

# Administrative intimidation and payment reduction frustrate innovative farmers under the European Agricultural Fund for Rural Development

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## Abstract

The article discusses how to put in perspective what is perceived by some project grant applicants of operational group projects operating within the late Rural Development Programme 2 (RDP-2) project grant funding in 2013-2015, as administrative intimidation and discouragement of the Dutch national payment agency. We may learn from the conclusions in view of the operational groups under the upcoming EIP-Agri support aid and other RGP-3 grants.

A guideline to this article is a phrase at the website [ec.europa.eu/agriculture/cap-funding/index](http://ec.europa.eu/agriculture/cap-funding/index): *“The European taxpayer rightly expects that these sums [- of the EU general budget for Agriculture and Rural development -] are correctly spent.”* In this article we discuss whether the EU taxpayer (and any other EU resident for that matter) should be satisfied with how the payment agency has applied the project grant payment reduction. As example we take the results of the affirmation procedure of the grant for Knowledge exchange network projects in the Peat Colonies area, under the late RDP-2 (2013-2015), in which 62 projects were granted with max. € 55.000,--.

In view of what EU taxpayers rightly may expect of the agency, the procedure for the aid applications of EU funds seems deviated from the purpose of the regulation. The image of a stimulating (though immature) regulation with a purpose-focused procedure, which resulted in remarkable effective and efficient knowledge exchange developments in the years 2007-2010, is gone. Instead the image has turned into an unreliable time and resources absorbing regulation, with such administrative burden, that potential project leaders are reluctant to encourage farmers to apply – even if they do not fear important payment reduction, like the former government organisations (fgo's): research institutes and extension agencies. The applied payment reductions led – of course, to additional societal unease. Moreover: the project successes in terms of knowledge exchange towards innovation are not celebrated anymore as they were in the early years of the RDP-2, because the focus has deviated towards the disadvantages and negative side effects.

Aside, the article reveals a reverse correlation between the projects that were allowed communication before the final decision about the payment and the applied payment reduction. Fgo's seem to suffer disproportionately less from the newly implemented communication policy of the payment agency. The fgo's are nonetheless, just as critical as other project leaders about how the payment agency handled the procedure.

A reintroduction of the insights of the policy implementation notes of 2007 about communication could reinstall a satisfactory system from the perspective of the EU taxpayer, in particular, if complemented with a sound and longer-term coordination within the payment agency. It is recommended to reinstall such concept as a control system for the RDP-3 grant procedures. Besides, the procedure for administrative control should be improved substantially, and lined up with the EU precedent judgements.

## 1 Introduction

On formal and social media appear regularly news items about incorrect uses of EU subsidies. Those abuses seem to proliferate, despite many measures that have been taken. On the other hand the EU [and by extension national authorities] shows itself an increasingly unreliable partner towards applicants of grants, who honestly strive after the objectives of their projects and budget their affairs as effective and efficient as possible. This phenomenon has emerged among others with funding programmes for stimulating innovation in agriculture. In this article we focus in particular on an example about knowledge sharing activities and cooperation in operational groups.

In any procedure for granting projects, there are two key decision moments: the granting before the start, and affirmation after the execution. The quality of the decision before the start depends largely on the competence of the consulted assessors to link the submitted project plans to their knowledge of the state of the skills in practice. This competence is determined by a combination of the individual qualities of the assessment team and the specific circumstances that frame the assessment procedure. The quality of the affirmation decision after ending the project depends on the competences of the agencies, the quality and coordination of the procedures, the distribution of responsibilities and the access to adequate juridical support.

### 1.1 The aim of this article

This article explores the recent incidents with unexpected negative affirmation decisions in one of the regulations under the [European Agricultural Fund for Rural Development \(EAFRD\)](#), and their effect on the reputation of reliability of the government in The Netherlands. Since the national payment agencies have the habit to refer to the EU Regulations, Directives and Controls as the source for the unexpected negative decisions, a radiant network of people around the applicants, both outside and inside the government have turned to mistrusting the EU grant sources for rural development.

The article discusses how to put in perspective what is perceived by some project grant applicants of operational group projects operating within the late Rural Development Programme 2 (RDP-2) project grant funding in 2013-2015, as administrative intimidation and discouragement of the Dutch national payment agency. We may learn from the conclusions in view of the operational groups under the upcoming EIP-Agri support aid and other RGP-3 grants.

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## **2 Grants and affirmations to farmers' knowledge network groups in 2007-2013**

### **2.1 A grant supported tender regulation for farmers' knowledge network groups**

Under the Rural Development Programme RDP-2 (2007-2013) the Dutch government had decided that farmers' knowledge network groups could be supported as collectives of businesses that engage in knowledge development activities outside institutes, and should therefore be framed in the knowledge dissemination chapter of the 7<sup>th</sup> Framework (EC Council Regulations N° 1857/2006; N° 1698/2005; and N° 1257/1999).

The network group activities were perceived within this frame as a kind of public-private cooperation in knowledge dissemination for innovation, in which farmers pursue innovative knowledge development through knowledge exchange with scientists, and knowledge sharing among each other, and with experts and others.

The projects were funded for the aim of striving to find new ways of diminishing or solving problems, which reduce the productivity or sustainability in agriculture. The project initiatives should come from, and be developed by the farmers. This concept is similar to that for operational groups in EIP-Agri in RDP-3. Our network groups seem in fact a kind of pioneers for the current EIP-Agri operational groups. Consistent with the conceptual formula, our network groups worked out and executed their project plans at the hand of progressive insights during the course of the project period, guided by an independent process leader. During the project period, adaptations to the project plan were in principle allowed unlimitedly within the project budget, as long as the central project aim was still pursued.

The Knowledge exchange network projects regulation was an innovative instrument under RDP-2. However, there was no clear internal handout within the government about how agency workers should deal with the implications of this type of projects. The payment agency needed space for adjusting the procedure while executing the administrative control, to make sure that the procedure would encourage and support innovation in agriculture and to make the administrative burden accessible. According to the policy implementation notes under RDP-2 in 2007, (made by the former agency [DR] before the national agency reorganisation in 2014) any payment reductions should therefore only be applied after formal and informal communication with the applicant. Since a large part of the regulation rules were so called conditions, the primary purpose of the communication was to allow the applicants to correct mistakes and adjust the application to any conditions that were misinterpreted or overlooked. Thus the administrative burden was also kept accessible for both the applicants and the agency; all of course, within the limits of integrity and fairness. The procedure aimed at limiting any enforced payment reductions to applicants of projects that evidently strive after the project objectives. In the information to grant applicants, this policy outline about communication was continued during the RDP-2 period (2007-2013). In this way the general focus would stay on the content of the projects and not on the administration – a common problem with many EU-related grants.

### **2.2 Shifting trends in the behaviour of the agency**

In the early years (2007-2010), the emphasis of the administrative critics were focussed on the budget of the initial project plan. Specific expenses were refused in advance, if they did not fit well enough with the conditions. Due to the ongoing plan adaptations during the execution, this meant in fact that there was less money to spent during the project execution than the desired budget. However, the advantage for the project participants was, that after the expenses were made, the affirmation of the grant payment was merely a formality.

Gradually, and (probably) directed by penalties through the biyearly EU account controls, the administrative control shifted the emphasis in the later years (2013-2015) towards payment refusal, reduction and reclaim of the expenses made, after the projects were finished. Payment refusals or reductions were initially limited to a few hundred Euros, and/or faded (almost) completely away, after final communication with the agency about the legitimacy of some specific expenditures. Recently, the number of projects facing payment reduction, the amount of reduction, and the reduction percentage of the requested payment, has substantiated further.

Whether these payment reductions and refusals were rightfully imposed, is a yet unsolved legal issue, in objection and appeal procedures, which may take until course of 2016 (or later) to conclude. In the meantime the general atmosphere among (potential) applicants has shifted towards mistrust in both directions: agency workers radiate the message that project applicants are increasingly defying the boundaries of the regulations, whereas some farmers organisations and extension services (and even some agency workers) are now warning openly against applying for any EAFRD grant funds in future. A group of representatives of various agricultural organisations has even officially raised the unprecedented question, whether it is possible to obtain a government guarantee or a private insurance against (in their perception) the unpredictable and unreliable behaviour of the government agency.

### 2.3 In view of RDP-3 (2014-2020)

Overlapping the end of the RDP-2 period, since 2013, a Model Regulation for the implementation of RDP-3 is under development in the Netherlands, based on an ex-ante evaluation. Already both the RDP-3 policy text and the Model Regulation gave rise to extensive disputes. Subsequently, decisions about opening grant funding opportunities for new projects were delayed over and over and are for the major part not yet foreseen until after the summer of 2016. The first grant opportunity for EIP-Agri proposals of operational groups is also postponed, at least until then.

The main reasons for reticence in relation to the Model Regulation RDP-3 are:

- a) ... that parties do not (dare to) make use of these grant regulations because they (fear that they) cannot take the risks (notably about payment reduction) that the application for funding entails, and/or
- b) ... that parties expect that a grant application in the context of this regulation will lead to all sorts of complex administrative procedures during the execution – and could be followed by legal procedures afterwards.

Ad a): Some organisations have explained publicly that the reason that they do not (dare to) make use of these subsidy regulations does not only has to do with the unpredictability of the subsidy payments, but also with the other financial conditions. The subsidy percentages as such are already hard to meet. At closer look, there is a good number of inextricable cost items excluded from the grant. On top of that, the method of calculating "staff costs" of organisations is tight for granting in the Model Regulation RDP-3. For some relevant parties in this field it has thus become (nearly) too complicated to construct a suitable project budget with the available sources.

Ad b): Since 2013 until now, the introduction of RDP-3 has costed already a load of employment (whether or not directly paid) of policy and agency workers, accountants, administrative managers & consultants, and lawyers; even before any tender grant has opened up. And after, private subsidy advisors will also claim their share of the funds. These types of surrounding employment had already increased in the context of the final years of RDP-2, for which, the administrative

burden had been systematically under calculated by the government. The balance with expenditures for the actual aim of the grants, however, seems to get lopsided for RDP-3. This gets topped up with the expected increase of administrative and legal procedures related to the multitude and imbalance of EU and national rules during the project executions under the Model Regulation.

## 2.4 International perspective

What is happening in the recent years in The Netherlands is not unique in the EU, concerning incidences of refusal, reduction and reclaim of granted funds for projects by the national payment agencies, as well as concerning the increase in administrative burden in the context of EU regulations, although there is substantial variability between Member States, because of their specific programmes, agency structures, regulations and judicial system.

## 3 The context of EU funding

### 3.1 The concept of proper use of EU tax money

According to the communication on EU websites, EU taxpayers rightly may expect that the aid applications of EU funds are properly done. In the communication the EU evokes that it is important that management and checking systems are in place and that irregular payments are detected and recovered. Under the basic rules for the financial management of the Common Agricultural Policy (CAP), the European Commission is responsible for the management of the [EAFRD](#). Based on the principle of shared management, the payment making to beneficiaries is delegated to the Member States, who themselves work through national or regional payment agencies. Prior to making payments, these agencies must, either themselves or through delegated bodies, satisfy themselves of the eligibility of the aid applications. The exact checks to be carried out are outlined in the sectoral regulations of the CAP and vary from one sector to another. The expenditure made by the payment agencies is afterwards reimbursed by the EU Commission to the Member States; in the case of EAFRD, on a quarterly basis. The reimbursements are, however, subject to subsequent corrections, which the EU Commission may make under the clearance of accounts procedures ([Cap-funding](#), 2013).

### Conclusion

The EU communication implicates that the costs for any aid application can basically be divided into the costs for management, checking and correction, and the actual payment for the policy purpose. So at the level of 'properly done', the EU taxpayer may first of all expect that management costs and purpose directed payments are in balance. Secondly, the EU taxpayer may also expect that irregular payments are detected and recovered.

### 3.2 EU frame for regularity in aid application of EIP-Agri

The European Innovation Partnership for Agricultural Productivity and Sustainability (EIP-Agri) provides grant support to projects under [EAFRD](#) [so called CAP 'second pillar'; Regulation 1305/2013; 2014-2020 (3)], which show innovation in linking research knowledge with farming and forestry practices. The EU's rural development policy is worth €100 billion from 2014-2020, with each EU country receiving a financial allocation for the 7-year period. This will leverage a further €61 billion of public funding in the Member States, as well as a variable addition of private co-financing, and an unknown addition of unaccounted administration burden for applicants and advisors. There are 118 RDPs in the 28 Member States for 2014-2020. EIP-Agri serves under the national RDP and supports operational groups with funding to projects that aim at finding new

ways of diminishing or solving problems, which reduce the productivity or sustainability. The project initiatives should come from, and be developed by, farmers or foresters.

Basically any EU grant payment should comply with the EU competition law, which nowadays is derived mostly from the Treaty on the Functioning of the European Union (TFEU or [Lisbon treaty](#), 2007) Articles 101-109, as well as from additional EU Regulations and Directives. Next, an EU grant payment should also comply with national regulations and directives of the specific Member State. The combination of the EU Regulation and Directives and those of a specific Member State do not always add up to a consistent legal frame.<sup>i</sup>

In the end, it all comes down to the issue of ‘irregular or ineligible payment’. The EU definition of ‘irregularity’ is laid down in the EU Council Regulation (EC, Euratom) No 2988/95, Article 1, cl. 2:

‘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.

In effect the issue is thus shifted from the term ‘irregularity’ to the term ‘unjustified item of expenditure’; i.e. to the (in)eligibility of the expenditure in the context of the legal frame for a specific policy purpose. In this perspective there are four available options (**Tabel 1**):

**Table 1. Four options for fitting policy purposes with legal frames**

	<i>Fitting with policy purpose</i>	<i>Unfitting with policy purpose</i>
<i>Fitting with legal frame</i>	eligible	(in)eligible?
<i>Unfitting with legal frame</i>	(in)eligible?	ineligible

So here the issue is narrowed down further to the question whether an expenditure is justified or not, in case the eligibility of the expenditure is disputed for not fitting (well) with either one of two: the legal frame or the policy purpose. How big an issue for dispute this may be in practice, depends on the gap between the policy purpose and its balance with the legal frame of Regulations and Directives. According to the EU communication the issue should so be taken in the perspective of what the ‘EU taxpayer rightly may expect’ ([Cap-funding](#), 2013).

Somewhat confusing in this perspective is the fact that in EU Council Regulation No 1122/2009, Articles 80 & 81 the terms in use are ‘undue payments’ and ‘undue entitlements’. It raises the confusion, whether the terms ‘ineligible’, ‘unjustified’ and ‘undue’, are all supposed to mean exactly the same thing, or not.

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<sup>i</sup> The EU competition law is also increasingly intertwined with intellectual property, such as copyright, trademarks, patents, etc. In a contribution of the author to IFSA 2014 in Berlin some confusing implications are discussed of the intertwining of intellectual property of project authors and the funding applications of farmers’ network projects ([Commandeur](#), 2014). In the USA it is believed that promotion of innovation through enforcement of intellectual property rights may promote as well as limit competitiveness (U.S. Dep’t of Justice & Fed. Trade Comm’n, 2007; Suzanne Scotchmer, 2004).

## Conclusion

We understand that the EU taxpayers (and all other EU residents for that matter) rightly may expect that the aid applications of EU funds are properly done in the perspective of the policy purpose, like EIP-Agri projects that lead to innovations in linking research knowledge with farming and forestry practices. The eligibility of an expenditure fitting only with the legal frame of Regulations and Directives should not dominate the decision whether an expenditure is justified under the grant conditions. The decision should be dominated by the perspective of the policy purpose.

### 3.3 Responsibility, legitimacy, fairness and consistency

The legal texts, relevant for the [EAFRD](#) and the implementation of the national rural development programmes (RDPs) in 2014-2020 can be found through the EU website: [Rural Development Legislation Index, 2014-2020](#). They consist of the “Common Provisions” regulation of basic rules, 4 main regulations (N° 1303/2013; N° 1305/2013; N° 1306/2013; 1310/2013; total: 290 pp), and 4 delegated acts and implementing acts (N° 640/2014; N° 807/2014; N° 808/2014; 809/2014; total: 120 pp). Further on, the legal texts, which are relevant for the national RDPs are given in national Regulations, Directives, Decisions, Clarifications, etc. For most applicants this is too much to comprehend. In many EU Member States a precedent is given, that the national Regulations, Directives, Decisions, Clarifications, etc., should incorporate the relevant EU Regulations. If not, the applicants do not have to be aware of them.

The relevant Regulations and Directives of the Member States can be classified in classes of rigidity, such as requirements, conditions, legal interpretations, accounts, formats, guidelines, etc. These terms are sometimes hard to translate in the various European languages. Here is a short overview of the classes:

- a. Requirements: you have to follow this rule, unless you can provide convincing evidence that it was beyond your responsibility that you have behaved otherwise;
- b. Conditions: you have to follow this rule, although unforeseen contingencies or evident mistakes may provide a fair excuse for having behaved otherwise (and may be corrected and adjusted if necessary or beneficiary);
- c. Legal interpretations: you have to follow the given interpretation of this rule, unless the interpretation contains an inconsistent restriction to the basic rule as such;
- d. Formats: handouts, designed as schedules, which you are required to use for providing specific information about your project, although it is not required that your background evidence is in line with these formats;
- e. Other accounts, guidelines and clarifications: without legal status, meant as helpful tools for understanding.

Among EU Member States the legal construction of requirements, conditions, juridical interpretations, guidelines, formats, accounts, etc., may differ substantially. In some national legal systems there is a lot of effort put into the issue of fairness and confidence (like in The Netherlands), whereas in other countries there are extensive schemes of legal interpretations and guidelines (southern Europe). In the implementation of the [Lisbon treaty](#) this topic is merely avoided, by stating that all national laws should be applied in addition to EU Regulations and Directives. However, that statement does not provide any solutions for contradicting conditions and guidelines of the EU and the national governments under the EAFRD, nor does it give clear handouts on how the concepts of responsibility, legitimacy, fairness, consistency and confidence should be applied to any actual grant applications.

To complicate things further, terms referring to project 'purpose', 'aim', 'objectives' or 'goals', or to distinguish 'frames', 'programmes', and 'projects', as well as terms like 'applications', 'adaptations', 'actions' and 'activities' are poorly defined and certainly confusing in their translations into the various EU languages. Consequently it is hard for anybody, agency worker or other, in any country to decide (consistently) whether a certain EU or national Regulation Article or Directive Account is appropriately applied to the expenditures in a specific project, or not – and whether the combination of all the regulations was well applied in the procedures.

In the chain of control mechanisms EU accountancy control is applied biyearly to evaluate the work of the national agencies. And then again questions arise, about how to decide (consistently) whether a certain EU or national Regulation Article or Directive Account is appropriately applied to the expenditures in a specific project, or not – and what procedure should have been applied. In addition, questions raise like: how to extend consistency towards the accountancy evaluations in other EU countries, in which the national judicial systems are based on (sometimes entirely) different legal concepts.

### **Conclusion**

We understand that all applicants (as well as EU taxpayers) rightly may expect that the aid applications of EU funds are done by well instructed payment agencies – and well instructed administration workers within these agencies. Within the EU the structure of instructions is still incomplete and unbalanced, due to lack of juridical definitions (and translations) at EU and national level, of an increasing amount of confusing key terms, lack of precedent judgements, contradictions between EU and national regulations and incomparable judicial systems in the EU countries.

## **4 Example: subsidy reduction in the context of the Knowledge exchange network projects regulation for the Peat Colonies area under the late RDP-2 (2013-2015)**

In **Table 2**, the first column ranks the 62 granted projects for the applied payment reduction percentage after project affirmation. The other columns reflect the quality assessment of the project plans, the involvement of former government organisations (fgo's) in the project leadership, the requested payments, the applied payment reduction, the reduction percentage and the motivation given by the agency for applying the reduction.

The projects were executed from mid-2013 (starting date varied) until (ultimately) the end of June 2015. Publicly it was communicated that the deadline for the requests for affirmation was 1 July 2015; i.e. 1 day instead of the usual 13 weeks after ending the projects. In internal and selectively applied externally communication of the payment agency the deadline was later postponed to 5 August 2015; i.e.: 25 [plus 1] days after the deadline for the ending.<sup>ii</sup>

Affirmation decisions were supposed to take place within 13 weeks after the deadline for submission (30 September 2015), and after communication with the applicants about errors or adjustments with respect to the conditions. During the procedure the internal instructions about communications were adjusted in such way, that it only took place with around 60% of the applicants (or their project leaders) before the decision. Part of the decisions were delayed, even until mid-December 2015. Payments were done ultimately right before the end of the year 2015.<sup>iii</sup>

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<sup>ii</sup> Oral communication RVO payment agency (June, 2016)

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**Table 2. Example: subsidy reduction in the context of the Knowledge exchange network projects regulation for the Peat Colonies area under the late RDP-2 (2013-2015)**

Ranking in reduction % <sup>1)</sup>	Project quality assessment <sup>2)</sup>	Former gov. org. (fgo) <sup>3)</sup>	Requested at affirmation (Max.55.000,-) <sup>4)</sup>	Reduction after affirmation <sup>5)</sup>	Difference in % <sup>6)</sup>	Formal motivation <sup>7)</sup>
62 <sup>a)</sup>	6,4		€ 55.000	€ -55.000	-100,00%	No evidence of participation of the co-applicant and insufficient proof of knowledge exchange <sup>m)</sup>
61	4,8		€ 55.000	€ -49.584	-90,15%	Wages of the applicant are not eligible <sup>n)</sup>
60	4,9		€ 55.000	€ -49.523	-90,04%	Wages of the applicant are not eligible <sup>n)</sup>
59	6,1		€ 36.897	€ -28.433	-77,06%	Costs made between the application and the granting are not eligible under EU legislation <sup>o)</sup>
58	4,9		€ 39.696	€ -19.058	-48,01%	Costs made between the application and the granting are not eligible under EU legislation <sup>o)</sup>
57	n.a.		€ 6.920	€ -2.147	-31,03%	Allowances to trainees are not eligible <sup>p)</sup>
56	4,7		€ 55.000	€ -11.045	-20,08%	Wages of the applicant are not eligible <sup>n)</sup>
55 <sup>b)</sup>	4,9		€ 55.000	€ -10.732	-19,51%	Agency interpretation of final report: activities were not executed (during the project period) <sup>m)</sup>
54	5,2		€ 55.000	€ -10.160	-18,47%	Wages of the applicant are not eligible <sup>n)</sup>
53	4,9		€ 55.000	€ -4.945	-8,99%	Wages of the applicant are not eligible <sup>n)</sup>
52	5,2		€ 43.800	€ -1.314	-3,00%	Insufficient evidence provided at affirmation <sup>q)</sup>
51	5,3		€ 55.000	€ -1.392	-2,53%	EU publication conditions (logo) not respected <sup>r)</sup>
50	4,8		€ 42.609	€ -639	-1,50%	Compensations to the applicant are not eligible <sup>m)</sup>
49	5,4		€ 55.000	€ -569	-1,03%	EU publication conditions (logo) not respected <sup>r)</sup>
48	4,0	1	€ 55.000	€ -257	-0,47%	Insufficient evidence provided at affirmation <sup>q)</sup>
47	4,8		€ 47.583	€ -168	-0,35%	VAT in business transactions are not eligible <sup>s)</sup>
46 <sup>c)</sup>	5,9		€ 55.000	€ -173	-0,31%	Application included unrelated costs <sup>s)</sup>
45	6,3	1	€ 51.764	€ -146	-0,28%	Application included not eligible bank costs <sup>q)</sup>
44 <sup>d)</sup>	6,7		€ 55.000	€ -130	-0,24%	VAT in business transactions are not eligible <sup>s)</sup>
43	4,9		€ 54.996	€ -34	-0,06%	Insufficient evidence provided at affirmation <sup>q)</sup>
42	5,5	1	€ 54.902	€ -4	-0,01%	VAT in business transactions are not eligible <sup>s)</sup>
<b>41-03</b>	<b>5,6</b>	<b>19</b>	<b>€ 48.357</b>	<b>€ 0</b>		<b>Average of 39 projects</b>
02	4,9		€ 0	€ 0		Not applied for affirmation
01	6,4		€ 41.214	€ +13.726	+33,30%	Compensation for over-investments by others <sup>t)</sup>
<b>fgo</b>		<b>22</b>	<b>€ 1.114.953</b>	<b>€ -407</b>	<b>-0,47%</b>	<b>Research institutes and Extension agencies</b>
<b>non-fgo</b>		<b>38</b>	<b>€ 1.810.138</b>	<b>€-245.046</b>	<b>-13,54%</b>	<b>Other project leaders (exclusive N° 01 - 02)</b>
<b>Totals</b>		<b>60</b>	<b>€ 2.925.091</b>	<b>€-245.453</b>	<b>-8,39%</b>	<b>all (exclusive N° 01 - 02)</b>
<b>Average</b>	<b>5,5</b>	<b>60</b>	<b>€ 48.572</b>	<b>€ -4.091</b>	<b>-9,16%</b>	<b>all (exclusive N° 01 - 02)</b>

1) The total number of objection appeals is unknown; the following appeals are confirmed:

- a) Objection to 62: The explanatory memorandum indicated, that others (incl. farmers) should participate, not necessarily the co-applicant; agency workers were present at knowledge exchange; decision is not based on proper administrative control

- b) Objection to 55: Misinterpretation of final report; also: minor mistakes were made to conditional rules in an annex and an invoice, applicant expects permission to make corrections; decision is not based on proper administrative control
  - c) Objection to 46: Obvious mistake was made in an invoice, applicant expects permission to correct.
  - d) Objection to 44: Misinterpretation of the rule by the agency: individuals cannot be incorporated in the corporation tax administration system
- 2) Project quality assessment: reflecting expert assessments of a combination of project plan quality criteria; in this assessment the notes ranged from 4,0 (lowest quality) to 6,8 (highest quality).
  - 3) Fgo: "former government organisation", involved a.o. as project leader (Research institute or Extension agency)
  - 4) After the affirmation application, the requested payment was only 3,4% less than the granted amount.
  - 5) According to the policy implementation notes under RDP-2 in 2007, payment reductions should only be applied after communication with the applicant, and permitting the applicant to make justifiable corrections. Although it is unknown with whom exactly, it is confirmed that formal and informal communication has taken place with about 60% of the applicants before decision making. These included all fgo's. However, similar communications have e.g. not taken place with any of the applicants mentioned, who submitted objection appeals.
  - 6) In terms of effectiveness, it may be discussed to what extent the agency should put in efforts to reduce "non-eligible" payments if the administrative control costs exceed the estimated payment reduction .
  - 7) The majority of the given formal motives are related to so called conditional rules. This means that both under national and EU legislation, the applicants should have been allowed to explain their intentions and make justifiable corrections after the application for affirmation. Moreover, misunderstandings about these conditions should have been prevented, by clear communication beforehand about the details of the Regulation during the granting and execution period.

Some general comments on the specific formal motives:

- m) Such conclusions should be based on proper administrative control of actual facts; not on personal interpretations of text fragments by agency workers
- n) Mistakes like these should already have been detected in the budget during the granting procedure
- o) The applied rule is not based on any clear EU legislation
- p) According to the policy implementation notes under RDP-2 in 2007 allowances to student trainees are contributions to education, and not a salary to an "employee" of the applicant.
- q) Unclear why evidence was not allowed to be added afterwards
- r) Except for editing books, EU publication rules are insufficiently clear for many circumstances, e.g. in cases of co-productions outside the project, or with social media involved (e.g. Facebook, and twitter). Besides, the rule is a condition – unclear why the applicant was not allowed to correct the publication.
- s) Concerns condition - unclear why corrections or adjustments were not allowed
- t) The comment seems to refer to a misunderstanding about the requested amount

#### 4.1 Ranking in reduction percentage (Table 2 -1)

Of the 62 projects, 39 received the requested payment (N°03-41). One (N° 02) did not apply for payment (was not executed) and one (N° 01) was granted more than requested. The payment of the other 21 projects (N°42-62) were reduced in comparison to the requested payment.

#### 4.2 Notes on ranking for project plan quality (Table 2 -2)

The project plans were granted in early 2013 after a quality assessment by a group of experts, using a given set of criteria. The overall assessment ranged from 6,9 (highest) to 4,0 (lowest) quality, with an overall average of 5,5. The project plans that faced payment reduction after affirmation were assessed slightly, though not significantly lower (average 5,3; range 4,0-6,7) than the ones that did not face payment reduction (average 5,6; range 4,2-6,9). It seems therefore that payment reductions are not influenced by the quality assessments of the project plans.

#### 4.3 Communication and fgo's (Table 2 -3)

Communication is usually done with the contact person, i.c. the project leader. In the affirmation procedure of 2015 formal (written) communication about misunderstandings and (possible) payment reductions have taken place with about 60% of the applicants before decision making. In

addition informal communications have taken place with the project leaders involved. It is unclear with which specific applicants formal or informal communication have taken place. However, due to the procedure, project leaders of organisations leading many projects were better informed, because what was communicated about one project, they could extend to others. Consequently, the large fgo's were better informed than other project leaders. Note: these communications have e.g. not taken place with any of the four applicants (or their project leader), who are now known to have submitted objection appeals.

It is not known what policy decision founded the agency's decision to reduce the allowance of communication before the payment decision. According to the agency the decision to allow communication was not made randomly, but based on a criteria called "completeness of the application". The definition of this criteria is rather obscure, but was related to the notice at first glance of the agency worker of occasion, whether any information was missing. The applicants who were allowed communication with the payment agency in that period before the payment decision could get up to 25 days more than others, to finish their application. They were convinced that the communication had a positive effect on the decision about the payment, although the administrative burden frustrated them.

There has been no general evaluation of the perception of the administrative burden by the applicants. However, in several informal contacts for this article all contact persons (including all contact persons of fgo's) complained about the disproportionality and excessiveness of the administrative burden, throughout the project execution period.

#### 4.4 Request at affirmation (Table 2 -4)

The average difference between the originally granted payment and the requested payment at affirmation is -3,4% (excl. the project ranked as N° 02). Table 2 does not specify these data, because that is beyond the focus of this article. One project should be mentioned here, however, (N° 01) because originally, the maximum payment was granted, but the requested payment was (probably by mistake) nearly € 14.000,-- less. This mistake was corrected by the agency in the affirmation procedure, although a reduction of € 60,-- was subtracted.

#### 4.5 Reduction at affirmation (Table 2 -5)

In view of the previously evoked policy information that the payment agency had planned to allow all applicants to correct and adapt their application before making negative decisions – within the limits of integrity, it is remarkable that communication was reduced to 60% and in 21 cases a payment reduction is imposed by the agency, varying from € 4,-- to all € 55.000,--. With these 21 cases, 11 applicants were faced with a reduction of less than € 1.500,--. Those are about the costs for an uncomplicated administrative control in such a the procedure. So in these cases the costs for payment reduction outrange the benefits for the EU.

There seems a reverse correlation between the projects that were allowed communication before the final decision about the payment and the applied payment reduction. Fgo's seem to suffer disproportionately less from payment reductions in the newly implemented communication policy of the payment agency. Of in total over € 1,11 Million of requested payments for the 22 fgo projects only € 407 (0,47%) was reduced, whereas of in total over € 1,81 Million of requested payments for 38 non-fgo projects (excl. N° 01-02) nearly € 0,25 Million (13,54%) was reduced.

This difference between fgo and non-fgo involvement is significant. However, there is no indication that the quality or the success of the project execution, the problem theme, the competences of the project leader, the composition of the network, or personal matters, have caused the phe-

nomenon. The suggestion is that fgo project leaders were better informed, and had more opportunities to adjust their payment applications than others. Nonetheless, fgo project leaders seem as frustrated as other project leaders, about how the payment agency handled the procedure.

#### **4.6 Reduction percentage (Table 2 -6)**

The funding of the Knowledge exchange network projects is tight for the applicants. Applicants are not allowed to cover wages or unpaid hours. Even other cost, e.g. travel, supplies, bank costs, etc., may often not be granted. Eligible costs are only accepted if they are made by others – and are covered for 80% to the applicants, whereas benefits should be accessible to everyone. Applicants already feel this as a substantial discouragement to apply. If, on top this the payment is reduced after affirmation (even with a small amount), the discouraging effect to future applications may be much more than the amount of reduction. The incidences of important payment reductions – indifferent of the motives of the payment agency, seem to have a devastating effect on the expectancy of future applications of – in particular, the farmers that are known to take responsible initiatives for their sector.

#### **4.7 Formal motivations for payment reduction (Table 2 -7)**

The criteria for the success of Knowledge exchange network projects are (Wielinga *et al.*, 2008):

1. The relevance and urgency of the problem or theme, for agriculture;
2. The passion of the participants to exchange knowledge exchange with respect to the problem;
3. The competence of the project leader to guide the knowledge development process;
4. The focussed efforts to produce, and the production of knowledge exchange products.

In view of these criteria it is remarkable, that the agency's motivations for payment reductions seem far more related to (accidental) administrative errors than to any of the project success criteria – maybe with the exception of the project ranked N° 62 (100% reduction); that particular motive seems out of the trend among the motives.

All payment reductions seem to be motivated by issues, that may have been solved through communication, either through clarification, explanation or correction of the final report, the financial report and related documents, or through a voluntary reduction of the requested payment by the applicant. The represented motives do not indicate the presence of any intentional misuse of the grant, in any project.

The majority of the given formal motives are related to so called conditional rules – and often those conditional rules that are unclear. This confirms that both under national and EU legislation, the applicants should have been allowed to explain and make justifiable corrections after the application for affirmation. Moreover, misunderstandings about these conditions could have been prevented, by clear communication about the details of the Regulation during the granting and execution period. In the appendix to Table 2 some additional comments on the motives are given.

#### **4.8 Conclusion from the example**

In view of what EU taxpayers rightly may expect of the agency, the procedure for the aid applications of EU funds seems deviated from the purpose of the regulation. The image of a stimulating (though immature) regulation with a purpose-focused procedure, which resulted in remarkable effective and efficient knowledge exchange developments in the years 2007-2010, is gone. Instead the image has turned into an unreliable time and resources absorbing regulation, with such administrative burden, that potential project leaders are reluctant to encourage farmers to apply – even if they do not fear important payment reduction, like the former government organisations (fgo's): research institutes and extension agencies. The applied payment reductions led – of

course, to additional societal unease. Moreover: the project successes in terms of knowledge exchange towards innovation are not celebrated anymore as they were in the early years of the RDP-2, because the focus has deviated towards the disadvantages and negative side effects.

## 5 Administrative control

Two kinds of incidents may occur at the level of (unintended) irregularities: both the beneficiaries and the payment agency can be responsible for it. In EU funded projects payment refusal, reduction or reclaim can even be demanded by the European Commission (EC), if an (unintended) irregularity has taken place at the level of the national or other authorities, without the responsibility or even the knowledge of the beneficiary. Legal instruments for the national agency to reduce the risks of reclaim by the EC are very limited. Therefore risk avoiding behaviour of the national payment agency towards the beneficiaries is common ([Brink, van den, 2012](#)).

### 5.1 What is proper administrative control?

The frequency and type of incidents that happen, depends largely on the control system of the payment agency, but may be biased by the EU control system that is applied to the agencies. In EC implementation act 809/2014; Section 2 the provision for checks of payments are outlined. In Article 48 the conduct of administrative checks are specified. In this context, the administrative check reports serve as evidence for payment refusal, reduction or reclaim in case irregularities have occurred. Confusion may occur, however, in the interpretation of the terms 'control', 'check', or 'audit': are they similar? Besides the English term 'administrative control' or 'office/ desk control' is confusing too, especially after translation in other languages: does that mean that only documented reports and texts should be taken into account, or should the control include a check of the actual situation? EC Commission Regulation N° 809/ 2013 is unclear about that. However, important decisions are found in precedent judgements, for example:

In [EC Curia Decision Judgement Case T305/00](#) (2003) the following precedent is found on the matter, which is since applied to other control report of administrative checks:

“In order to assess the evidential value of a document, it is necessary to determine whether the information it contains is credible, to take into account the origin of the document and the circumstances in which it was drawn up, and to consider whether it seems, on the basis of its content, sensible and reliable (see Joined Cases [...]).”

From this precedent it can be concluded, that the administrative control should be related to the actual (onsite) situation and be sensible and reliable. The EU Court of Justice admits thus to the national court explicitly the space to assess whether the principles of legal certainty and protection of legitimate expectations are rightly applied in view of the Community law. In face of payment reduction, refusal, or reclaim: the assessment should be balanced with regard to the conduct of both the beneficiaries and the relevant governing bodies ([Brink, van den, 2012](#)).

### Conclusion

Proper administrative control should cover the following elements:

- a) It should be done by a competent person in view of the content;
- b) Conclusions should be supported by facts of the onsite situation that may serve as evidence;
- c) Conclusions should be sensible, reliable and likely in view of the actual, onsite situation.

## 5.2 Application of administrative control to the example of this article

The underlying EU ‘soft law’ procedures are often not easily revealed to the grant applicants. This makes it hard for beneficiaries to provide evidence if a mistake is made by the payment agency (Dam, van, 2013). The agency in this example (RVO) has a historical, pre-reorganizational habit of providing the information about procedures, though only after request. Lately it arrives sometimes with extensive delay, up to several months.

The administrative control of the affirmation application in the example were done by the agency at the hand of a list of 17 questions. An adjusted translation of these questions is given in **Table 3**.

**Table 3. Checklist of the administrative control of the affirmation applications in the Knowledge exchange network projects in the Peat Colonies area, under the late RDP-2 (2013-2015)**

	Description <sup>iv</sup>	Y/N
1	Is the signature correct and sufficient?	
2	Has the project started within three months after the granting date?	
3	Has the project ended ultimately on 1 July 2015?	
4	Is the application for payment affirmation submitted within 13 weeks + 25 working days after ending the activities, but NO LATER THAN August 5, 2015? (1 July + 25 working days)?	
5	Is the term report (required after each year) received?	
6	Is the final report satisfactory?	
7	Has the applicant executed the project according to the project plan and (if applicable) the adaptations approved by the agency?	
8	Is the payment overview satisfactory and are all expenses made AND payed?	
9	Are all payments supported by invoices and evidence documentation of payments?	
10	Is the applicant receptive for payments in the government administration system?	
11	Is there a motive for physical control on site, after the desk control and (if applicable) the risk analysis?	
12	If applied: are there any results from the physical control on site, which could influence this request for affirmation payment?	
13	Are there any manifest errors?	
14	Are there any circumventing devices applied?	
15	Has the applicant deliberately provided incorrect or incomplete information?	
16	Has the applicant deliberately provided incorrect or incomplete information this calendar year, or the previous, in any request for a grant, a payment in advance, or an affirmation payment, concerning this or any other regulation within the same RDP context?	
17	Are there any ineligible expenses presented in this request?	

The most revealing aspect of the question list is not the questions that are posed, but the fact that the three key questions for proper administrative control (mentioned above) are not specifically posed. According to an informant of the agency these key questions are neither posed, nor specified in any other control handout. Agency workers are instructed to try and draw conclusions from their own interpretations. Only if necessary in cases of doubt about the conclusion they are about to draw, they may make contact with the applicant – preferably in a formal letter.<sup>v</sup>

This instruction seems a deviation from the legal principle of the ‘benefit of the doubt’. It means, that based on an administrative control an agency worker can only choose from two conclusions: ‘benefit of the doubt’ or ‘doubt’. In cases of doubt the most obvious action is communication by telephone or E-mail. In cases of persisting ‘doubt’ further facts checking procedures may be performed, e.g. by a special inspection agency, before the conclusive decision is made about the payment reduction, refusal or reclaim.

<sup>iv</sup> Adjusted translation in English by the author of this article

<sup>v</sup> Oral communication RVO payment agency (June, 2016)

Here is an example of part the affirmation checklist with the motivation of the agency worker of the occasion, after which this applicant was faced with an important payment reduction:<sup>vi</sup>

11	Is there a motive for physical control on site, after the desk control and (if applicable) the risk analysis?	YES
<i>Motivation: Eligibility unclear of an invoice, and of the expenses for an event. The issue is send to the national inspection agency for control onsite.</i>		
12	If applied: are there any results from the physical control on site, which could influence this request for affirmation payment?	NO
<i>Motivation: The national inspection agency concluded that all is correct. Substantiating information is added. Based on the substantiating information I deducted some ineligible costs.</i>		

This example indicates rather obviously, that this agency worker was both poorly instructed – and checked afterwards. Obviously this person did not know how to evaluate the information: neither the questions in the checklist, nor the substantiating comments of the inspection agency:

- The answer “NO” to N° 12 contradicts with the subsequent decision to reduce the payment;
- Substantiating information supporting that all is correct, does not support a counter decision;
- Conclusions about ineligible costs require evidence from proper administrative control.

The motivation seems to indicate that the agency worker is overactive in trying to reduce payments. The behaviour raises questions to what extend the fierce biyearly EU account controls have created an atmosphere of pressure.

The example seems illustrative for the control methods that were used by the payment agency for this Regulation: with all four objected decisions there are issues about the (mis) interpretation of conditional rules and reports. Besides the majority of the other motives for payment reduction are also about the interpretation of (conditional) rules, which had not been clear, or about which the communication had been inadequate at an earlier stage.

## 6 Final Discussion

In 2007 policy implementation notes were made by the former payment agency [DR] under RDP-2, about how to make this regulation really stimulating and avoid unsupportive payment reductions. Apparently these notes are out of use since the national agency reorganisation, completed in 2014. Besides, few or none of the current workers in the payment agency have experiences that go back to the origin of this regulation. The evaluation system that is currently in use, is perceived as intimidating and discouraging by the (potential) applicants and project leaders for several reasons: restriction of eligible costs, administrative burden, and risk of payment reduction.

In the official interim evaluations of this regulation various assessment experts have proposed that in order to reduce the procedures, they should be linked to the granted projects as a kind of steering experts during the execution. Project leaders proposed instead, to avoid this increase of hierarchy, and argued for the organisation of a mutual evaluation system of project successes, using intervision techniques (Blokland *et al.*, 2013; Bartels BV, 2009).

Although the implications of neither of these propositions has so far been discussed seriously, the incorporation of both proposition in the legal control system could be interesting and challenging.

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<sup>vi</sup> Adjusted translation in English by the author of this article

A reintroduction of the insights of the policy implementation notes of 2007 about communication could reinstall a satisfactory system from the perspective of the EU taxpayer, in particular, if complemented with a sound and longer-term coordination within the payment agency. It is recommended to reinstall such concept as a control system for the RDP-3 grant procedures. Besides, the procedure for administrative control should be improved substantially, and lined up with the EU precedent judgements.

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