusion in the category of pastures (eligible for subsidies) of the grass lands on the security territory of the airports, sports fields (in particular, golf) on which the administrators apply mowing. Starting from 2014, based on the EU regulation, these lands were excluded from payments;
- reed lands from Danube Delta were declared in 2023, by Low, pasture areas forcing the interpretation of COM(2022) 304 regarding the *paludiculture* and, through that, becoming eligible for land subsidies[96].

[96] COM(2022) 304 final available at: https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vlu5df6y3szt https://www.agroinfo.ro/politic/adrian-pintea-acum-subventia-apia-pe-pasunea-cu-stuf-cazul-paul-stanescu https://www.digi24.ro/stiri/cum-a-ajuns-stuful-din-delta-sa-fie-transformat-in-pasune-pentru-bani-de-la-ue-fiul-lui-paul-stanescu-printre-beneficiari-2652383

USING FALSE DOCUMENTS for justifying payment request under AFIR projects for goods that were purchased at a lower price and that were of a different nature or quantity than those requested from the EAFRD, thus unjustifiably obtaining funds from the EU budget[97].

[97]Source: https://www.news.ro/justitie/parchetul-european-ancheteaza-cinci-persoane-frauda-agravanta-materie-subventii-implica-ferma-crestere-porcilor-prejudiciu-peste-660-000-euro-unul-dintre-cei-vizati-nepotul-secretarului-general-psd-1922403318002024071421673136

III Section: Procedural aspects related to information-exchange between authorities largely involved in fight against fraud

1. What databases are provided for collecting information on frauds (and irregularities) concerning agricultural funds and how do they work? Does each country have implemented IMS (Irregularity Management System)? If yes, how does this tool work? What authority is in charge of using it?

YES! DLAF reporting the irregularities at the EU level.

In 2023, as the contact institution in Romania, DLAF centralized and sent to OLAF a number of 3372 reports related to irregularities (644 initial reports, 1834 update reports, 73 cancellation cases, 738 closure reports and 83 reopening), out of which the vast majority concerned the funding instruments of the Common Agricultural Policy. According to the DLAF report, during the year 2023 a number of 2320 reports for identified irregularities concerning CAP were send to the OLAF, of these:

- 494 initial reports,
- 1521 update reports on cases of irregularities submitted in previous years,
- 27 reports canceling cases of irregularities submitted in previous years,
- 1 report on the reopening of an irregularity case submitted before 2023,
- 277 reports of closure of cases of irregularities submitted in previous years[98].

2. What are the most relevant consequences of national differences related to the aforementioned topics? What impact do they have on information-exchange activities?

The fact that APIA has focused its anti-fraud strategy on detecting corruption among its own employees/public officials, shifts the focus from looking for fraud attempts. Thus, civil servants in charge of controlling the spending of European money are more careful not to be

[98] Source: Fight against fraud department (DLAF). Annual activity report 2023, available at: https://antifrauda.gov.ro/w/wp-content/uploads/2024/04/2024_04_09_Activity_Report_DLAF_2023-1.pdf

accused of corruption/bribery than to identify fraud attempts and/or fraudulent schemes applied by beneficiaries of EU funds.

Lack of practical experience in detecting irregularities among paying agency officials may mean that sophisticated fraud schemes go undetected during checks.

There is not much transparency about detected fraud cases – there is no publicly accessible database of such cases recoded in Romania. Annual DLAF reports mention only the number of cases of irregularities with CAP funds, without giving details about the type of irregularities or their mechanism.

3. What solutions can be outlined?

- More intense exchange of experience between officers in charge of detecting fraudulent schemes at European level
- Continuous updating of the list of mechanisms that constitute fraud with European funds within the framework of EU regulations, as new such schemes have been documented
- Increased transparency regarding the nature and fraudulent mechanisms that have been detected
- Public information campaign on fraud mechanisms with EU funds to allow citizens to recognize them as well as encourage the general public to report irregularities to the competent authorities.

AFRADE Project - National Legal Report (Bulgaria)

Author: Assoc. Prof. Dr. Minko GEORGIEV

A. Financial fraud and European Union funds

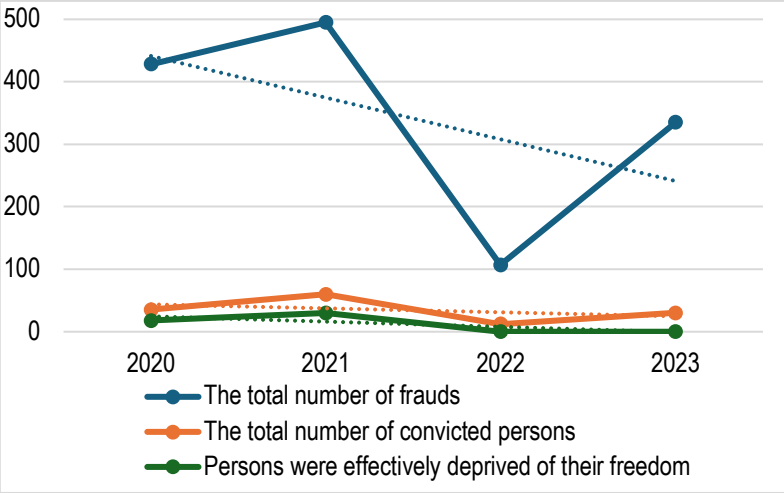
In this report, a new approach[99] is sought to uncover fraud involving EU funds by unifying into a single doctrine the research from NP; the EU's strategy for combating financial crimes affecting EU funds; the regulatory framework of agriculture; and new methods for integrating information[100] in a digital environment and using artificial intelligence[101]. The focus of the report is on Bulgaria.

Financial Fraud has a bilateral effect. They affect, on one hand, the financial interests of the EU, and on the other, those of the Bulgarian state and its citizens. Such an approach to analysis also follows from the necessity to apply the principle of national cooperation[102].

B. Brief statistical information for frauds.

In 2020, the total number of fraud cases related to EU funds in BG was 428. Of these, 35 individuals were convicted, with 15 receiving effective prison sentences. By 2023, the total number of such fraud cases had decreased to 335. During this period, 30 individuals were convicted, but none received effective prison sentences. This data indicates a decline in the overall number of fraud cases in Bulgaria.

Figure 1. Statistical information: fraud in BG.



Source: Own date

Data from Fig. 1 show a decline in the number of investigated frauds related to EU funds and affecting the union's financial interests. We believe the decrease is due to the unsuccessful

[99] See the approach for uncovering fraud (Abreu, Pereira & Gomes, 2024

[100] Information integration should be understood as any action involving the collection, exchange, processing, analysis, and synthesis of data, including in digital form, in accordance with the requirements of the Classified Information Protection Act (CIPA) and the Personal Data Protection Act (PDPA).

[101] See Ngai E.W.T., Yong Hu, Y.H. Wong, Yijun Chen & Xin Sun (2011), Ocampo (2023), Zhaoxu Li & Zitong Yu (2023), Rodríguez (2024) on the issues of managing large datasets and detecting fraud using artificial intelligence

[102] Art. 10 of the Treaty on the Functioning of the European Union (TFEU).

detection of these crimes. At a later stage of the study, sufficient information will be provided to show that the number of frauds in Bulgaria has increased in recent years. There is a lack of synthetic data on the number of agricultural frauds in the country related to the receipt of subsidies, which affect the financial interests of the EU.

C. Legal aspects of combating fraud in EU Funds (BG).

At the beginning of 2023, Bulgaria adopted a new Strategy for Combating Fraud[103]. Through this strategy, the idea of a systemic approach to combating fraud was established, meaning:

- A new common conceptual framework for combating financial fraud.
- Harmonization of legislation - seeking the objectives of the Directive through other acts.
- Integration of new technologies and digital tools for detecting fraud in EU funds.
- Synergy between legal and technical measures to combat financial fraud.

D. Historical approach to the analysis of legislative acts important for establishing a basis for combating financial fraud with EU funds.

A historical approach to analyzing Bulgaria's legal doctrine on fraud involving EU funds, with a retrospective review of developments from the pre-accession period through Bulgaria's EU membership.
The beginning of the fight against fraud in the EU can be considered the creation in 1988 of the working group "Unit for Coordinating the Fight against Fraud". From that moment, the fight against fraud and corruption and the protection of the financial interests of the EU acquired an official character. Shortly after the entry into force of the Maastricht Treaty in 1993, the Convention for the Protection of the Financial Interests of the European Communities[104] was signed and introduced by the Council Act of 26 July 1995. It's a member of the Treaty of Accession of 27.09.1996. This facilitated the allocation of financial resources from the EU to Bulgaria through agricultural programs, such as SAPARD.
The 1999 Treaty of Amsterdam strengthened close cooperation in criminal law and the convention became the main instrument of cooperation in criminal matters (Art. 143). In 2003 With the Treaty of Nice. The EU made several changes in the field of justice, including the creation of Eurojust.
The „Hercules" program was introduced in 2004 to protect the EU's financial interests by fighting irregularities, fraud, and corruption affecting the EU budget.
Subsequent extensions to the program enhanced controls on fraud involving EU funds. In 2007, the Hercules II programs commenced under the management of OLAF. From the same year with the Treaty of Lisbon, the EU declared a clear political will to institutionally fight

[103] https://www.afcos.bg/sites/default/files/uploads/docs/2020-11/NAFS%202021-2027_0.pdf
[104] Anti-Fraud Convention.

against these crimes TFEU - Art. 310, para. 6 and Art. 325 - special chapter 6 for combating fraud.
In 2011 – a new full-fledged European Commission Anti-Fraud Strategy was adopted later in 2016 the Commission introduced the Early Fraud Detection and Elimination System (EDES).
2017 - saw the adoption of Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union, with which the EU updated its action on fraud with funds from its funds, including limiting the policy on the use of special intelligence funds.
2019 - The European Court of Auditors emphasized in its Special Report No 01/2019 entitled "Fighting fraud in EU spending - action needed" that the approach must be proactive.
2019 - EU anti-fraud program 2021–2027 was launched in the EU.
2020 - Council Regulation (EU) 2017/1939 of 12 October 2017 established the European Public Prosecutor's Office, which became operational in June 2021.
In 2020, to combat e-commerce VAT fraud, starting of the Central Electronic System for Information on Payments (CESOP) to maintain registers and arrays of information on cross-border payments within the EU[105].
In 2021, the new financial framework (2021-2027) introduced a new EU anti-fraud program. Integrate Hercules III and the Anti-Fraud Information System (AFIS), which is the technical infrastructure for the exchange of fraud-related information between national and EU administrations and integrate it with the Irregularity Management System (IMS)), which is the data exchange information system for the EU institutions about OLAF investigations, both systems being managed by OLAF.
After the adoption of the European Commission's Anti-Fraud Action Plan (2023 rev.) in 2023, Bulgaria introduced a new concept for combating fraud through EU funds. In addition to the strategy for implementing the Directive on the Protection of the European Union's Financial Interests (PIF), the concept includes the idea of amending other regulatory acts related to anti-fraud legislation. It also incorporates the IMS (Irregularity Management System) and integrates legal, financial, and technological systems through IT (digital tools for fraud prevention and detection) to explore new methods for preventing and uncovering fraud involving EU funds.

E. Normative basis of fraud with EU funds.

E1. The legal definitions of fraud – Bulgaria.

The first definition of fraud involving EU funds was introduced through the Anti-Fraud Convention (1993). A new legal definition was proposed in Art. 3 of the Directive (EU) 2017/1371 of the European Parliament and the Council on July 5, 2017, concerning the fight against fraud affecting the financial interests of the Union under the criminal law Directive (PIF). The subject of the offense is related to the 'financial interests of the EU,' which,

[105] Cynthia & Pouwels (2023).

according to Art. 1 of the Directive (PIF), includes revenues, expenditures, and assets acquired through the EU budget, institutional budgets, agencies, etc.[106]

The PIF Directive expands the scope of the understanding of the term 'fraud.' It uses terminology such as 'corruption' and 'embezzlement,' among others, meaning that several types of crimes fall within its scope. The main criteria for committing the crime are detailed in Art. 3 of the Directive, which harms the financial interests of the EU, i.e., EU funds or funds provided to the Bulgarian state.

The crime can be committed through active actions: by directly disposing of funds, falsifying or using a document, or through inaction: withholding and concealing information. For this reason, we consider several types of crimes found in different chapters of the Bulgarian Criminal Code, which fall within the scope of the Directive.

Frauds.

In Bulgaria, the essential composition of the crime of fraud is formulated in Art. 209 of the (CC). In Art. 212, document fraud is introduced as part of the CC. When logically and systematically interpreted, it should be accepted that the object of the offense depends on two factors: the 'material phenomenon reflected in the composition' and the 'functions of the criminal offense'[107]. Document fraud involving EU funds is established in Art. 212, para. 3 of the CC.

Embezzlement.

Embezzlement occurs when a person in the capacity of an 'official,' to whom items or financial resources have been entrusted in this capacity to safeguard or manage, disposes of them (Art. 201 of the Penal Code). An important condition for the embezzlement of EU funds is that the crime must be committed by an official. To the objectives of the Directive, the embezzled financial resources must be from funds belonging to the European Union or provided by the European Union to the Bulgarian state.

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[106] On the Ministry of Finance's website, definitions of fraud related to EU funds are presented. These definitions stem from Regulation (EU) 1303/2013 of the European Parliament and the Council, as well as Art. 1(2) of Regulation (EC, Euratom) No 2988/95 of the Council regarding the protection of the financial interests of the European Communities. This includes the meaning specified in Art. 2(36) of Regulation (EU) 1303/2013, Directive (EU) 2017/1371 of the European Parliament and the Council of July 5, 2017, concerning the fight against fraud affecting the financial interests of the Union through criminal law, and Regulation (EU, Euratom) 2018/1046 of the European Parliament and the Council of July 18, 2018, on the financial rules applicable to the general budget of the Union. The latter regulation amends Regulations (EU) Nos. 1296/2013, 1301/2013, 1303/2013, 1304/2013, 1309/2013, 1316/2013, 223/2014, and 283/2014, as well as Decision No. 541/2014/EU and repeals Regulation (EU, Euratom) No. 966/2012. https://www.minfin.bg/bg/280

[107] "Filchev (2005, 62-63). See Mihaylov (2003), Stoinov (2021) regarding the discussion on whether fraud can be committed through inaction.

Document crimes.

Document crimes involve the creation or use of documents with false content, or of false or altered documents, through which a person has obtained or attempted to obtain financial resources from EU funds or those provided to the Bulgarian state (Arts. 308-315 of the CC).

Withholding information that should be provided by law or providing false information.

It is a crime to present false information or withhold information in violation of an obligation to provide such information, to obtain funds from EU funds or funds provided by the European Union to the Bulgarian state, as well as funds belonging to the Bulgarian state, which co-finance projects funded by these funds (Arti. 248a, para.2 and para.5 of the CC)

Other abuses of EU funds.

Misuse of financial resources received from funds belonging to the European Union or provided by the European Union to the Bulgarian state. The funds may have been obtained following the law, but are subsequently used in a manner different from the predetermined purpose (Art. 254b of the CC).

E2. Legal qualification of different types of financial crimes.

We can classify fraud according to the PIF Directive as crimes involving EU funds or funds provided to the Bulgarian state and affecting the financial interests of the EU.

Substantive crimes include:

Financial embezzlement, as per Arts. 202(2) and 202(3) of the (CC). Art. 201 (3) of the CC in connection with Arts. 202(2) and 202(3) of the CC, and Art. 205 of the CC, affecting the financial interests of the EU.

Document frauds, related to the use of documents to obtain funds from EU funds, affect the financial interests of the EU under the new composition of Art. 212(3) of the CC, as well as those under Arts. 212b (1)(2) and (3) of the CC.

False information. Providing false information or concealing information, in violation of the obligation to provide such information to obtain funds from EU funds – Arts. 248a (2) and 248a (3) of the CC.

Illegal disbursement. Obtaining funds from EU funds because of providing false information or concealing information, in case of an obligation to provide such information – Art. 248a (4) of the CC.

Misuse of funds. Use of funds from EU funds not for their intended purpose, affecting the financial interests of the EU – Art. 254b of the CC.

Tab.1 Important Legal Bases

Criminal Code (CC, 1968) BG	**Legal Bases**	**Specificity**
CC[108]	Art. 202(2) i.3; (CC) Art. 212 (3) (CC) Art. 248a (2); Art. 248a (5) (CC) Art. 254b (CC)	EU Fonds

Source: Own analysis

Table 1 shows the legal grounds for prosecuting crimes related to EU funds in Bulgaria.

Non-substantive crimes:

Crimes against the financial and tax system (Art. 253 and Arts 255-256 of the CC).

Crimes – public official - (Arts. 282 and 285 of the CC).

Arts 301-304 of the CC (bribery).

These crimes were committed to facilitate the obtaining of such funds from the EU funds, that is, to facilitate or conceal the commission of such substantive crimes.

Non-substantive crimes, when crimes against funds from the European Union, when the funds are received in the Bulgarian budget or when they are to be collected through Bulgarian revenue authorities for the benefit of the European budget:

Often these crimes are committed to conceal or assist in the commission of other crimes involving fraud with EU funds.

E3. Subject (subject of crime). A person who commits a crime to Bulgarian Criminal Law (BCL).

According to legal doctrine in Bulgaria, the subject of a crime is always a natural person. This individual must have committed a socially dangerous act (action or inaction), done so 'guiltily,' and the act must be declared punishable. The subjects of a crime also include those who assist in committing the crime[109].

[108] Criminal Code (CC) https://www.wipo.int/wipolex/en/legislation/details/21816

[109] Art. 9, § 1 of the CC provides the legal definition of the term 'crime.' See Gruev (2021), Henov (1992), Dolapchiev (1946), and Filchev (2024) for discussions on the essence of the concepts: crime, guilt, criminal sanctions, and the elements of crimes

The legitimate definition of 'official' is provided in Art. 93, para. 1 of the CC. The 'official'[110] is a crucial criterion for certain crimes, such as those in Art. 201, para. 3 and 5 of the CC (embezzlement). In many respects, the 'official' resembles the figure of the 'public official' as defined by the PIF Directive, but there are some significant differences

The concept of 'official' in the Bulgarian CC has a broader scope concerning individuals committing certain crimes compared to the 'public official' as defined by the PIF Directive. Public officials are always part of the public administration of a member state or the EU, even when they do not hold an official position but are entrusted with the management of public services. In this context, the Directive defines its scope for crimes such as 'embezzlement,' which are committed by public officials. Individuals who are not part of the organization, i.e., not defined as part of its structure and not described in the internal regulatory act of the public organization but are authorized by contract to purchase goods on behalf of the organization, are not considered officials[111].

E4. "Object of a crime" according to BCL.

Bulgarian legal theory discusses the 'object of a crime'. The object of the crime is the system of social relations regulated by legal norms and protected by law—in this specific case, the Bulgarian Criminal Law (BCL). Legal theory further distinguishes between the group object of a crime and the immediate object of a crime.

The *group object* of crimes corresponding to the PIF Directive can be defined as social relations protected by law, specifically those related to 'property' and 'economy.' In 1968, the Bulgarian legislator employed terminology suitable for that period, addressing the needs of the then Bulgarian state and its legal system. Through interpretation, it can be inferred that the object pertains to relations involving public property and the public organizations of which Bulgaria is a member, in this case, the EU.

Accordingly, this also applies to the object representing the 'economy,' which should be perceived as an economic system composed of EU member states, with joint management of financial assets arising from shared competencies between them and the EU.

As for the immediate object, it is further specified as the financial interests of the Union with an exhaustive list of social relations that should be protected according to Art. 3 of the PIF Directive: expenses related to public procurement; documents and declarations related to EU assets; information related to EU assets and expenditures; revenues derived from own

[110] According to Bulgarian criminal law, an 'official' is a person who is assigned to perform: a) service in a state institution, excluding those who perform only material execution activities; b) managerial work or work related to the safeguarding or management of foreign property in a state enterprise, cooperative, public organization, other legal entity, or sole trader, etc. – Art. 93, item 1 of the CC.

[111] Decision No. 354 of the Supreme Court of Cassation (SCC) dated 12.12.1995 on criminal case No. 82/1992, I (Criminal Department (C.D.)).

resources (EU); the Union's budget, the Union's resources, and the benefits the Union has provided to third parties.

This clarification is important due to the need to harmonize Bulgarian law and create more specific, clear rules regulating social relations related to agriculture, which can easily be placed within a clear technical (electronic) environment with clear technical parameters

F. Functional qualification of agricultural fraud.

Often, the problems in detecting fraud do not stem from criminal law but from regulatory acts issued in connection with the regulation of other legal sectors, even those unrelated to agriculture. The functional characteristic of agricultural fraud is important to more clearly describe the essence, methods, means, and persons directly and indirectly connected with this type of fraud. This would clarify the specific acts and actions – illuminating the schemes – in the commission of agricultural fraud related to EU funds.

- fraudulent activities arising from the disbursement of EU funds based on the area of agricultural land, including payments for green and environmental initiatives.
- fraudulent claims involving unproduced inaccurately reported, or incorrectly produced agricultural outputs for which EU funds were allocated.
- fraudulent use of materials, fertilizers, seeds, fuels, energy, and other inputs in agricultural production that are subsidized by EU funds.
- fraud associated with funds allocated for machinery, equipment, and infrastructure related to agricultural production, including green (environmental) payments aimed at supporting rural livelihoods.
- fraudulent acquisition of EU funds in response to disasters or other crises impacting farmers, such as "de minimis" aid.

Fraud related to EU funds received for the protection of intellectual property rights in agriculture, including the establishment of easements, protected products, and brands associated with quality schemes. Identifying the problematic "legal zones" is related to identifying applicable or related legal acts, which are not always agricultural, and the technical tools for detecting fraud.

G. Public bodies and agricultural fraud detection: function and important normative acts.

G1. Public bodies - detection of fraud or reduce the risk of fraud within the meaning of the Directive (PIF).

Prosecution. The main figure in criminal investigation and prosecution is the Bulgarian Prosecution Office. According to Art. 145, para.1 of the Law on the Judiciary (LJ), the prosecutor, in the performance of the functions provided by law, may:

- personally conduct inspections (Art. 145 (1), item 2 of the LJ).
- assign the relevant authorities to conduct inspections and audits within a specified period when there is evidence of crimes or unlawful acts and actions, and to present conclusions to him, and upon request, all materials (Art. 145 (1), item 3 of the (LJ)).

National Investigation Service (NIS). Investigators from the NIS investigate cases under Art. 212, para. 5 of the Penal Proceeding Code (PPC) when the fraud is of particularly large scale, and crimes committed abroad under Art. 194, para. 3 of the PPC, as frauds under the Directive often fall within the scope of these procedural law texts. Cases of factual complexity (Art. 194, para. 3 of the PPC) are also assigned to NIS investigators for investigation following a decision by the administrative head of the respective district prosecutor's office.

Investigations of crimes within the competence of the European Public Prosecutor's Office are carried out by European Delegated Prosecutors[112].

Ministry of the Interior (MoI). Police. Art. 6, item 3 of the Law on the Ministry of the Interior, investigates all types of crimes that are not included in Art. 194 of the PPC.

According to Art. 33, para. 1, item 8 of the Law on the (MoI), the minister coordinates the fight against offenses affecting the financial interests of the European Union and coordinates the management of European Union funds related to the activities of the (MoI).

Ministry of Finance (Customs). The customs authorities have an important informational function related to cross-border actions and the identification of individuals committing fraud with EU funds or those provided to the Bulgarian state – regarding vehicles and goods (money/valuable currency) transported by them, upon arrival and departure from the customs territory of the Union through border checkpoints subject to customs control[113].

National Revenue Agency (NRA). Tax authorities. The tax authorities play an important role in identifying fraud with EU funds or those provided to the Bulgarian state. They provide information in connection with ongoing investigations to both the Ministry of the Interior and the European Anti-Fraud Office (OLAF), upon request from the Director-General of OLAF[114].

Agency for State Financial Inspection (ASFI). The main goal of the Agency for State Financial Inspection is to protect the public financial interests of Bulgaria. Art. 2 para. 2 of the LSFI regulates the identification of fraud and violations affecting the financial interests of the European Communities[115].

[112] Art. 139a, §1 of the Law on the Judiciary (LJ).
[113] Art. 2, § 1 and 2 of the Customs Act.
[114] Art. 74, §1, item 5 of the Tax and Social Insurance Procedure Code (TSIPC) and Art. 3, §1, items 14 and items 16 of the Law on the NRA (in relation Art. 127a, par. 4 of the LNRA).
[115] Law on State Financial Inspection (LSFI).

Bulgarian National Audit Office (BNAO). The powers of the National Audit Office include auditing funds and programs of the European Union, including their management by the respective authorities and the final beneficiaries of the funds[116].

Commission for Counteracting Corruption and Commission for Confiscation of Illegally Acquired Assets CCC and CCIAA). Investigating inspectors. The Commission maintains registers of individuals holding public positions, as well as their assets and those of their closest relatives. Individuals managing EU funds are subject to special control[117]. In the investigation of crimes within the competence of the European Public Prosecutor's Office, investigating inspectors closely cooperate with European investigating prosecutors, which is regulated by an agreement between the Chairman of the Commission and the European delegated prosecutor authorized by the European Public Prosecutor's Office under Art. 139a, para.1 of the (LJ)[118]. Art. 59, para.1 of the LCC is related to the exchange of information and access to electronic registers, databases, and other information arrays.

Registry Agency (RA). It maintains a system for registering property rights; the rights (property) of traders; the property of spouses when required by law, and a register for special pledges.

Geodesy, Cartography and Cadastre Agency (GCCA). It maintains property information through digital identifiers, as well as the digital map of their boundaries.

Regional Services (28 in number in Bulgaria) Regional Governor. The Regional Governor has powers related to the management and control of state agricultural lands in the respective region, including issuing permits and monitoring compliance with legislation. In this regard, the Regional Governor has powers under the procedures of Arts. 37c and 37j of the LOUAL, which are directly related to land use and the coordination of information related to payments from EU funds.

Municipalities. The municipalities (265 in number in Bulgaria). The municipal administrations maintain and manage the following registers: (a) Population Register - includes data on the residents of the municipality, such as personal registration cards and family registers, (b) Municipal Property Register - contains information about properties owned by the municipality. (c.) Local Taxes and Fees Register - includes data on the collection of local taxes and fees, (d) Civil Status Register - includes records of births, marriages, and deaths. (e) Agricultural Land Register - contains information about agricultural lands and their management. In addition to coordinating municipal projects related to EU fund financing, the mayor of the municipality is obliged to provide information and consultations to farmers regarding their rights related to EU fund financing.

[116] Art. 5, §1, item 4 of the Law of the Bulgarian National Audit Office (BNAO).
[117] Art. 4, §43 of the Law on Counteracting Corruption (LCC).
[118] Art. 19, §4 of the LCC.

The Regional Governor oversees the implementation of national and regional agricultural policies and programs. The Regional Governor can provide information and assistance to farmers regarding their rights and opportunities for funding and development.

G2. Public bodies and functions that support the detection of fraud or the reduction of the risk of fraud in agriculture.

Ministry of Agriculture and Food. In addition to the powers related to creating and changing the regulations in the agrarian sector, the Ministry of Agriculture and Food (17 directorates of the specialized administration with functions related to EU funds) maintains arrays of information - registers - about farmers and agricultural activities. This makes it an important participant in the processes, since in addition to the governance of the agencies in its portfolio, the Ministry of Health has coordination functions regarding information for farmers. Ordinance No. 105/2006 on the terms and conditions for the creation, maintenance, access, and use of the integrated system for administration and control, issued by the Ministry of Agriculture and Food (last revised in 2012), set the terms and conditions for creation, maintenance, access and use of information systems in the sector.

State "State Fund 'Agriculture' (SFA). State Fund 'Agriculture' is responsible for monitoring activities and the payment of subsidy amounts. It performs payments, verifies, and controls the use of aid under schemes, measures, and interventions supporting the Common Agricultural Policy that require subsequent control, as well as controls information related to payments from EU funds (Art. 11a, points 4 and 11, and Art. 11a, para. 2 of the FAA). The Paying Agency maintains and operates with synthesized information: data from the registration of applicants and support applications; data for the identification of agricultural parcels and the identification system; and data for the registration of animals in a common information system, maintaining links with other external registers. SFA is responsible for the monitoring of the activities and the payment of the subsidy amounts.

Office of Agriculture (OA). OA supports the register of contracts for land use. They also manage the ISAC (Integrated System of Control and Administration) support mapping the areas to be cultivated. Applications (documents) for participation in the procedures, including requests for subsidy payments, are submitted through them.

Executive Agency for Fisheries and Aquaculture. Provides information on aquaculture. Controls new species of aquaculture.
Executive Agency for Selection and Reproduction in Animal Breeding. Provides information on selection and reproduction in animal breeding. Controls the creation of new breeds.
Executive Agency for Variety Testing, Approbation, and Seed Control. Provides information on varieties and seeds. Controls the testing of new varieties.
National Hail Suppression Service. The information from it can be used for potential compensation payments under de minimis.

Food Safety Agency (FSAF). Maintains several registers of agricultural producers and the products produced by them in the integrated information system (IISAPPS).

National Plant Protection Agency. It maintains registers for producers of fertilizers and plant protection products, as well as those performing plant protection activities, such as fumigation, disinfection, fertilizer testing, and more.
Executive Agency for Vine and Wine. It maintains registers with information about agricultural producers engaged in grape cultivation.

Executive Agency for Forests. Responsible for the management and protection of forests.

Table 2: Public bodies, functions – context - combating fraud - EU funds.

Public Bodies	**Functions**
Prosecutor's office. *Prosecutors (European Delegated Prosecutors).*	Investigation, Control: Incidental.
National Investigation Service (NIS). *Investigators.*	Investigation, Control: incidental.
Ministry of the Interior (MoI). *Police: Investigating officers.*	Investigation, Control: Incidental.
Anti-Corruption Commission (ACC) / Commission for the Confiscation of Illegally Acquired Assets (CCIAA) *Investigating Inspectors*	Investigation, Control: incidental
Agency for State Financial Inspection (ASFI).	Control: Incidental.
Bulgarian National Audit Office (BNAO). ..	Control: Incidental.
National Revenue Agency (NAA) *Tax authorities*	Control: incidental and permanent.
Ministry of Finance. *Customs Agency (State).*	Control: incidental and permanent.
Municipalities. M*ayors*. Regions. Regional governors.	Coordination, Information.
Agency for Geodesy, Cartography and Cadastre (AGCC).	Coordination, Information.
Registration Agency (RA).	Coordination, Information.
Ministry of Agriculture and Food (MAF).	Coordination, Information Control: permanent.
SF "Agriculture" (Paying Agency).	Coordination, Information Control: permanent.
Office of Agriculture (OA).	Coordination, Information Control: permanent.
Vine and Wine Executive Agency (VWEA).	Coordination, Information Control: permanent.
Food Safety Agency (FSA).	Coordination, Information Control: permanent.
National Plant Protection Service. (NPPS).	Coordination, Information Control: permanent.

Executive Agency for Fisheries and Aquaculture	Coordination, Information Control: permanent.
Executive Agency for Selection and Reproduction in Animal Breeding.	Coordination, Information Control: permanent.
Executive Agency for Variety Testing, Approbation, and Seed Control	Coordination, Information Control: permanent.
National Hail Suppression Service. (NHSS).	Coordination, Information.
Executive Agency for Forests (EAF).	Information.

Source: Own analysis

Table. 2 shows the investigative bodies and administration bodies related to the collection, coordination of information, control over EU funds, and detection of fraud with EU funds.

H. Public registers and public administration support the integration of information in the fight against fraud in agriculture.

Table 3 (Appendix) provides information on public registers, the public authorities that manage them, and the regulatory acts related to their management[119]. Some of the registers are in electronic form. Potential integration of information from the registers would provide opportunities for large flows of synthetic data about farmers and their resources to be processed in the context of the Directive (PIF). Potential integration with other current information flows would allow for immediate analysis of deviations from the normal course of processes.

I. Conclusions and Recommendations.

(1) The absence of a legislative framework in Bulgaria to protect its financial system from crimes related to EU funds.

(2) The lack of emphasis in Bulgarian legislation on agricultural fraud involving EU funds. Consequently, the likely direction for amendments in the special part of the Bulgarian Criminal Code should include provisions for agricultural fraud. Additional clauses should be introduced in relevant legal acts affecting agriculture to clearly distinguish when the use of such documents constitutes a crime and when it is an administrative violation.

(3) The alignment of the Bulgarian CC with the objectives of the PIF Directive.

(4) The establishment of a traceability register for food (agricultural products) to monitor the agri-food chain, which would enhance information integration and help reduce the risks of fraud.

(5) The assessment and management of fraud risks involving EU funds and funds allocated to the Bulgarian state through the integration of synthetic data from processes—registers, and

[119]See Kurteva & Stoykova (2023) for the registers related to the management of agricultural lands.

databases—will enable the use of digital technologies based on artificial intelligence. Ensuring the flow of synthetic information regarding deviations from normal process operations should improve the detection of fraud.

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APPENDIX.

Table 3: Registers, Administrative bodies, Regulatory acts.

Administrative Bodies	Registers and Regulatory Acts
OA	Register of farmers (N - 3/99)[120]
OA	Register of agricultural cooperatives (LC)[121]
OA	Register of lease and rental contracts – Art. 3, §.3 of the (LLA)[122], (N - 6/00)[123].
OA	Register for the use of agricultural land (unregistered contracts)) – Arts. 37b (1),37c,37j of the (LOUAL)[124]
OA	Map register for the restored property - Art.37b (1) of the LOUAL and Art.10 (2) of the N- 49/04[125]

[120] Ordinance No. 3 of Jan. 29, 1999 - on the creation and maintenance of a register of farmers (N - 3/99)
[121] Law on Cooperatives (LC, 1999)
[122] Law on Lease in Agriculture (LLA, 1996)
[123] Ordinance 6 of 18.02.2000 on the terms and conditions of registration of lease contracts in the land commissions. (See also Interpretive Decision No. 2/2015 of 20.07.2017 of the General Assembly of the Civil and Commercial Colleges of the Supreme Court of Cassation. (ID-2/2015))
[124] Law on the Ownership and Use of Agricultural Lands (LOUAL, 1991)
[125] Ordinance No. 49 of November 5, 2004, on maintenance of the restored property map.

Administrative Bodies	Registers and Regulatory Acts
OA	Register of agreements under Art. 37c of the (LOUAL) – (Art. 74 of the RALOUAL)[126]
OA	State land fund register – Art. 24 of the (LOUAL)
OA	Register of breeding farms and holdings - Art. 15 of the Animal Husbandry Act [127]
OA	Register of properties and owners and register of restitution benefits (restitution) (N - 49/04)
OA	Register of field inspections. (N - 105/06)[128]
OA	Register of objections admissible layer (N- 105 /06)
OA	Grain monitoring register (N - 23/2015)[129]
OA	Statistical data register (LS) [130]
OA	Register of farmers for support (FAA)[131] / (N-105/2006) / (N-3/ 23)[132]
OAF	File register under LOUAL и (LROLFLFF)[133]
OA	Register of applications for restitution of ownership rights to agricultural lands and forests (LOUAL)
OA	Register of properties with changed purpose Art.17 of the (LAPA)[134]
OA	Register of plantations; Register of irrigated areas; Register of queen bees and drains.
OA	Register of owners of livestock facilities. (N – 61/06) [135].
FSAF	*Registers in the IASRG:* Unified Register of Animals and Animal Breeding Facilities; Unified Register of veterinary medicinal products; Unified Register of operators in the feed sector and Unified Register of animal by-products and their derived products; National Register of facilities for the production and distribution of food and materials and objects intended for contact with food and animal by-products; Unified register of plant protection products, fertilizers, related operations and phytosanitary control (Plant protection products); Unified Register of Plant Protection Products, Fertilizers,

[126] Regulations to the law to the law on the ownership and use of agricultural lands (RALOUAL).
[127]) Animal Husbandry Act (AHA, 2000).
[128] Ordinance No. 105 of August 22, 2006, on the terms and conditions for the creation, maintenance, access, and use of the integrated administration and control system.
[129]. Ordinance No. 23 of December 29, 2015, on the terms and conditions for grain market monitoring.
[130] Law on Statistics (LS, 1999).
[131] Farmers Assistance Act (FAA, 1998).
[132] Ordinance No. 3 of March 10, 2023, on the terms and conditions for the implementation of interventions in the form of direct payments included in the Strategic Plan, for inspections, reductions in payments, and the procedure for imposing administrative sanctions.
[133] Law on Restitution of Ownership of Forests and Lands from the Forest Fund (LROFLFF, 1997).
[134] Law on the Protection of Agricultural Lands (LAPA, 1996)
[135] Ordinance No. 61 of May 9, 2006, on the terms and conditions for identification of animals, registration of livestock facilities, and access to the database of identified animals and registered facilities.

Administrative Bodies	Registers and Regulatory Acts
MAF	Related Operations and Phytosanitary Control (Phytosanitary Control)[136]. Register of development farms and holdings to produce purebred and hybrid. bird material. (N-22/04)[137]. Register of development farms and holdings to produce purebred and hybrid material from pigs (N-30/ 04)[138].
MAF	Register of First Buyers of Raw Cow, Sheep, Goat, and Buffalo Milk (N-26/10)[139]
MAF	Information database of producers, processors, and traders of agricultural products and foods produced according to the rules of organic production. (N-5/18).[140]
MAF	Register of producers of Bulgarian yogurt (N-5/23)[141].
MAF	Register of foods of traditionally specific nature according to Regulation 1151/2012 (N - 6/11)[142].
MAF	Register of Rose Growers and Rose Oil Producers (Art. 1 of the ORL)[143]
MAF (Animal husbandry)	List of issued permits for breeding activities. Register of First Buyers of Raw Cow, Sheep, Goat, and Buffalo Milk. Register of first purchasers of raw cow, sheep, goat, and buffalo milk (discontinued); Register of producers of queen bees and swarms/broods (N - 47/03)[144]. Register of slaughterhouses performing mandatory classification; Register of classifiers who have completed the Cattle, Pig, and Sheep Carcass Classification Course.
MAF (Branch organizations)	Register of branch organizations and national branch organizations in the forestry sector. Register of recognized organizations and groups of producers of agricultural products.

[136] Law on the Bulgarian Food Safety Agency (LBFSA, 2011).
[137] Ordinance No. 22 of May 14, 2004, on the rules for the production and trade of purebred and hybrid breeding material in birds and the procedure for keeping a register.
[138] Ordinance No. 30 of July 9, 2004, on the rules for the production and marketing of purebred and hybrid breeding material in pigs and the procedure for keeping a register.
[139] Ordinance No. 26 of October 14, 2010, on the specific requirements for direct supplies of small quantities of raw materials and food of animal origin.
[140] The Law on the Implementation of the General Organization of the Markets in Agricultural Products of the European Union (LIGAAP).
[141] Ordinance No. 5 of May 2, 2023, on the specific requirements for the production, collection, transportation, and processing of raw milk, the marketing of milk and milk products, and their official control.
[142] Ordinance No. 6 of May 5, 2011, on the specific requirements for the implementation of official control over the use of protected geographical indications and foods of a traditionally specific nature.
[143] Oil Rose Law (ORL, 2020).
[144] Ordinance No. 47 of November 11, 2003, on the production and marketing of elite and breeding queen bees and brood (swarms) and the procedure for keeping a register.

Administrative Bodies	Registers and Regulatory Acts
MAF (Plant breeding)	Public register of the areas sown with GM plants, for which there is permission for their release on the European market. Public registers (tobacco) (N- 22/16), (D - 19/04)[145]. Register of grain storage facilities; Public electronic register of issued permits for the cultivation of plants of the hemp genus (Cannabis) (N-1/18)[146].
MAF (Biological production)	Electronic register of sowing and planting material and potato seeds produced according to the rules of organic production.
MAF (protected names)	Register of producers of protected geographical indications and foods with a traditionally specific character (No. 13); Register of controlling persons for compliance with the specification of protected geographical indications and foods of a traditionally specific character (No. 14).
MAF	Register of state aid in the field of agriculture, approved by the European Commission and implemented during the 2014-2020 programming period (No.17).
MAF	*National Public Electronic Register for agricultural and forestry machinery:* (NPERAFM): Register of certificates of legal capacity for the category. (4a); Register of certificates of legal capacity for category Tps (4b); Register of study forms and teachers of study forms (4c); Information database for registration, reporting, and control of equipment (No. 27)
RA	Trade Register (TR) and Register of the Non-Profit Legal Entities (RNPLE)[147]
RA	Register BULSTAT (BRA)[148].
RA	Property register (PA)[149] и (REPA)[150].
Municipality	Civil status register (LCR)[151].
Municipality	Local Taxes and Fees Register (LTL)[152].
Municipality	Population Register
Municipality	Agricultural Land Register.
Municipality	Municipal Property Register

[145] Ordinance on the terms and conditions for issuing and revoking permits for the industrial processing of tobacco and production of tobacco products. Decree – 19/ 2004 of the Government of Bulgaria (D-19/04).
[146] Ordinance No. 1 of March 12, 2018, on the conditions and procedures for issuing a permit for the cultivation of plants of the hemp genus (cannabis), intended for fiber, seeds for feed and food and seeds for sowing, with a content of less than 0.3 by weight the percentage of tetrahydrocannabinol determined in the leaf mass, flower and fruit tips, for trade and control.
[147] Law on the Commercial Register and the Register of Non-Profit Legal Entities (LCRRNPLE, 2006).
[148] BULSTAT Register Act (BRA, 2005)
[149] Property Act (PA, 1951)
[150] Regulations on Entries to the Property Act (REPA, 1951).
[151] Law on Civil Registration (LCR, 1999).
[152] Law on Local Taxes and Fees (LLTF, 1997).

Administrative Bodies	Registers and Regulatory Acts
GCCA	Register of specialized cards (LCPR)[153] and § 1 of the (N-15/01)[154].
CCC	Registries Art. 112 of the (LCC)
all	Register Art. 49 §. 1, item 1 and item 3 of (LCC))
all	Register of reports of Art.19, §. 1 it. 3 of the (LPPRPDIV)[155].
all	Register of procedures under the law on access to public information (LAPI)[156]

Source: Own analysis

[153] Law on the Cadastre and Property Register (LCPR, 2000).
[154] Ordinance No. 15 of 23.07.2001 on the structure and content of the real estate identifier in the cadastre.
[155] Law for the Protection of Persons Filing Reports or Publicly Disclosing Information About Violations
[156] law on access to public information (LAPI, 2002)

AFRADE

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AFRADE Project - National Legal Report (Slovakia)

Author: Dr. Libor Klimek

AFRADE

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Introduction

The report analyses the implementation and control of EU agricultural funds in Slovakia under the shared-management model of the CAP. It outlines the role of the two key financial instruments: the European Agricultural Guarantee Fund (EAGF), supporting direct payments, and the European Agricultural Fund for Rural Development (EAFRD), which funds rural development initiatives. Slovakia's Agricultural Paying Agency (PPA) is the main national body responsible for disbursing funds, conducting checks, and reporting irregularities. The Ministry of Agriculture and Rural Development of the Slovak Republic oversees strategy, and AFCOS Slovakia coordinates fraud detection and co-operation with OLAF and European Public Prosecutor's Office.

Eligibility for funding depends on compliance with EU and national criteria. Applications are processed and evaluated by the PPA, which uses formal checks, points-based evaluations, and on-site inspections. Suspected fraud is reported to the IMS system, with AFCOS coordinating further investigation.

The document differentiates between irregularities, suspected fraud, and fraud, highlighting the legal complexity in Slovakia and the difficulty in proving intent. Frequent fraud schemes include fictitious farms, inflated costs, and proxy applicants. A notable case type involves misused EAFRD funds for private guesthouses.

Cross-border frauds pose further challenges due to legal, institutional, and technical disparities. Obstacles include limited interoperability, fragmented IT systems, and low staffing in AFCOS. Recommendations include legal harmonisation, IT integration, stronger analytical tools, public transparency, and enhanced cooperation mechanisms with EU partners. The document underscores the need for systemic improvements to safeguard the financial interests of the EU in Slovakia.

I Section: Payment Mechanisms

1. Shared Management CAP Funds: What are them and how do they work?

Shared-management CAP funds are a central element of the EU's Common Agricultural Policy (CAP), whereby both the European Commission and the Member States share responsibilities in managing and controlling the funds. These funds primarily operate through two financial instruments: the **European Agricultural Guarantee Fund** (EAGF) and the **European Agricultural Fund for Rural Development** (EAFRD). Under the shared-management model, on the one hand, the European Commission provides funding, while on the other hand, Member States of the EU are responsible for *implementing the payments, monitoring their proper use, and reporting irregularities or suspected frauds*.

This model functions through a *decentralised* administration. The European Commission sets the general framework, including the strategic objectives, eligibility criteria, and monitoring mechanisms, while each Member State drafts its own CAP Strategic Plan, adapted to its national context, which must be approved by the Commission. The execution of these plans is carried out through accredited Paying Agencies, which are national or regional bodies authorised to disburse EU agricultural subsidies. These agencies are also responsible for implementing management and control systems to ensure that funds are used properly and in line with EU law. Additionally, **each Member State must designate a coordinating body and an audit authority to supervise and report on the effective functioning of the system**.

In terms of purpose, shared-management CAP funds finance a wide array of interventions aimed at supporting agricultural income, enhancing rural development, promoting sustainable farming practices, and ensuring food security across the EU. The EAGF typically covers direct payments to farmers and market-related expenditure, whereas the EAFRD supports broader rural development measures, including investment in infrastructure, environmental sustainability projects, training for rural populations, and innovation in agriculture and forestry.

Moreover, these funds play a significant role in achieving overarching EU goals such as the Green Deal, digital transformation of agriculture, and social cohesion in rural areas. They also contribute to climate resilience, biodiversity protection, and the promotion of generational renewal by supporting young farmers. The flexibility of shared-management enables the CAP to be more responsive to local needs, but it also introduces variability and complexity, particularly in the detection and reporting of fraud or irregularities. Consequently, strong co-operation mechanisms between the EU and Member States are essential to maintain the integrity and effectiveness of the system.

1.1 The European Agricultural Guarantee Fund (EAGF) and its connection to Slovakia

As seen, the European Agricultural Guarantee Fund (EAGF) is one of the two main financial instruments of the Common Agricultural Policy (CAP) and plays a critical role in supporting agricultural income and stabilising markets across the EU. Its core function is to finance direct payments to farmers and certain market support measures. In the context of Slovakia, the EAGF has been a tool for ensuring the economic sustainability of the agricultural sector, particularly given the country's large rural population and significant dependence on agriculture for employment and regional development.

In Slovakia, EAGF funding is administered through the national Paying Agency – the **Agricultural Paying Agency** (Slovak: *Pôdohospodárska platobná agentúra*; see <https://www.apa.sk>), which is responsible for the disbursement of direct payments to eligible farmers and agricultural businesses. These payments are based on clearly defined eligibility conditions and are meant to provide a stable income floor, especially for small and medium-sized farms. The fund also supports environmental measures and cross-compliance rules, which farmers in Slovakia must adhere to in order to receive full payments, thereby aligning national agricultural practices with EU-wide sustainability goals.

One of the key strengths of EAGF support in Slovakia is its capacity to buffer the effects of market fluctuations and external shocks. Given Slovakia's position as a smaller agricultural economy within the EU, access to EAGF financing has allowed its farmers to remain

competitive within the single market. It has also helped maintain rural employment and prevent depopulation in less-developed regions. However, Slovakia has also faced challenges related to transparency and integrity in fund management, making the efficiency of control mechanisms and fraud detection especially relevant in recent years.

The EAGF is directly linked to Slovakia's CAP Strategic Plan, which outlines national priorities and how EU funds will be used to meet them. The Government of the Slovak Republic stated in its Government Programme Declaration for 2023–2027:[157] "*The Government shall use its legislative initiative to create a legal framework for the transformation of the Agricultural Paying Agency into a modern agency of this century*" (Slovak: *Vláda využije svoju legislatívnu iniciatívu na vytvorenie právneho rámca transformácie Pôdohospodárskej platobnej agentúry na modernú agentúru tohto storočia*).

1.2 The European Agricultural Fund for Rural Development (EAFRD) and its connection to Slovakia

As seen, the European Agricultural Fund for Rural Development (EAFRD) is the second main pillar of the EU's Common Agricultural Policy (CAP) and serves as a key instrument for supporting rural development, economic diversification, and improving the quality of life in rural areas. Unlike the EAGF, which focuses on direct payments to farmers, the EAFRD provides co-financing for long-term investment projects and programmes aimed at enhancing the competitiveness of agriculture, environmental protection, social inclusion, and innovation in rural communities.

In Slovakia, the EAFRD represents a significant source of public investment in infrastructure, education, digitalisation, and environmental projects in rural areas. The fund co-finances the **Slovak Rural Development Programme** (Slovak: *Program rozvoja vidieka Slovenskej republiky*), which is the country's strategic document outlining national priorities in

[157] Government Programme Declaration of the Slovak Republic for 2023–2027 – "To live better, more peacefully and more safely" (Slovak: *Programové vyhlásenie Vlády Slovenskej republiky 2023-2027 – „Lepšie, pokojnejšie a bezpečnejšie žiť"*). Available online <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=535376>.

agriculture and rural development. This programme is implemented through various measures – from supporting young farmers and improving rural living conditions to promoting organic farming and forest restoration.

The EAFRD also significantly supports projects focused on climate change adaptation, soil and water protection, and biodiversity conservation. In the Slovak context, these aspects are particularly important, as many rural regions face challenges such as soil erosion, ageing populations, or weak infrastructure. Thanks to EAFRD support, municipalities and agricultural businesses can invest in environmentally friendly technologies as well as services that increase the attractiveness of rural areas for young people and entrepreneurs.

The management and control of EAFRD funds in Slovakia is ensured by the Ministry of Agriculture and Rural Development of the Slovak Republic (Slovak: *Ministerstvo pôdohospodárstva a rozvoja vidieka Slovenskej republiky*; see <https://www.mpsr.sk>) through the Agricultural Paying Agency. However, the absorption process is often criticised for administrative complexity, low absorption capacity, and delays in project evaluation. In recent years, the Slovak Government has therefore declared its intention to reform the implementation of funds, including the digitalisation of procedures and improved transparency in the allocation of financial resources.

2. Responsible Bodies for Payment in Slovakia and their main activities

In the Slovak Republic, the disbursement of EU agricultural funds under the shared-management system is primarily the responsibility of the **Agricultural Paying Agency** (Slovak: *Pôdohospodárska platobná agentúra*; see <https://www.apa.sk>) – in Slovakia also known as **PPA**, which operates as an **accredited paying agency in accordance with the requirements of European legislation**. It was established by Act No. 473/2003 Coll. on the Agricultural Paying Agency[158] (not in force these days), and its main task is to implement

[158] Act of the National Council of the Slovak Republic of 24 October 2003 No. 473/2003 Coll. on the Agricultural Paying Agency and on Support for Entrepreneurship in Agriculture (Slovak: *Zákon Národnej rady Slovenskej republiky z 24. októbra 2003 č. 473/2003 Z. z. o Pôdohospodárskej platobnej agentúre, o podpore podnikania v*

funding and control mechanisms for payments from the two key EU agricultural funds: the EAGF and the EAFRD.

The main activities of the PPA include *receiving and registering applications* for non-repayable financial contributions from farmers, municipalities, entrepreneurs or other eligible entities. Once the application is submitted, an *administrative check and eligibility assessment* follows, during which it is evaluated whether the applicant meets all the conditions stated in the call or the respective aid scheme. The PPA also performs *on-site checks*, both ex-ante and ex-post, aimed at preventing the misuse of funds and identifying possible irregularities or fraud. After approval of the application and completion of control, the agency proceeds to *pay out the financial support* to the beneficiary's account and ensures *all steps are recorded in information systems*, including monitoring databases.

The PPA is also responsible for *collecting and providing data* for audit purposes and reporting to the Ministry of Agriculture and Rural Development of the Slovak Republic, as well as to European bodies such as the European Commission, the European Court of Auditors, OLAF, or the European Public Prosecutor's Office. Furthermore, the agency must maintain a *record-keeping and documentation system* that allows for traceability of individual cases and audit trail verification. The PPA also implements *corrective actions* in cases of identified errors, as well as *recovery of unduly paid funds*.

The PPA is overseen by the Ministry of Agriculture and Rural Development of the Slovak Republic, which serves as the managing authority for the CAP programming periods and is responsible for drafting strategic plans and implementation frameworks for the use of EU funds. The ministry is also in charge of legislative preparation, issuing methodological guidelines, launching calls for proposals and collecting data necessary for analytical evaluations of fund utilisation.

Moreover, in the field of fraud prevention and investigation, a special role is played by **AFCOS Slovakia** – the national Anti-Fraud Coordination Service (Slovak: *Sieť AFCOS*; see

pôdohospodárstve). Available online <https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/2003/473/20060201>.

<https://mirri.gov.sk/sekcie/cko/ochrana-financnych-zaujmov-eu-v-sr/siet-afcos>), which operates **under the Office of the Government of the Slovak Republic** (Slovak: *Úrad Vlády Slovenskej republiky*). Its task is to coordinate co-operation between Slovak authorities and European institutions, such as OLAF and the European Public Prosecutor's Office, particularly in the investigation of serious financial fraud cases affecting the EU budget. In detail, the coordination of AFCOS network partners is overseen by the Government Office of the Slovak Republic through the department called the **National Anti-Fraud Office for OLAF** (Slovak: *Odbor Národný úrad pre OLAF*). In accordance with Article 24(5) of Act No. 575/2001 Coll. on the Organisation of the Activities of the Government and on the Organisation of Central State Administration[159] (as amended by later legislation), this office coordinates and ensures the protection of the financial interests of the EU in Slovakia. At the same time, it serves as the Anti-Fraud Coordination Service (AFCOS) pursuant to Regulation No. 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF). The partners of the AFCOS network are obliged, in safeguarding the financial interests of the EU in the Slovak Republic, to act in compliance with the relevant European and national legislation in order to fulfil the objectives set out in Article 325 of the Treaty on the Functioning of the EU. Through National Anti-Fraud Office for OLAF, they regularly exchange information on their activities and also co-operate in the preparation of draft legal regulations, manuals, and guidelines related to the protection of the EU's financial interests. To ensure an integrated approach and active co-operation among the AFCOS network partners, a *Steering Committee for the Protection of the EU's Financial Interests in the Slovak Republic* (Slovak: *Riadiaci výbor pre ochranu finančných záujmov Európskej únie v Slovenskej republike*) was established by a resolution of the Government of the Slovak Republic. This committee also supervises the implementation of measures resulting from the National Strategy for the Protection of the EU's Financial Interests in the Slovak Republic.

[159] Act of the National Council of the Slovak Republic of 12. decembra 2001 No. 473/2003 Coll. on the Organisation of the Activities of the Government and on the Organisation of Central State Administration (Slovak: *Zákon Národnej rady Slovenskej republiky z 12. decembra 2001 č. 473/2003 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy*). Available online <https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/2001/575/20250101>.

It should be noted that another relevant actor is the **Supreme Audit Office of the Slovak Republic** (Slovak: *Najvyšší kontrolný úrad Slovenskej republiky*; see <https://www.nku.gov.sk>), which performs external oversight of the economy, efficiency and legality of public expenditures, including EU funds.

3. Accessing CAP Funds in Slovakia: What are the eligibility conditions? How does the adjudication procedures work? How are conditions evaluated?

3.1. Eligibility Conditions

In Slovakia, the provision of support from the Common Agricultural Policy (CAP), specifically from the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), is governed by defined eligibility conditions set out in both national and European legislation, and further specified in calls for proposals published by the Agricultural Paying Agency (PPA).

Eligibility conditions depend on the type of measure or aid scheme to which the applicant applies. In general, the applicant must be an **active farmer**, meaning a *natural* or *legal person* who carries out agricultural activities as defined in Article 4 of Regulation (EU) 2021/2115. The applicant must be registered in the Central Register of Agricultural Entities, be listed in the Register of Applicants maintained by the PPA, and have a legal relationship to the land (e.g. lease agreement, land ownership certificate).

Basic conditions also include compliance with cross-compliance requirements, i.e. adherence to legislation in the areas of environmental protection, animal welfare, plant health, and food safety. In the case of support under the Rural Development Programme (EAFRD), additional requirements apply, for example, a minimum investment amount, an age limit for young farmers (under 40), conditions for organic farming, or participation in quality schemes. In some cases, applicants must also meet specific selection criteria, which form part of the evaluation framework for each call. These may include consideration of environmental impact, project innovativeness, unemployment levels in the region, and more. Often,

applicants from less developed regions of Slovakia or projects with a multiplier effect on employment and the local economy are prioritised.

Applicants must also be financially and administratively sound – they must not be listed in the Early Detection and Exclusion System (EDES), must not have debts to the state, and must demonstrate that they have secured co-financing if required by the scheme. For investment projects, a feasibility study, business plan, and commitment to maintain the project for at least five years are often required.

3.2. How does the adjudication procedures work? How are conditions evaluated?

The process of adjudicating applications for CAP support is complex and consists of several phases designed to ensure objectivity and transparency. After the PPA publishes a call for proposals, the applicant submits the application *electronically*, usually via the IS PPA information system, providing all required information and uploading supporting documents. In some calls, the application must be accompanied by project documentation, price offers, or statements from public authorities.

Once the application is received, it undergoes formal and substantive checks carried out by PPA staff. This stage includes verifying the completeness of the application, compliance with the call, verification of land ownership or lease status, and assessment of cross-compliance. The administrative check also evaluates the amount of eligible expenditure, the correctness of applied rates, and compliance with state aid rules.

If the call is subject to a points-based evaluation, the application is ranked based on predefined criteria (e.g. innovativeness, environmental benefit, social impact, applicant status such as young farmer, woman, disadvantaged region, etc.). PPA then compiles a ranking of projects, supporting those with the highest scores until the call budget is exhausted.

If the application is approved, the PPA issues a decision on the award of a non-repayable financial contribution and concludes a support contract with the applicant. This contract specifies the conditions of use, implementation deadlines, and penalties for non-compliance. After the project is implemented, the applicant submits a payment request, which is again

checked by the PPA, including expenditure documentation, accounting records, and procurement documents. Only after the expenditure is approved are the funds disbursed.
A crucial role in evaluating compliance is played by on-site inspections, which verify the actual implementation of activities, physical existence of investments, and compliance with procurement rules. If the PPA identifies irregularities, it may reduce the subsidy amount, apply corrections, or require full repayment. In case of suspected fraud, the matter is referred to AFCOS, OLAF, or the competent law enforcement authority.

4. Detection and reporting of irregularities and suspected frauds: How do detection and reporting work in practice?

In the Slovak Republic, the primary responsibility for detecting irregularities and suspected fraud in the use of EU agricultural funds lies with the **Agricultural Paying Agency** (PPA). As the accredited paying agency, the PPA plays a key role in administering Common Agricultural Policy (CAP) funds, including the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD). It is directly responsible for administrative processing of applications, verifying eligibility, and conducting follow-up and on-the-spot checks, during which initial signs of potential irregularities are most often detected.

The **detection system** operates under a *multi-level control architecture*. In addition to the PPA, internal control units of the *Ministry of Agriculture and Rural Development of the Slovak Republic* oversee the agency's work. Other important actors include *AFCOS Slovakia*, which serves as the national contact point for OLAF and coordinates the protection of EU financial interests, and the *Supreme Audit Office of the Slovak Republic*, which conducts ex-post audits of the effectiveness, efficiency, and legality of public expenditures, including EU funds.

In certain cases, detection may also come from external whistleblowers – such as former employees, competitors, or municipalities, who report suspicious conduct by applicants. Whistleblower protection in Slovakia is governed by the Act No. 54/2019 Coll. on the

Protection of Whistleblowers of Anti-Social Activity[160] (as amended by later legislation).

5. How do detection and reporting work in practice?

In practice, the detection of irregularities takes place at **several levels** and throughout **different stages** of the project implementation cycle. The first stage involves administrative verification, during which completeness of applications, the eligibility of expenditures, contractual relations, land ownership, and registry entries (e.g., CEHZ, land cadastre, social insurance) are reviewed. Next comes cross-checking of data across multiple national databases and systems to identify potential duplications or fictitious expenses.

The second level of control is on-the-spot inspection, during which PPA inspectors verify whether the project has actually been implemented, whether the investment exists physically, and whether it aligns with the approved project scope. In case of suspicion, the inspectors prepare an inspection report, which undergoes legal review.

If the suspicion is deemed serious and possibly fraudulent, a record of irregularity is created and entered into the **Irregularity Management System** (IMS)– the official EU platform for recording and monitoring irregularities. At the same time, AFCOS Slovakia is notified. AFCOS may then refer the case to OLAF or to national law enforcement authorities if there are grounds for criminal proceedings. The entire detection and reporting mechanism is structured, formalised, and closely linked to both national and European authorities.

6. Are these activities supported by IT-Tools?

Yes, modern information technologies and analytical tools are essential to fraud detection and reporting. At the national level, the key system is the PPA Information System (IS PPA), which

[160] Act of the National Council of the Slovak Republic of 30 January 2019 No. 54/2019 Coll. on the Protection of Whistleblowers of Anti-Social Activity (Slovak: *Zákon Národnej rady Slovenskej republiky z 30. januára 2019 č. 54/2019 Z. z. o ochrane oznamovateľov protispoločenskej činnosti*). Available online <https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/2019/54/20230901>.

supports the processing of applications, archiving of documentation, automatic alerting, and the generation of audit trails.

At the European level, Slovakia uses the IMS system, accessible to OLAF and the European Commission. IMS allows for categorisation of cases (administrative error vs. suspected fraud), tracking resolution progress, and analysing trends to help identify recurring fraud patterns.

Slovakia also utilises the **Central Register of Projects** (CRPI) to track all publicly and EU-funded projects. This register supports both public oversight and expert audits. The PPA itself has implemented internal risk monitoring tools, including algorithms and risk matrices, that detect anomalies such as repeated contractor wins, inflated budgets, or abnormal timing of expenses.

7. Do administrative offices follow some guidelines in order to identify risky situations? Are there common indicators that administrative authorities rely on?

Yes, administrative authorities including the PPA follow a set of binding internal and external guidelines designed to help identify risk-prone situations and behaviours. These include internal methodologies based on the recommendations of the European Commission, OLAF, and national auditing bodies. Such guidelines typically contain lists of so called "*red flags*" (risk indicators) and model fraudulent schemes.

Common indicators include matches between contractors and beneficiaries in ownership structures, document manipulation, sudden budget increases, repeated contract amendments, identical text in multiple applications, inconsistencies between budgets and real implementation, or suspiciously rapid execution of investment activities.

Authorities also use risk scoring systems that evaluate each applicant's profile based on factors like prior grant history, control findings, financial stability, and behavioural patterns. These scores are generated by IS PPA and guide auditors in focusing efforts on the most vulnerable or suspicious cases.

8. Do Paying Agencies provide for a communication system with EC and/or national authorities competent in the fight against fraud (AFCOS)? Once that a suspected fraud or irregularity is detected, what is the standard procedure to be applied?

Yes, Slovakia has an established notification and communication mechanism to ensure effective information exchange between the PPA, AFCOS, OLAF, and the European Commission. The PPA is required to report all confirmed irregularities and suspicions of fraud to the IMS system, which serves as the EU's primary database for financial irregularity reporting.

Once a suspicion arises, the PPA inspector prepares an internal report, which is reviewed by the legal department. If the suspicion is confirmed, the case is formally recorded in IMS, and AFCOS Slovakia is notified. AFCOS coordinates the next steps, which may include referring the case to OLAF or initiating a domestic investigation through law enforcement or the European Public Prosecutor's Office.

This process is governed by national procedural guidelines that ensure each case is properly documented, reported, and monitored through to resolution. This communication framework is fundamental to maintaining transparency, preventing misuse of EU funds, and enabling prompt responses by audit and judicial authorities at both the national and EU levels.

II Section: Fraudulent schemes and criminal law analysis

2. *Notions of "fraud" and "irregularity" according to the European legislation.*

Frauds in CAP expenditures derive their meaning from the general definition of fraud as provided in the Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law. The Directive establishes *minimum rules* concerning criminal offences and sanctions. Article 3(2)(b) of the Directive provides three different types of conduct for committing frauds in procurement-related expenditures, at least when committed in order to make an unlawful gain for the perpetrator or another, by causing a loss to the Union's financial interests: falsity, non-disclosure, and misapplication of funds.

Frauds in CAP expenditures should be distinguished from "*irregularities*" and "*suspected frauds*" concerning the same funds. The basic distinction between "*irregularity*" and "*fraud*" is mainly based on intent: fraud requires intent, while irregularity does not; instead, "*suspected fraud*" is an irregularity whose gravity is sufficient to prompt an administrative or a criminal investigation in order to establish intent and knowledge of the offence.

A first notion of "*irregularity*" is entailed in the Council Regulation (EC, EURATOM) No. 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. According to Article 1(2) of the Regulation, "*irregularity*" shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

The difference between irregularity and fraud has a relevant meaning in respect to the detection criteria, preventive measures and effectiveness of sanctions, since irregularities have an administrative relevance, while frauds are genuine criminal offences.

At the European level, the legal definitions are well established and binding across all Member States. They serve as a common basis for detection, enforcement, and reporting. The differentiation between these categories directly impacts the allocation of responsibilities, the legal thresholds for reporting, and the degree of intervention by both national authorities and supranational bodies such as OLAF and the European Public Prosecutor's Office.

In practice, irregularities often arise from negligence, mistakes in documentation, or administrative errors. These include, for instance, errors in the calculation of payments, delays in project implementation, or failure to comply with procurement rules. Since no intent is present, they are resolved through administrative channels – corrections, recoveries, or warnings.

In contrast, fraud entails a deliberate act, such as forging documents, submitting false claims, manipulating public tenders, or creating fictitious operations for financial gain. As such, fraud requires not only administrative remedies but also criminal prosecution, and it often involves extended investigations and judicial proceedings.

"*Suspected fraud*" occupies an intermediate position. It refers to situations where the facts suggest intentional misconduct, but further verification is needed to confirm fraudulent intent.

2. What are the most frequent "red flags"?

In the context of using funds from the Common Agricultural Policy (CAP), fraudulent behaviour often follows certain recurring patterns known as **fraudulent schemes**. European institutions such as OLAF and the European Court of Auditors, as well as national oversight bodies, have identified several *red flags* that may indicate risky behaviour or potential fraud. The **most frequent red flags** include:

- *Identical or very similar wording* in applications from different applicants, which may suggest coordinated behaviour or the use of "front" individuals.
- *Sudden budget increases shortly before submission*, or unjustified inflated unit prices.
- *Contractual ties between the applicant and supplier*, such as shared ownership or personnel connections.

- *Repeated success of a single entity* across multiple calls or regions, without adequate operational capacity.
- *Very fast project implementation*, often with limited real impact, or submission of documents only at the final evaluation stage.

As for *typical fraudulent schemes*, the following have been identified:

- *Fictitious farms or land*, where applications are submitted for land that the applicant does not legally control or which does not exist at all.
- *Inflated expenditure* in investment projects, especially in equipment purchases or construction—known as "overpricing".
- *Manipulated public procurement*, where competing companies are controlled by the same entity, or the criteria are tailored to a specific bidder.
- *Misuse of schemes for young farmers*, where the applicant is formally a young person, but the project is actually managed by a different, more experienced party (a "proxy" setup).
- *Double financing*, where support is drawn from multiple EU funds for the same purpose.

In Slovakia, some of these schemes have been repeatedly observed. Particularly problematic are cases involving *leased land without the owner's consent*, or fictitious activities in remote rural areas. Another major issue is the *insufficient verification of data* by the Paying Agency and the lack of integrated databases, which allows fraudulent schemes to bypass formal checks. Strengthening analytical capacity, enhancing cross-database checks, and sharing insights between oversight bodies are essential steps to improving fraud prevention and detection in the Slovak context.

In recent years, Slovakia has faced **a serious issue with the use of EU funds allocated for rural development**, specifically under the Rural Development Programme (RDP), where subsidies from the European Agricultural Fund for Rural Development (EAFRD) were used for the construction of private guesthouses. These funds were officially intended to support rural tourism and the diversification of farmers' incomes, but in many cases, they were used to build luxury accommodation facilities that do not serve their original purpose or are used

commercially without any connection to agricultural activities. According to media reports, these projects often involve parent or related companies that misused schemes designed primarily for small farms. Some of the guesthouses were built in highly attractive tourist areas, outside genuine rural contexts, where the agricultural component is minimal or entirely absent. This phenomenon is a typical example of a fraudulent scheme combining deliberate misrepresentation of information in applications, conflicts of interest, and insufficient control by the Paying Agency (PPA). It represents a serious reputational problem for the EU funding system, as well as an indicator of the need to tighten selection criteria, enhance purpose verification, and improve post-project monitoring mechanisms.

3. What are the most relevant practical implications of cross-border agricultural frauds?

Cross-border agricultural frauds pose a particularly serious challenge for both EU Member States and EU institutions. Their practical implications are legal, economic, institutional, and operational in nature. These frauds transcend national borders, exploiting differences in national control systems, legal definitions, and implementation levels of the Common Agricultural Policy (CAP). Typical cases include complex ownership chains, fictitious transfers of agricultural land, misuse of identities across countries, or manipulation of cross-border procurement procedures. A major consequence is the limited ability of national authorities to effectively investigate such frauds, as evidence, documents, and witnesses may be located in different jurisdictions. Without efficient legal assistance or joint investigations, cases may collapse.

Cross-border frauds also increase the risk of duplicate or overlapping financing, where agencies in different countries unknowingly provide support for the same plot of land, project, or person. Weak interoperability of IT systems and poor communication between national AFCOS units may enable such schemes or delay their detection. Institutionally, such frauds undermine mutual trust between states, hamper coordination, and expose vulnerabilities in EU fund control mechanisms. They often reveal unequal institutional capacities, inconsistent application of red flags, and gaps in oversight tools.

In Slovakia, challenges are particularly present in cooperation with neighbouring countries (e.g., Hungary, Poland, Austria) in cases involving cross-border land ownership, business affiliations, or artificially structured purchases of agri-equipment to exploit support schemes. Slovak authorities face difficulties verifying foreign records and lack resources for international investigations. This underlines the need to strengthen AFCOS-to-AFCOS communication, harmonise risk assessment approaches, and increase technical support for joint EU-funded investigations.

4. Are the legal definitions of these offences clear enough in order to identify them in practice?

In Slovakia, all criminal offences, including **criminal offences related to fraud involving EU funds** are regulated by the Criminal Code No. 300/2005 Coll.[161] (as amended by later legislation). Articles 261 to 263 of the Criminal Code cover offences concerning the **Damaging the Financial Interests of the European Union** (Slovak: *Poškodzovanie finančných záujmov Európskej únie*). Additionally, the criminal offence is regulated by Article 225 of the Criminal Code – **subsidy fraud** (Slovak: subvenčný podvod); the Criminal Code reflects the transposition of the PIF Directive No. 2017/1371/EU.

Slovak version	English version
Poškodzovanie finančných záujmov Európskej únie	**Damaging the Financial Interests of the European Union**
§ 261 (1) Kto použije alebo predloží falšovaný, nesprávny alebo neúplný výkaz alebo doklad, alebo neposkytne povinné údaje, a tým umožní protiprávne zadržanie finančných prostriedkov alebo iných aktív pochádzajúcich z rozpočtu Európskej únie, z	Article 261 (1) Whoever uses or submits a falsified, incorrect or incomplete report or document, or fails to provide mandatory data, thereby enabling the unlawful retention of financial resources or other assets originating from the budget of the European Union,

[161] Act of the National Council of the Slovak Republic of 20 May 2004 No. 300/2005 Coll., Criminal Code (Slovak: *Zákon Národnej rady Slovenskej republiky z 30. mája 2004 č. 300/2005 Z. z., Trestný zákon*). Available online <https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/2005/300/20250217>.

rozpočtu spravovaného Európskou úniou alebo v mene Európskej únie alebo rozpočtu inštitúcií, orgánov, úradov a agentúr Európskej únie zriadených v súlade so Zmluvou o Európskej únii alebo Zmluvou o fungovaní Európskej únie alebo rozpočtu nimi priamo alebo nepriamo spravovaného a kontrolovaného alebo použitie týchto prostriedkov alebo aktív na iný ako určený účel, potrestá sa odňatím slobody až na štyri roky.	from a budget managed by the European Union or on behalf of the European Union, or from the budget of institutions, bodies, offices and agencies of the European Union established in accordance with the Treaty on European Union or the Treaty on the Functioning of the European Union, or from a budget directly or indirectly managed and controlled by them, or uses such funds or assets for a purpose other than that intended, shall be punished by imprisonment for up to four years.
(2) Rovnako ako v odseku 1 sa potrestá, kto použije finančné prostriedky alebo iné aktíva pochádzajúce z rozpočtu Európskej únie, z rozpočtu spravovaného Európskou úniou alebo v mene Európskej únie alebo rozpočtu inštitúcií, orgánov, úradov a agentúr Európskej únie zriadených v súlade so Zmluvou o Európskej únii alebo Zmluvou o fungovaní Európskej únie alebo rozpočtu nimi priamo alebo nepriamo spravovaného a kontrolovaného na iný ako určený účel.	(2) The same punishment as in paragraph 1 shall apply to whoever uses financial resources or other assets originating from the budget of the European Union, from a budget managed by the European Union or on behalf of the European Union, or from the budget of institutions, bodies, offices and agencies of the European Union established in accordance with the Treaty on European Union or the Treaty on the Functioning of the European Union, or from a budget directly or indirectly managed and controlled by them, for a purpose other than that intended.
(3) Odňatím slobody na jeden rok až päť rokov sa páchateľ potrestá, ak ako zamestnanec, člen, zástupca alebo iná osoba oprávnená konať za toho, kto finančné prostriedky alebo iné aktíva uvedené v odseku 1 poskytuje, umožní získať finančné prostriedky alebo iné aktíva uvedené v odseku 1 tomu, o kom vie, že nespĺňa podmienky určené na ich poskytnutie, alebo umožní ich protiprávne zadržať alebo použiť na iný ako určený účel.	(3) The offender shall be punished by imprisonment from one to five years if, as an employee, member, representative or other person authorized to act on behalf of the entity providing the financial resources or other assets referred to in paragraph 1, he enables the acquisition of such financial resources or other assets by someone whom he knows does not meet the conditions for their provision, or enables their unlawful retention or use for a purpose other than that intended.
(4) Odňatím slobody na dva roky až šesť rokov sa páchateľ potrestá, ak spácha čin uvedený v odseku 1, 2 alebo 3 a) a spôsobí ním väčšiu škodu, b) z osobitného motívu, alebo c) závažnejším spôsobom konania.	(4) The offender shall be punished by imprisonment from two to six years if he commits the act referred to in paragraph 1, 2 or 3 a) and causes greater damage,

(5) Odňatím slobody na dva roky až osem rokov sa páchateľ potrestá, ak spácha čin uvedený v odseku 1, 2 alebo 3 a spôsobí ním značnú škodu. (6) Odňatím slobody na tri roky až desať rokov sa páchateľ potrestá, ak spácha čin uvedený v odseku 1, 2 alebo 3 a) a spôsobí ním škodu veľkého rozsahu, alebo b) ako člen nebezpečného zoskupenia. § 262 (1) Kto poruší alebo nesplní povinnosť vyplývajúcu z jeho zamestnania, povolania, postavenia alebo funkcie v riadení alebo kontrole činnosti osôb ním riadených, a tým umožní spáchanie trestného činu podľa § 261 ods. 1, potrestá sa odňatím slobody až na dva roky. (2) Odňatím slobody na jeden rok až štyri roky sa páchateľ potrestá, ak spácha čin uvedený v odseku 1 a spôsobí ním väčšiu škodu. (3) Odňatím slobody na jeden rok až päť rokov sa páchateľ potrestá, ak spácha čin uvedený v odseku 1 a spôsobí ním značnú škodu. § 263 (1) Kto z nedbanlivosti poškodí finančné záujmy Európskej únie konaním uvedeným v § 261 ods. 1, potrestá sa odňatím slobody až na jeden rok. (2) Odňatím slobody až na dva roky sa páchateľ potrestá, ak spácha čin uvedený v odseku 1 a spôsobí ním značnú škodu.	b) with a special motive, or c) in a more serious manner of conduct. (5) The offender shall be punished by imprisonment from two to eight years if he commits the act referred to in paragraph 1, 2 or 3 and causes significant damage. (6) The offender shall be punished by imprisonment from three to ten years if he commits the act referred to in paragraph 1, 2 or 3 a) and causes damage of large scale, or b) as a member of a dangerous group. Article 262 (1) Whoever violates or fails to fulfil an obligation arising from his employment, profession, position or function in the management or control of the activities of persons under his direction, thereby enabling the commission of a criminal offence under § 261 paragraph 1, shall be punished by imprisonment for up to two years. (2) The offender shall be punished by imprisonment from one to four years if he commits the act referred to in paragraph 1 and causes greater damage. (3) The offender shall be punished by imprisonment from one to five years if he commits the act referred to in paragraph 1 and causes significant damage. Article 263 (1) Whoever, through negligence, damages the financial interests of the European Union by conduct referred to in § 261 paragraph 1, shall be punished by imprisonment for up to one year. (2) The offender shall be punished by imprisonment for up to two years if he commits the act referred to in paragraph 1 and causes significant damage.

Slovak version	English version
Subvenčný podvod	**Subsidy Fraud**
§ 225 (1) Kto vyláka od iného dotáciu, subvenciu, príspevok alebo iné plnenie zo štátneho rozpočtu, z rozpočtu verejnoprávnej inštitúcie, rozpočtu štátneho fondu, rozpočtu vyššieho územného celku alebo rozpočtu obce, ktorých poskytnutie alebo použitie je podľa všeobecne záväzného právneho predpisu viazané na podmienky, ktoré nespĺňa, a to tým, že ho uvedie do omylu v otázke ich splnenia, potrestá sa odňatím slobody na šesť mesiacov až tri roky a šesť mesiacov. (2) Rovnako ako v odseku 1 sa potrestá, kto získanú dotáciu, subvenciu, príspevok alebo iné plnenie zo štátneho rozpočtu, z rozpočtu verejnoprávnej inštitúcie, rozpočtu štátneho fondu, rozpočtu vyššieho územného celku alebo rozpočtu obce použije na iný ako určený účel. (3) Odňatím slobody na jeden rok až štyri roky a šesť mesiacov sa páchateľ potrestá, ak ako zamestnanec, člen, zástupca alebo iná osoba oprávnená konať za toho, kto dotáciu, subvenciu, príspevok alebo iné plnenie zo štátneho rozpočtu, z rozpočtu verejnoprávnej inštitúcie, rozpočtu štátneho fondu, rozpočtu vyššieho územného celku alebo rozpočtu obce poskytuje, umožní získať dotáciu, subvenciu, príspevok alebo iné plnenie zo štátneho rozpočtu, z rozpočtu verejnoprávnej inštitúcie, rozpočtu štátneho fondu, rozpočtu vyššieho územného celku alebo rozpočtu obce tomu, o kom vie, že nespĺňa podmienky určené na jeho poskytnutie.	Article 225 (1) Whoever obtains from another person a subsidy, grant, contribution, or other payment from the state budget, from the budget of a public institution, from the budget of a state fund, from the budget of a higher territorial unit or from a municipal budget, the provision or use of which is, under generally binding legal regulations, subject to conditions which he does not meet, by misleading them about the fulfilment of such conditions, shall be punished by imprisonment from six months to three years and six months. (2) The same punishment as in paragraph 1 shall apply to whoever uses the obtained subsidy, grant, contribution, or other payment from the state budget, from the budget of a public institution, from the budget of a state fund, from the budget of a higher territorial unit or from a municipal budget for a purpose other than that intended. (3) The offender shall be punished by imprisonment from one year to four years and six months if, as an employee, member, representative, or other person authorised to act on behalf of the provider of the subsidy, grant, contribution, or other payment from the state budget, from the budget of a public institution, from the budget of a state fund, from the budget of a higher territorial unit or from a municipal budget, he enables such support to be granted to someone whom he knows does not meet the conditions for its provision.

(4) Odňatím slobody na dva roky až päť rokov a šesť mesiacov sa páchateľ potrestá, ak spácha čin uvedený v odseku 1, 2 alebo 3 a) a spôsobí ním väčšiu škodu, b) z osobitného motívu, alebo c) závažnejším spôsobom konania.	(4) The offender shall be punished by imprisonment from two years to five years and six months if he commits the act referred to in paragraph 1, 2 or 3 a) and causes greater damage, b) with a special motive, or c) in a more serious manner of conduct.
(5) Odňatím slobody na dva roky až sedem rokov a šesť mesiacov sa páchateľ potrestá, ak spácha čin uvedený v odseku 1, 2 alebo 3 a spôsobí ním značnú škodu.	(5) The offender shall be punished by imprisonment from two years to seven years and six months if he commits the act referred to in paragraph 1, 2 or 3 and causes significant damage.
(6) Odňatím slobody na tri roky až deväť rokov a šesť mesiacov sa páchateľ potrestá, ak spácha čin uvedený v odseku 1, 2 alebo 3 a) a spôsobí ním škodu veľkého rozsahu, b) ako člen nebezpečného zoskupenia, alebo c) za krízovej situácie.	(6) The offender shall be punished by imprisonment from three years to nine years and six months if he commits the act referred to in paragraph 1, 2 or 3 a) and causes damage of large scale, b) as a member of a dangerous group, or c) during a crisis situation.

NOTE: This is legal understanding of DAMAGE for mentioned criminal offences:

§ 125 (Trestného zákona)	§ 125 (of the Criminal Code)
(1) **Škodou malou** sa rozumie *škoda prevyšujúca sumu 700 eur*. **Škodou väčšou** sa rozumie *škoda prevyšujúca sumu 20 000 eur*. **Značnou škodou** sa rozumie *škoda prevyšujúca sumu 250 000 eur*. **Škodou veľkého rozsahu** sa rozumie *škoda prevyšujúca sumu 650 000 eur*. Tieto hľadiská sa použijú rovnako na určenie výšky prospechu, hodnoty veci a rozsahu činu. (2) Ak tento zákon v osobitnej časti vyžaduje v základnej skutkovej podstate spôsobenie škody ako majetkový následok trestného činu a neuvádza jej výšku, má sa za to, že musí byť spôsobená aspoň škoda malá.	(1) **Minor damage** shall mean *damage exceeding the amount of 700 euros*. **Greater damage** shall mean *damage exceeding the amount of 20,000 euros*. **Significant damage** shall mean *damage exceeding the amount of 250,000 euros*. **Damage of large scale** shall mean *damage exceeding the amount of 650,000 euros*. These criteria shall equally apply to the determination of the amount of benefit, the value of an item, and the extent of the act. (2) If this Act in its Special Part requires, in the basic elements of a criminal offence, the causing of damage as a property consequence of the offence without specifying its amount, it shall be deemed that at least minor damage must be caused.

Although the legal framework is formally in place, **in practice the definitions are not always sufficiently clear**, particularly when it comes to distinguishing administrative errors from criminally relevant fraud. A major challenge is proving *intent* and *deliberate manipulation* in an application, which is necessary to differentiate an "irregularity" from a "fraud". Another issue is that the **law enforcement authorities in Slovakia often lack specialisation in agricultural fraud**, meaning such cases are assessed as general economic crimes. There is also a lack of a unified methodology for evaluating evidence and limited integration between criminal procedures and the administrative processes of the Paying Agency (PPA).

Therefore, it is essential **to strengthen the expertise of investigators and prosecutors** in this field and to ensure closer cooperation with oversight bodies such as AFCOS and OLAF to improve the identification and qualification of these offences in practice.

5. Can evidence of these offences always be easily collected

Collecting evidence in criminal cases related to damaging the financial interests of the EU – particularly in the area of agricultural fund misuse – is demanding and often problematic in the Slovak context.

Although some evidence is formally accessible, such as accounting records, contracts, applications, invoices, or findings from inspections by the Agricultural Paying Agency (PPA), on the other hand, in practice, law enforcement authorities face obstacles.

First, the challenge is the **proof of *intent***, which is essential to distinguish fraud from mere administrative error. Intent is rarely proven by direct evidence but rather through indirect indicators – for example, patterns of behaviour, repeated actions by the perpetrator, or the structure of relationships between applicants and suppliers. These require analytical capacity, experienced investigators, and time.

Second, a serious factor is also the **low level of specialisation among investigators in agri-fraud cases**. Much of the relevant evidence is administrative in nature and comes from calls for proposals, procurement procedures, or monitoring reports, which many investigators do

not fully understand. There is a lack of interdisciplinary connection between criminal law, EU law, agricultural policy and public finance.

Third, in the case of cross-border fraud, **collecting evidence is even more difficult**. It requires international legal assistance, document translation, and coordination across jurisdictions, which demands both expertise and time.

Indeed, gathering evidence in this area is not easy, either legally or practically. Effective prosecution requires interdisciplinary co-operation, better understanding of law, and specialised investigative teams focused on protecting the EU's financial interests.

6. What are the offences that most frequently recur?

In the context of drawing funds from the EU, especially in agriculture and rural development, the most commonly recurring offences – could fall (their clarification as criminal offences is often challenging, demanding and questionable) – under the following legal classifications according to the Slovak Criminal Code:

1. **Subsidy Fraud** (Article 225 of the Criminal Code; Slovak: *subvenčný podvod*). This is among the most typical criminal offences in this field. It involves situations where an applicant knowingly provides false information in a subsidy application (e.g., fictitious costs, fabricated activities) or uses the obtained funds for a purpose other than that approved. This type of offence is especially common in infrastructure development, machinery purchases, or services linked to rural development.
2. **Damaging the Financial Interests of the EU** (Article 261 of the Criminal Code; Slovak: *poškodzovanie finančných záujmov Európskej únie*). A criminal offence transposed under EU law obligations, including the PIF Directive, reflecting more serious forms of EU fund embezzlement, particularly in cases involving the misuse of public funds on a large scale. This section typically applies to deliberate concealment of facts or document falsification.
3. **Breach of Duty in the Administration of Another's Property** (Article 237 of the Criminal Code; Slovak: *porušenie povinnosti pri správe cudzieho majetku*). It is applied

in cases where a responsible person managing a project fails to meet contractual obligations or intentionally causes damage by mismanaging entrusted funds.

4. **Bid Rigging in Public Procurement** (Article 266 of the Criminal Code; Slovak: *machinácie pri verejnom obstarávaní*). A frequently recurring offence in cases where procurement procedures are "tailor-made" or where competition is intentionally restricted.
5. **Money Laundering** (Article 233 of the Criminal Code; Slovak: *legalizácia výnosu z trestnej činnosti*). Although less frequent, this offence increasingly appears in the context of EU funds, particularly when illegally acquired resources are reinvested into the legal economy through "cover" agricultural projects.

In practice, these offences are often *interconnected* – for example, subsidy fraud combined with bid rigging or damaging EU financial interests. The typical perpetrators are legal entities, business operators, or public officials who have access to the decision-making processes regarding support allocation. There are also frequent links between the applicant, supplier, and evaluator, creating opportunities for organised and systematic misuse of funds. For this reason, not only repression but also prevention – through thorough risk assessment and transparency – is essential.

III Section: Procedural aspects related to information-exchange between authorities largely involved in fight against fraud

1. What are the most relevant and problematic implications of cross-border agricultural frauds? Can national authorities exchange information efficiently? What obstacles can hinder effective communication among national authorities?

Cross-border agricultural frauds represent a significant risk to the financial interests of the EU, particularly because they exploit differences between national fund management systems, control mechanisms, and legal procedures. In the Slovak context, such frauds are especially problematic due to *insufficient institutional interoperability* and *weak cross-border coordination*.

National authorities such as the Agricultural Paying Agency (PPA), AFCOS Slovakia, and law enforcement authorities can – in theory – exchange information through formal tools (e.g., the IMS system, mutual legal assistance requests, or via OLAF). In practice, however, delays, duplication, and communication failures often occur, reducing the effectiveness of case handling. Information exchange between Slovakia and other Member States of the EU frequently depends on the individual initiative of specific staff members, rather than systematic coordination.

The **main obstacles to effective communication** can be divided into several categories:

- **Legal differences** – varying classification of the same acts in different countries, differing levels of criminal liability, procedural deadlines, and access to evidence.
- **Technical barriers** – lack of interconnection between information systems across countries, incompatible formats, and database non-interoperability.
- **Institutional capacity** – limited number of specialists for cross-border cases, insufficient language proficiency, and the overload of staff within AFCOS and the paying agency.

- **Communication channels** – absence of direct, operational channels between partners in different countries (e.g., between two AFCOS units) for resolving urgent cases quickly.

The seriousness of these obstacles highlights the need to strengthen institutional co-operation, harmonise procedures, and create standardised protocols for information exchange, applicable across the EU and fully implemented at national level. In this regard, Slovakia has not yet achieved full interoperability or effective coordination with foreign partners.

2. What databases are provided for collecting information on frauds (and irregularities) concerning agricultural funds and how do they work? Does each country have implemented IMS (Irregularity Management System)? If yes, how does this tool work? What authority is in charge of using it?

In the area of combating fraud and irregularities in the use of EU agricultural funds, several *information systems and databases* are used in the Slovak Republic. The most important is the **IMS – Irregularity Management System**, operated by the European Commission (OLAF). This system is designed for reporting irregularities and suspected fraud in the use of EU expenditures, including Common Agricultural Policy (CAP) funds.

IMS is implemented and actively used in Slovakia. The authority responsible for its management and operation is AFCOS Slovakia, which serves as the national contact point for OLAF. Administrative units, particularly the Agricultural Paying Agency (PPA), are obliged to report identified irregularities through IMS if they meet the criteria defined by EU regulations (e.g., Commission Regulations 2015/1970 to 1973).

The system works by requiring obliged entities (e.g., PPA) to register cases of irregularities into IMS with detailed information – identification of entities involved, description of the act, amount of funds affected, the stage of the process (administrative or judicial), and applied measures or sanctions. IMS also allows for case analysis, statistical exports, and serves as a source of information for OLAF when deciding whether to launch an investigation.

Besides IMS, other systems are used at the national level:

- **IS PPA** – the internal information system of the Agricultural Paying Agency, which contains data on applications, inspections, payments, and findings.
- **CRPI** – the Central Register of Projects financed from public funds, which records projects including those supported by EU funds.
- **Information systems of the tax administration and ministries**, which are used to verify ownership, eligibility of applicants, and public expenditures.

However, the cooperation between these databases is only partial and not fully automated, which poses an obstacle to swift and effective action in cases of suspected fraud. While IMS is a useful tool, its effectiveness depends on the timeliness, quality, and accuracy of the data provided by national authorities.

3. What are the most relevant consequences of national differences related to the aforementioned topics? What impact do they have on information-exchange activities?

National differences among Member States of the EU in terms of legal frameworks, organisational structures, and technical infrastructure have a significant impact on the quality and effectiveness of information exchange related to the detection and investigation of agricultural fund fraud. These differences create asymmetry between national systems, which complicates operational co-operation, data comparability, and timely response.

In the **Slovak context, the most relevant consequences are**:

- **Different levels of defining and assessing fraud and irregularities** – while some countries have detailed methodologies and classifications of cases (e.g. “red flags”), Slovakia applies less standardised approaches, which makes alignment with foreign partners more difficult.
- **Uneven implementation of the IMS system** – although Slovakia uses IMS, the quality and regularity of data input may vary compared to other countries. Not all Member States approach the system with the same consistency, limiting the ability to fully compare data.
- **Differences in the technical level of databases and IT systems** – countries use various information formats that are not always compatible with other national or EU

systems. For Slovakia, this means that some data must be converted or processed manually, which slows down response times.

- **Different institutional capacity of AFCOS units** – while some states have well-developed teams with forensic analysts and legal experts, the Slovak AFCOS has limited human and technical resources. This affects its ability to respond to cross-border cases and to initiate international co-operation.

These national differences negatively affect information exchange: they cause delays, incomplete data, inconsistent interpretations of terms, and in some cases, a lack of engagement from international partners. To ensure effective information exchange, it is therefore essential to harmonise technical standards, unify operational practices, and strengthen mutual trust among Member States of the EU.

4. What solutions can be outlined?

Improving information exchange between authorities involved in combating fraud in the area of agricultural funds requires systemic, technical, legislative, and human resource measures. Based on the current situation in Slovakia and practical observations, several concrete recommendations can be proposed:

Strengthening the legal framework and legal certainty

One of the major problems is the unclear boundary between an administrative irregularity and a criminally relevant fraud. Solutions include:

- Introducing a clearer definition of *intent* for purposes of special kind of fraud, along with methodological tools for assessing it in both administrative and criminal proceedings.
- Issuing binding guidelines for the Paying Agency and AFCOS, specifying when suspicion is serious enough to warrant reporting via IMS or to criminal authorities.
- Establishing a mandatory inter-institutional procedure for suspected fraud, for example, a step-by-step escalation protocol between the Paying Agency, AFCOS, and the police.

Improving interoperability and technical tools

A key weakness in the Slovak context is the *fragmentation* of information systems. The IS PPA, IMS, CRPI, and other registers operate separately and are not fully interconnected. We propose:

- Creating a centralised integration platform to enable data exchange between national databases and allow export into IMS.
- Introducing API interfaces between the PPA, AFCOS, OLAF, and potentially the Slovak Financial Administration to increase the speed and accuracy of data transfers.
- Performing regular *data quality audits* and *backups of data* submitted to IMS to ensure usability by OLAF and EPPO.
- Developing an *analytical module* capable of using algorithms to identify red flags and suspicious behavioural patterns based on data from multiple sources.

Professional specialisation and human resources

To allow national institutions to cooperate effectively in investigations and information exchange, it is necessary to:

- Increase the number of specialists in AFCOS Slovakia, especially legal experts, IT professionals, and analysts.
- Create specialised units within the PPA dedicated exclusively to risk monitoring and IMS data entry.
- Introduce mandatory training programs for Paying Agency staff, auditors, and investigators on EU legislation, IMS functionality, and communication with OLAF.
- Support employee rotation between institutions (PPA ↔ AFCOS ↔ police) to facilitate knowledge sharing and methodological consistency.

International co-operation and cross-border mechanisms

Cross-border agricultural fraud requires swift, targeted, and trusted information exchange. Slovakia should:

- Actively initiate bilateral agreements between AFCOS units (e.g. Slovakia–Hungary, Slovakia–Poland), establishing procedures for exchanging data outside the IMS platform.
- Implement a "rapid alert mechanism", enabling AFCOS units to exchange real-time alerts about suspicious entities or fraud schemes.
- Support joint investigations under the patronage of OLAF or EPPO, while also contributing to reforms in EU guidance that reflect regional specificities (for example, for the Visegrád Group).

Transparency and public oversight

EU fund fraud is often a consequence of low transparency in decision-making. To address this, Slovakia should:

- Publish lists of approved projects, including information on contractual partners, amounts awarded, and evaluators involved.
- Create a public online platform for whistleblowing, where citizens can report suspicions of misuse, linked directly to AFCOS Slovakia.
- Regularly publish annual reports by AFCOS and PPA on the status of irregularity management and co-operation with OLAF/EPPO.

Financial and strategic planning

None of these solutions can be implemented without adequate funding and strategic direction. Slovakia should:

- Prioritise anti-fraud efforts in national budgets, especially in areas of digitalisation and personnel development.
- Develop a National Strategy for Information Exchange on Irregularities and Fraud, including clear objectives, indicators, and measurable outputs.
- Leverage EU technical assistance instruments (e.g. TSI – Technical Support Instrument) to finance system development, training, and analytical tool creation.