

**Germany – Federal Administrative Court – File no: 3 C 31/13 Date of decision: 2014/10/01**

**Regarding the guideline for retroactive application of the lenient sanction norm dealing with premeditated over-declaration under the regulation regime associated with article 53 section 1 of TFEU 796/2004**

The plaintiff objected to the complete reclamation of the single farm payment. He is a farmer, and controls an area of about 92 ha. He applied for the single farm payment (among other things) with his summary application of 2006. He indicated his desire to use a sub-area to cultivate potatoes for starch production. The chamber of agriculture in question granted the plaintiff the single farm payment. However, the plaintiff violated his declaration by delivering the potatoes that came from the sub-area in question to a company, which then commercialised the potatoes. After a corresponding communication had been sent, the defendant informed the plaintiff that the single farm payment had been granted in an unjustified manner. If the situation involves a premeditated irregularity, the single farm payment is to be repaid in full. The plaintiff made a confession regarding his behaviour. In May 2008, the defendant then cancelled the grants within the framework of the reclamation of the contribution in question. This was done to the extent to which the single farm payment had been granted for the respective sub-area. In July 2009, as instructed by the ministry, the defendant consulted the plaintiff with regard to the complete reclamation of the single farm payment, because he (the plaintiff) committed a premeditated irregularity by not reporting the change in the utilisation of the potatoes. The defendant then cancelled the existing grants within the framework of a complete reclamation of the single farm payment.

The Higher Administrative Court changed the acceding administrative verdict and dismissed the lawsuit, because the plaintiff deliberately failed to correct the respective information. It permitted the revision on account of the issue of whether, and under which conditions, a partial revocation decree issued by the authorities when they were in full possession of the facts of the case could, in accordance with the prevailing union law, substantiate credit that is worthy of protection.

The Federal Administrative Court modified this verdict. It came to the conclusion that in accordance with the sanction regulations of delegated Regulation (EU) no. 640/2014, the premeditated over-declaration that is pursuant to the benefit-of-the-doubt principle associated with article 2 section 2 sentence 2 of Regulation (EC, Euratom) no. 2988/95 remains free of penalties; in this case, it considers the issue of whether or not the plaintiff could have invoked the topic of credit that is worthy of protection to be irrelevant.

Summary provided by JuriFast

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