



Reports of Cases

Case C-437/22

**Criminal proceedings
against
R.M.
and
E.M.**

(Request for a preliminary ruling from the Riigikohus)

Judgment of the Court (First Chamber) of 29 February 2024

(Reference for a preliminary ruling – Agriculture – Common agricultural policy – Support for rural development by the European Agricultural Fund for Rural Development (EAFRD) – Protection of the financial interests of the European Union – Regulation (EC, Euratom) No 2988/95 – Article 7 – Administrative measures and penalties – Regulation No 1306/2013 – Articles 54 and 56 – Delegated Regulation No 640/2014 – Article 35 – Recovery of sums unduly paid to persons who have taken part in the irregularity – Concept of ‘beneficiary’)

1. *Agriculture – EAFRD financing – Clearance of accounts – Recovery of sums unduly paid – Debtors of the obligation to repay – Persons that are not beneficiaries of aid who intentionally made false statements in order to obtain it – Included*
(European Parliament and Council Regulation No 1306/2013, recital 39, Arts 54(1) and 56, first para.; Council Regulation No 2988/95, Art. 7, Commission Regulation No 640/2014, Art. 35(6))

(see paragraphs 49-54, 60-63, operative part 1)

2. *Agriculture – Common agricultural policy – EAFRD financing – Support for rural development – Refusal or withdrawal of aid – Beneficiary who made false statements in order to receive aid – Concept of ‘beneficiary’ – Representative of a legal person who committed fraud in order to obtain aid for that legal person – Not included – Representative who receives the profits generated by the legal person – Irrelevant*
(Commission Regulation No 640/2014, Art. 35(6))

(see paragraphs 67, 68, operative part 2)

Résumé

Ruling on a request for a preliminary ruling from the Riigikohus (Supreme Court, Estonia), the Court of Justice confirms the possibility for a Member State to request repayment of aid financed by the European Agricultural Fund for Rural Development (EAFRD) and wrongly paid to a beneficiary company, directly to the natural persons who are its legal representatives where they have committed fraudulent acts in order to obtain that aid, even if they cannot themselves be regarded as beneficiaries of the aid.

Company X OÜ, which merged with Company Y OÜ, had obtained aid under Estonia's rural development programmes for the years 2007 to 2013 and 2014 to 2020.

R.M. and, after him, E.M., his spouse, were representatives of that company.

In criminal proceedings brought against R.M. and E.M., the Viru Maakohus (Court of First Instance, Viru, Estonia), then the Tartu Ringkonnakohus (Court of Appeal, Tartu, Estonia) convicted R.M. on three counts of subsidy fraud for the benefit of company X and E.M. of being an accomplice for two of those counts, for having intentionally made false statements to the responsible Estonian authority in order to obtain the aid at issue.

Moreover, those courts ordered R.M. and E.M. to pay the Republic of Estonia the amount of that aid wrongly received by company X.

R.M. and E.M. brought appeals on a point of law before the Supreme Court, the referring court, submitting that aid wrongly received can be legitimately recovered only from the beneficiary of that aid, namely company Y, which succeeded company X in its rights and obligations following the merger of those two companies.

The referring court upholds the conviction of R.M. and E.M. for subsidy fraud, but expresses doubts as to the possibility to request that they repay the aid at issue.

In particular, the referring court asks, first, whether the relevant provisions of EU law¹ allow for seeking recovery of aid financed by the EAFRD and wrongly received as a result of fraud not only from the beneficiary of that aid, but also from persons who, although they cannot be regarded as beneficiaries of that aid, took part in the irregularity which led to the undue payment thereof.

Secondly, that court is uncertain, in essence, whether, where a legal person has obtained agricultural aid as a result of fraud attributable to its representatives, those representatives may, in so far as, in reality, they receive the profits generated by that legal person, be regarded as being 'beneficiaries' of that aid within the meaning of EU law.²

¹ They include the first paragraph of Article 56 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549, and corrigendum OJ 2016 L 130, p. 6), read, first, in conjunction with Article 54 of that regulation and the first sentence of Article 35(6) of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ 2014 L 181, p. 48), and, secondly, in the light of Article 7 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1 and corrigendum OJ 1998 L 36, p. 16).

² In particular within the meaning of Article 35(6) of Delegated Regulation No 640/2014 read in conjunction with point 1 of the second subparagraph of Article 2(1) of that delegated regulation.

Findings of the Court

In order to answer those questions, the Court analyses, in particular, the context and objectives of the relevant provisions of EU law.

First, recital 39 of Regulation No 1306/2013 emphasises the need for Member States to prevent, detect and deal effectively with any irregularities and that, to that end, they should apply Regulation No 2988/95. Furthermore, Article 54(3)(b) of that regulation, which permits Member States not to pursue recovery of aid wrongly received where that recovery proves impossible owing to the insolvency of, inter alia, ‘the persons legally responsible for the irregularity’, would be deprived of its effectiveness if it was not possible to seek recovery of the aid concerned from those persons.

Secondly, the possibility of seeking recovery of wrongly received aid from not only the beneficiary thereof, but also from persons who intentionally made false statements in order to obtain it contributes to the objective of protecting the financial interests of the Union,³ in particular where the beneficiary is a legal person which no longer exists or does not have sufficient resources to repay that aid.

Furthermore, requesting those persons to repay such wrongly received aid does not breach the principle of legal certainty in so far as the relevant rules in the present case are sufficiently clear in that regard.

Even though Article 56 of Regulation No 1306/2013 does not expressly lay down an obligation to repay the aid for those persons, that article must be read in the light of recital 39 of that regulation. Furthermore, Article 2(1)(g) of that regulation refers expressly to Regulation No 2988/95 as regards the definition of the term ‘irregularity’. Moreover, under Article 7 of Regulation No 2988/95, the repayment of the aid may be imposed on persons who have taken part in the irregularity at issue.

The Court adds, lastly, that it cannot be inferred from such an analysis that the representatives of a legal person who have committed fraud in order to allow that legal person to obtain agricultural aid may not themselves be categorised as ‘beneficiaries’ of the aid. They cannot be regarded as being ‘beneficiaries’ of that aid, within the meaning of Delegated Regulation No 640/2014, if they are not covered by any of the three categories of person referred to by point 1 of the second subparagraph of Article 2(1) thereof,⁴ even if, in reality, they receive the profits generated by that legal person.

³ As provided for in Article 58(1)(e) of Regulation No 1306/2013. See also the objective of effectively combating fraud, referred to in the fourth recital of Regulation No 2988/95.

⁴ That is to say a farmer as defined in Article 4(1)(a) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ 2013 L 347, p. 608), the beneficiary subject to cross-compliance within the meaning of Article 92 of Regulation No 1306/2013 and/or the beneficiary receiving rural development support as referred to in Article 2(10) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320).