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**THE APPLICATION OF THE SINGLE PAYMENT BY NATIONAL ADMINISTRATIONS AND
NATIONAL COURTS**

HUNGARIAN NATIONAL REPORT

1. National administrative measure in the Single Payment Scheme (SPS)

1.1 The institutional characteristics of SPS

Which „participants” are responsible for the realisation of the single payment? What is the competence of the single „participant”? Among the state, the local administration, and areas (etc.), how are the division of power and competences formed regarding the single payment?

In Hungary, the SPS system will be introduced in 2009, so we don't have accurate information concerning the operating of the system yet, because of the lack of time.

In the course of the lecture, I can report on questions affecting the SAPS (Single Area Payment Scheme) system and on the plans of SPS introduction in Hungary.³

The introduction of SPS system could not take place in Hungary, because it did not suit the prescribed requirements of informational and checking systems, being necessary to the introduction of support.

Therefore, the continuous development of uniform informational system took place and process of meeting the requirements is expected to happen in 2008. So in the year of 2009, the technical and procedure conditions, necessary to the introduction of SPS system, will be given.

The introduction of SAPS took place in May, 2004 – at the time of our accession to the EU.

The system of SAPS (direct payment producers' support based on area) is made up of two sources: - single area payment scheme (SAPS) - additional national area payment support (Top-up), of which source is the Hungarian budget.

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³ SZILÁGYI János Ede: The institutional system of market regulation In: Csák Csilla: *Agricultural Law*, Novotni 2006. 352-356. p.

The paying agency is called the Agricultural and Rural development Agency (referred to as Agency) in Hungary

This is a uniform administrative authority, which supplies all tasks related to the payment of agricultural supports, independently of the fact, that the support originates from rural development or from guarantee fund. The Agency establishes a formula sheet, supplies the support applications with a reception declaration, and informs the producers about the supplied data. After that, by means of the application of Agricultural Parcel Identifier System⁴ (APIS), the datas of the handed support applications are compared to the datas of the APIS System.

If the difference is under 5%, then the Agency modifies the support application officially, and pays the correct sum.

If the difference exceeds 5%, it carries out physical control, or charge a participating organization⁵ to carry out the physical control.

If the over demand in the course of the physical control can not be resolved, it calls the parties to demonstrate their land-use and proprietary quality.

If there is a collision between the two claimants in this respect, it suspends the procedure till the court's final decision. If the size of the really used area come to light, then the Agency makes the support decision in favour of his/her name, and the payment occurs to the given bank account number.

The important participant of the procedure is the **petitioner**, who may be the real user of the area, and acts in a Client register. He presents the support application, gets and checks the feedback, and receives the controllers making physical control, arriving with the credentials of Agricultural and Rural Development Agency. In case of need, with the abstract of the leasehold register, or with title deed, he/she proves his/her quality of land user.

The potential participants of the procedure are the experts of the chamber of agriculture or the producers' support network, who take part in the determination of units given to the real users of lands according to a public contract or to another agreement.

In Hungary 90% of the procedures have an administrative character that the possibly emerging property and use debates may turn into judicial process.

In this case the court may be a civil or an administrative court. In case of a suspended procedure it is generally a civil court which acts. Yet, if the Agency makes the decision, an administrative court may intervene in the case.

⁴ SZILAGYI János Ede: MEPAR In: Csák Csilla: *Agricultural law* 185-186.p.

1. 2. Submission of tenders of entitlement for support and the adjudication of the single payment.

1. 2. 1. Are they „general” simplified support rights?

Time limits, regulating requirements, conditions of entitlement allocation, the definition of a payment entitlement, corresponding?

During the execution of Single Area Payment Scheme (SAPS), the support entitlement is for a year, and is necessary to request again year by year.⁶

For the given year the order of the Agricultural and Rural Development Ministry, brought in the spring of that year, regulates the valid conditions of support of the given year. As all of the newly acceding countries, Hungary also received an opportunity to complete the union supports from local budget.

In our country some emphasized agricultural areas ,apart from union SAPS supportings, obtain domestic additional supports (top-up) yet, of which detailed rules are implied in the order of Agricultural and Rural Development Ministry published in the beginning of the year, and are generally valid for 1 year, and of which partial rules I review in the point 1.1.2.⁷

The conditions of giving support are implied in the regulations of „correct agricultural and environmental state”, that is controlled only in the course of the physical controls of the Agricultural and Rural Development Agency.⁸

The right to be paid is only bound to the legally binding of decision; there is not a separate entitlement.

In the development of creating the criteria, the legislation of Hungary is determined considerably by the accession to the EU.

The determination of the definitions and condition systems of „Correct Agricultural and Environmental state and „Correct Economical Practice” is attached to the community support system.

⁵ See more in: OLAJOS István: Public law contracts, In: Csák Csilla: *Agricultural law*, 343-347.p.

⁶ See in 28/2007 (IV.20.) Agricultural order

⁷ See in: 29/2007 (IV.20.) Agricultural order

⁸ Act XVII of 2007.

From the legislation of the Common Agricultural Policy (CAP), the 1257/1999/EC (about rural development supports) and 1782/2003/EC (direct supports) Council orders are worth considering.

The agricultural producer coming in for a direct payment based on the Council order 1782/2003/EC is liable to observe the farming requirements taken in the order, additionally the regulations concerning the good environmental and ecological state of agricultural territories.

The farming requirements mentioned in the III. annex of order 1782/2003 are established on the following areas: on the one hand public- animal- and plant health, on the other hand on the areas of environment and tolerance of animals.

The Member States insure the maintenance of all agricultural territories, particularly the good agricultural and the ecological state of crop lands extracted from the production. Therefore, the Member States (in Hungary it is the order extending the rural development supports- about the definition of the condition system of „Correct Agricultural and Environmental State” and „Correct Farming Practise” accomplished to the requirements of single area payment supports and rural development⁹) based on the framework included in the order, define at national or regional level the minimum standards, relevant at good agricultural and ecological state, considering the unique peculiarities of the affected areas, as the soil- and climate relations, the existing farming systems, the land utilization, the crop rotation, the farming practice and the agricultural firm construction.

All of this does not offend the regulations applied to the correct farming practice in connection with the 1257/1999/EC order, and the agricultural- and environmental protection measures applied above the reference level of the correct farming practise.

If the agricultural producer in consequence of directly imputable act or result of omission does not observe the farming requirements taken in the law, or the regulations concerning the good agricultural and an ecological state, the whole sum of direct given payments in the calendar year of violating the regulations, has to be reduced or deleted. The reduction of supports, or the exclusion from the circle of the supports is applicable in that case, if the breach of regulations is related to the a) agricultural activity or to the b) agricultural firm's territory (including the parcels under conditioning)

The aim of the order of Agricultural and Rural Development Ministry, is that the minimal farming and environmental requirements, prescribed in national and european union measures, and necessary for the conditions of single area payment, or the rural development supports, have to be defined.

⁹ 4/2004.(I.13.) Agricultural order

The system of requirements of „Correct Agricultural and Environmental State”, necessary for the recourse of single area payment supports, is included in the 1. annex of the order.

The agricultural and a rural development minister may establish additional conditions apart from the particular regulations to the recourse of supports. The scope of the order expands on the agricultural producers, resorting the supports, who is liable to use the requirements defined in the order on the whole area of his economy in case of claiming the relevant support.

The fulfilment of the support aspects (minimal requirements) has to be considered and appraised on the base of point system defined in community and national legislation.

If in case of the fulfilment of viewpoints, the percentage rate of the difference of the realised and the accessible points correlated to the accessible points of program, is not zero, and

- a) that is at worst 10%, a warning letter have to be sent for the agricultural producer,
- b) that is at worst 20%, 10% has to be deduct from the sum of the support of that year,
- c) that is at worst 30%, 20% has to be deduct from the sum of the support,
- d) that is at worst 50%, 50% has to be deduct from the sum of the support,
- e) that is at worst 60%, 100% has to be deduct from the sum of support,
- f) if it exceeds 70%, the agricultural producer has to be excluded from the program .

Since the supports are concerned the users of the area, same requirements apply to the users of areas with different titles (for example: property, lease,etc.)

1.2.2. „Special” support entitlement?

What are these special rights? Omission/invalidation rights? Are they rights united again? Are they the rights from the national reserve?

The cultivational and animal husbandry supports, which compose the base of national top-up support, and the agro- environmental economy aim programs rated among the rural development supports, belong to these special rights.

The top-up supports can also be grouped into cultivational and animal husbandry supports. The supports can be: separated from production, partly separated or partly bound to production, or bound to production.¹⁰

¹⁰ Supports separated from production are for example: bull and ewe husbandry supports in special areas; partly separated and partly bound supports are: cultivation of Burley and Virginia tobacco, female cow keeping, cultivation of rice; bound to production supports are: ewe keeping, some field vegetable production etc.

The system of agricultural-rural development supports, forming a united system in Hungary, expands on the tillage cultivation¹¹, the lawn farming¹², plantation growing¹³, aquatic habitats¹⁴, and the extensive livestock production.¹⁵

What are the problems of definition of the support entitlement in special cases in the period of the reference?

The time limit usually acts on the production period, which means the quota year generally. Among the agro-rural development programs are such an aim programs, which suppose more year continuous farming, so the support entitlement is one-year long (Long-term fallowing, tillage cultivation on sensitive character areas, lawn farming, the formation of aquatic habitats, tuft, marshes, the nurture of moorlands aim programs).

The general conditions in case of top-up supports: taking the risks of the production, the registration of the keepers of animals into the Uniform Identification and Registry System (UIRS), in case of support not bound to the production, the reference period established by the Agency, that the people, who won quota in the previous or in the year of the support, may obtain.¹⁶

On the areas with an adverse aptitude, the condition of the support is the qualification of the area, and a 5 year long undertaking of obligations concerning the continuation of the production.

The „Correct Farming Practise” prescribes special arrangement in the framework of agro- and environmental economy.

The most important problem is that in the practice of the Agency the definition of the transfer of firm can not be interpreted. Under the firm only soil and livestock are meant and not set of things including the entitlements to support.

There was a case of a dairy-farm settlement for sale, in which the salesman with a reference period before the start of the quota year sold his/her livestock, settlement and reference period.

The registration into the UIRS and into the Registration System of Estates.

The Agency did not pass a resolution until the start of the quota year, and asked the fulfillment of the milk quota from the previous owner. After the owner neither with a settlement nor with livestock could perform according to the quota, the Agency distracted 20% of the quota, and handed over the decreased quota to the customer one year later.

¹¹ Inside the program can be: basic, farming, long-term fallowing, production of extraordinary field vegetables and plants etc. aim programs

¹² The aimprograms inside the program: basic, ecological, lawn farming in sensitive natural areas

¹³ Integrated, ecological, extraordinary plantation growing aim programs

¹⁴ The development of extensive fishpond, reed farming, the formation of aquatic habitats, tuft, marshes, moorlands.

¹⁵ Ecological livestock production aim programs, the support of keeping of native animals.

Do those agricultural employees (entrepreneurs) get support, who merely keep their lands in „good agricultural and environmental condition” (in a state)?

Yes, because this is the only condition of the attain of Single Area Payment Scheme.

1.2.3. The administration and the single payment support entitlement.

Does the administration intervene in the course of the procedure of selling, transfer, union etc.? And in the fixing of the sum of the single payment support?

The role of the administration have not taken shape in this process yet. Really serious practice among the top up supports belongs to the reference period entitlements, and to the system of the replanting rights in the wine section. The reference period entitlements are attached to the system of the quota regulation generally, so in case of milk, sugar, and tobacco the competences can be different.

The role of the administrative organism- in this case the earlier mentioned Agricultural and Rural Development Agency- is manifested in the handing on of the entitlement attached to the milk quota, which figures in a quota register of the Agency, and of the union quota handed out to Hungary.(in 2005 it meant 1947 280 tonnage).

The Agency registers the quotas distributed among the producers, and the quotas stayed in the quota-reserve, from which the producer who owns quotas and better sale opportunities, can buy, or can lease.

But it is possible, and means the suitable utilisation of the quota by the person, who gives leasing, if he/she gets the right for marketing from another producer.

The 5% of the Hungarian national quota is divided among firms marketing directly for the consumers, this is the „direct sale” quota.

To the sale of the quota, and to its leasing, the approval of the Agency, as an administrative organisation, and the signing into the quota register is necessary.

The regulation of the tobacco quota differs from the milk quota, there is not a „sale reserve”, so the whole quota consists of the quotas giving to the producers and the quota reserve.

After the making of the order about the tobacco producer groups¹⁷, top up supports can be claimed only through these organisms may demand, so the producer group will be entitled to quota. In case of sugar quotas the production entitlement is divided between the big sugar

¹⁶ 4-6.§. of 29/2007 (IV. 20.) Agricultural order

¹⁷ Formed by the 56/2003.(V. 23) Agricultural order

industries and their firms by the Ministry, and to the transfer, the buying of the given firm is necessary, but to the transaction the consent of the Ministry is also necessary.

Generally it can be said, that to have a support, the registering of the rights with a financial value are central regulated, and the minimal condition of the transfer is the administrative contribution of the deal, but the Hungarian administration does not interfere into the price, and into the person of the transferor.

Has the administrative practice significance in the agricultural practice or in the national agricultural right? (the definition of the agricultural function, the development of the agricultural properties, the formation of agricultural companies...)

The administrative practice defines the agricultural right and its role considerably in Hungary.

Our administrative authorities have gone through an important change, recently. Nearly 15 organizations, with independent function, and different degree of decentralization were unified in a big institution with a common management on regional level; where the responsibility of the management, and the decision competence is concentrated in one person's hand. Therefore, organs with big traditions and good work, turned to be the victims of the reduction of the public administration's expenses.

The growing tasks can be done with difficulties by the remained employees of public administration, and the managerial decision cannot be prepared adequate.

So the entrepreneurs try to avoid in many cases the direct contact with the agricultural administration, and keep the contact only with the Agency dealing with supports, which help their work financially. This system will employ the traditional agrarian-management farm support system with difficulties, which is the condition to keep the requirements regarding food coming from the EU, animal public health and plant health.

Has the appearance of the single payment support system an effect into the organization of an agricultural sector: vocational or professional groups?

The introduction of single payment support system did not make essential vitalising impact on the Hungarian agricultural sector.

In addition to the wine village system, which can be said traditionally strenght, and has independent administrative rights, the Chamber of Agriculture, after the obligatory abolition of the membership, became an empty organisation, which strives for the maintenance of its existing capacities by participating, as a delegated task, in the physical control of the single area payment support.

How does the administration treat the applications filed for the single payment support in case of new or young agricultural employee? In cases, where an administrative permit is necessary to the foundation, is the awarding of the support the condition of the permission?

How is the change organized? Is it efficient? In what measure?

In Hungary the support of young smallholders, as the support for life start, and for taking over the economy, performs in the New Hungary Rural Development Plan, but about the support of the plan a concrete order has not been established yet.

In the form planned currently, the economies created fresh may get a support for capitalising the economy, and for the development of the minimal infrastructure. According to our opinion this support form (SPS) with farm basis, may have reason for the existence, if a support right reserve is available,

and if we talk about received economy, than it has to begin with a real support entitlement.

The validation of agricultural political aims

By forming of the domestic model, the following agricultural political viewpoints shall prevail:

- the promotion of the development of agricultural production by strengthening the producers' safety by means of stabilizing the present leasehold relations, of balanced land market's maintenance,
- the maximum respect of the preference of animal husbandry sections,
- the stimulation of the structural correction concerning the market relations
- the creation of full harmony with the New Hungary Rural Development Program.

Hungary has opportunity to validate the national support-political aims according to the legal provisions.

There has already been reached a consensus about the considerable part of the choices demanding simple decisions, i.e.:

- the minimal 1 hectare of firm size,
- the circle of the sections joined to the production,
- the base period.

Some questions, concerning the 27 Member States, are open yet, i.e.:

- the rules of sale of entitlement with or without land,
- the separate support of special species (like the famous *Hungarian cow*) based on Article 69.
- the national decisions concerning the application of „10 months rules”

- the measure of traditional national reserve and the rules of its request

The definition of the support entitlements in the year of the conversion

The support entitlement distributed in the first year of SPS, consists of two components.

The regional component is the one to which is entitled all the land user, registered in that year, met the entitlement criteria and has appropriate land.

The other is the additional component which differs according to the farms.

If we suppose, that in 2008, in the last year of SAPS system, the SAPS distributes the SAPS frame on 5 million hectares of area then this means support of 128,2 Euro/hectare.

It is reasonable to set the SPS regional component in a way with regard to agro political aims in order to be closer to the 128,2 euro/ha SPS in 2008, in 2009 too.

The SPS top up works fundamentally different compared to SAPS top up.

The SPS entitlement of producer, economy, and firm constitute the basis.

The national supplement is the co-financing of the EU money, where the measure of national components shall stay within 30 % of the nominal value of the entitlement.

The national complement all titles separately, with maximum 30 % of supports concerning EU 15 between 2009-2010, and in 2011 by 2 %, in 2012 by 10 %.

supplement of component joined to the production is simple.

1.3.Proof and sanctions

1.3.1.The proof of the fulfilment of the requirements bound to awarding of SPS.

Who controls/examines the fulfilment?

The formal control of the applications is done by the Petitional Department of county office of Agricultural and Rural Development Agency.

If the requested area does not suit, it gets to a rejection formally. The producers/areas selected from the applications based on a sample are controlled by the the colleagues of county field controller department or the Institute of Geodesy, Cartography and Remote Sensing (FÖMI). This can be find in the 12.§ of the 28/2007 (IV.20.) order of Agricultural Ministry.

The control of the content of the applications happens centrally: after the sealing of the formal control the requirements in national blocks with a cross-control is compared to the measured areas.

What is the legal nature of the proof?

The device of the proof is the application handed in. In case of an additional support: application, contract, declaration of purchasing, expertise.

What is the practice of the proof? What are the results of the proof?

The FÖMI prepares air shot in the different periods of the financial year, in the increase phases of the plants, and these are compared with datas of the application.

The experts of on-the-spot investigation control the areas on the spot with a GPS, and the made plant culture. The results of the control get into the informatics system used by the office, which evaluates it, and uses sanctions in the cases of deficiency. See in the 13. and 15.§. of 28/2007.(IV. 20.) Agricultural order.

How is the observance of „good agricultural and environmental condition” examined? How is the correspondence examined in generality?

By the on-the-spot investigation and by the FÖMI. After these controls they make a correspondence examination with a program used by the Agency.

1.3.2. Sanctions**Who imposes it?**

The Agricultural and Rural Development Agency.

What is the legal nature of the sanctions?

It has punisher character: fine, the distraction of support, exclusion from support.

On a what kind of basis are the sanctions valid?

The 13. and 15.§. of 28/2007. (IV.20.) order of Agricultural and Rural Development Ministry dispose about the measures and application.

2. The role of the court in the debates concerning the single payment support entitlement.

The review of a decision affects the area of administrative law. The branch office sends the judicial statement of claim to the Department of Remedy. There are 300-400 legal proceedings yearly. With the introduction of SPS- as generally with the introduction of any new system- the number of the legal proceedings grows by leaps and bounds.

SUMMARY

About the report of Hungary with title: The introduction of the Single Payment Scheme into the administrative and judicial system of the Member States

The farm support system is planned to be introduced in 2009 in Hungary. In the completion of the report we analysed the Single Area Payment Scheme (SAPS), which has been adopted since 2004, and its execution.

An important participant of the support system is the paying agency, which is called in Hungary the Agricultural and Rural Development Agency, which establishes a formula sheet, and directs the Integral Administrative and Controlling System. (IACS)

Another important participant is the petitioner, who files the support application,, and supplies datas about the land utilizaton, the third important participants are the organisations controlling the petitioner and the participating organs.

The petitioner makes a statement in the support application about that, in his economy he observes the regulations of „good ecological state”. The Agency controls this by the comparasion with datas of the IACS, or by distance perception, and by on-the-spot investigation. In the controlling participating organisms can take part, who act as the representative of the paying agency, in its name, and the agency is responsible for their activity directly, their inner relations are regulated by their civil contract or administrative cooperation agreement.

The land based SAPS support can be complemented with national „top up”support, which can be kept by the countries acceding in 2004, until 2013 because of the formation of doubled CAP (Common Agricultural Policy) So these supports in the first period of the SPS will be presented in Hungary. The „top up” supports have two main kinds.The supports with a market basis, which can be bound to production, partly separated from production, or separated from production.

And we can also talk among the rural development supports about agricultural- envirmnt economy supports, which can establish within programs of tillage cultivation, lawn farming, plantation growing, aquatic habitats, and extensive livestock production, additional aim programs.

Relevant to these programs the regulations of „ Correct Economical Practise” have to be observed, which contains more complex regulations than the good ecological state, and has different support forms.

Since 2006 a unified office, the Agricultural Management Office helps the work of the Agency, but this office can not always concentrate its self-employed departments in a unified management system.Among the civil corporations settling down in the self-organization levels of the Hungarian management system, the wine village system, supplying administrative tasks, is the most considerable, the Chamber of Agriculture providing with more local organisms and supplying administrative tasks by the annulment of the obligatory membership, looks small beside this.

In connection with the supports 300-400 court cases arises throughout the country, which procedure happens almost always in Capital Court as a result of the contract practise of the Agency. There is a relatively little number of court cases, because according to the decision of the Hungarian Constitutional Court, in the tender form announced agricultural support cannot be sued for.