



The exclusion of a farmer from benefiting from agricultural aid on the ground of a false declaration of the area of his farm does not preclude the imposition of a criminal penalty for the same act

Such an exclusion from benefiting from aid provided for by EU law does not constitute a criminal penalty

EU rules on agricultural aid schemes¹ provide for aid to be paid according *inter alia* to the area declared by the farmer (single area payment). If, following a check, there is found to be a difference of more than 30% between the area determined and the area declared by the farmer, no aid is granted for the year in question. Furthermore, where the difference is more than 50%, the farmer is also excluded from receiving aid, up to the amount which corresponds to the difference between the real area and the area declared, during the following three calendar years.

The Polish Criminal Code provides for a detention period of between three and five years for a person who, with the intention of obtaining a subsidy, submits either a document that is forged, altered, attests falsehoods or is dishonest, or a dishonest written statement concerning circumstances of essential importance.

In 2005 Mr Bonda applied, in Poland, to the District Office of the Agricultural Restructuring and Modernisation Agency for a single area payment for 2005. In connection with that application, he submitted an incorrect declaration of the extent of agricultural land cultivated and the crops grown on that land, overstating the area used for agriculture by giving a figure of 212.78 hectares instead of 113.49 hectares.

By a decision of 2006, the director of that office refused Mr Bonda the single area payment for 2005 and imposed a penalty on him consisting of the loss of entitlement to the single area payment, up to the amount of the difference between the real area and the area declared, for the following three years.

By judgment of 14 July 2009, the Sąd Rejonowy w Goleniowie (District Court, Goleniów, Poland) convicted Mr Bonda of subsidy fraud in accordance with the Criminal Code, on the ground that, for the purpose of obtaining subsidies, he had made a false declaration concerning facts of essential importance for obtaining a single area payment. On that basis Mr Bonda was sentenced to eight months' imprisonment suspended for two years and a fine of 80 daily rates of PLN 20 each (about €400). Mr Bonda appealed against that judgment.

The Sąd Najwyższy (Supreme Court) hearing the appeal on a point of law, asks the Court of Justice whether measures which exclude a farmer from receiving aid for the year in which he made a false declaration of the eligible area, and reduce the aid he can claim within the following three calendar years by an amount corresponding to the difference between the area declared and the area determined, constitute criminal penalties which would then prevent any criminal

¹ Commission Regulation (EC) No 1973/2004 of 29 October 2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials (OJ 2004 L 345, p. 1).

proceedings being brought against Mr Bonda for the same act, pursuant to the principle *ne bis in idem* (prohibition of being tried twice for the same offence) in the Polish Criminal Procedure Code.

The Court of Justice recalls that it has previously held that penalties laid down by rules of the common agricultural policy, such as the temporary exclusion of an economic operator from the benefit of an aid scheme, are not of a criminal nature. It has taken the view that such exclusions are intended to combat the numerous irregularities which are committed in the context of agricultural aid and, because they weigh heavily on the EU budget, are of such a nature as to compromise the action undertaken by the institutions in that field to stabilise markets, support the standard of living of farmers and ensure that supplies reach consumers at reasonable prices.

The Court observes that, in this case, only operators who have applied to benefit from the aid scheme in question can be subject to the measures concerned, if it appears that the information provided by such operators in support of their application is incorrect. It also considers that those measures constitute a specific administrative instrument forming an integral part of a specific scheme of aid and intend to ensure the sound financial management of public funds of the EU.

On the basis of those factors, the Court concludes that the measures in question are of an administrative nature.

That nature is not called into question by an examination of the case-law of the European Court of Human Rights on the concept of 'criminal proceedings'². The Court notes in this respect that three criteria are relevant for defining that concept. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence and the third is the nature and degree of severity of the penalty that the person concerned is liable to incur.

As regards the first criterion, the Court observes that the measures which exclude a farmer from benefiting from aid are not regarded as criminal in nature by EU law.

As regards the second criterion, the Court considers that those measures can apply only to economic operators who have recourse to the aid scheme in question, and that the purpose of those measures is not punitive, but is essentially to protect the management of EU funds by temporarily excluding a recipient who has made incorrect statements in his application for aid. The fact that the reduction of the amount of aid that may be paid to the farmer for the years following that in which an irregularity has been found only applies if an application is submitted in respect of those years also indicates that these measures are not punitive.

As regards the third criterion, the Court finds that the sole effect of the penalties provided for by EU law is to deprive the farmer in question of the prospect of obtaining aid, and that the reduction of the amount of aid that may be paid to the farmer for the years following that in which an irregularity has been found is subject to the submission of an application in respect of those years, so that those penalties cannot be considered criminal.

Consequently, **the Court finds that such penalties cannot be classified as criminal.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell 📞 (+352) 4303 3355

² Article 4(1) of Protocol No 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Strasbourg on 22 November 1984.