



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

5 June 2012*

((Common agricultural policy — Single area payment scheme — Regulation (EC) No 1973/2004 — Article 138(1) — Exclusion from receiving aid if the area declared is not correct — Administrative or criminal nature of that penalty — Rule against the overlapping of criminal penalties — Ne bis in idem principle))

In Case C-489/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Sąd Najwyższy (Poland), made by decision of 27 September 2010, received at the Court on 12 October 2010, in the criminal proceedings against

Łukasz Marcin Bonda,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot and A. Prechal, Presidents of Chambers, A. Rosas, R. Silva de Lapuerta, K. Schieman, A. Borg Barthet (Rapporteur), L. Bay Larsen, M. Berger and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 4 October 2011,

after considering the observations submitted on behalf of:

- Mr Bonda, by J. Markowicz, adwokat,
- the Polish Government, by M. Szpunar, D. Krawczyk and B. Majczyna, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the European Commission, by A. Bouquet and A. Szmytkowska, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 December 2011,

gives the following

* Language of the case: Polish.

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 138(1) of 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).
- 2 The reference has been made in criminal proceedings against Mr Bonda for fraud in his declaration of the agricultural area eligible for the single area payment.

Legal context

International law

- 3 Under 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 ('Protocol No 7'):

'No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.'

European Union law

Regulation (EC, Euratom) No 2988/95

- 4 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) states, in the fourth, fifth, ninth, tenth and twelfth recitals in its preamble:

'Whereas the effectiveness of the combating of fraud against the Communities' financial interests calls for a common set of legal rules to be enacted for all areas covered by Community policies;

Whereas irregular conduct, and the administrative measures and penalties relating thereto, are provided for in sectoral rules in accordance with this Regulation;

...

Whereas Community measures and penalties laid down in pursuance of the objectives of the common agricultural policy form an integral part of the aid systems; whereas they pursue their own ends which do not affect the assessment of the conduct of the economic operators concerned by the competent authorities of the Member States from the point of view of criminal law; whereas their effectiveness must be ensured by the immediate effect of Community rules and by applying in full Community measures as a whole, where the adoption of preventive measures has not made it possible to achieve that objective;

Whereas not only under the general principle of equity and the principle of proportionality but also in the light of the principle of *ne bis in idem*, appropriate provisions must be adopted while respecting the *acquis communautaire* and the provisions laid down in specific Community rules existing at the time of entry into force of this Regulation, to prevent any overlap of Community financial penalties and national criminal penalties imposed on the same persons for the same reasons;

...

Whereas this Regulation will apply without prejudice to the application of the Member States' criminal law'.

5 Article 1 of that regulation provides:

'1. For the purposes of protecting the European Communities' financial interests, general rules are hereby adopted relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Community law.

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.'

6 In accordance with Article 2 of that regulation:

'1. Administrative checks, measures and penalties shall be introduced in so far as they are necessary to ensure the proper application of Community law. They shall be effective, proportionate and dissuasive so that they provide adequate protection for the Communities' financial interests.

2. No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively.

3. Community law shall determine the nature and scope of the administrative measures and penalties necessary for the correct application of the rules in question, having regard to the nature and seriousness of the irregularity, the advantage granted or received and the degree of responsibility.

4. Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.'

7 Article 4 of that regulation provides:

'1. As a general rule, any irregularity shall involve withdrawal of the wrongly obtained advantage:

- by an obligation to pay or repay the amounts due or wrongly received,
- by the total or partial loss of the security provided in support of the request for an advantage granted or at the time of the receipt of an advance.

2. Application of the measures referred to in paragraph 1 shall be limited to the withdrawal of the advantage obtained plus, where so provided for, interest which may be determined on a flat-rate basis.

3. Acts which are established to have as their purpose the obtaining of an advantage contrary to the objectives of the Community law applicable in the case by artificially creating the conditions required for obtaining that advantage shall result, as the case shall be, either in failure to obtain the advantage or in its withdrawal.

4. The measures provided for in this Article shall not be regarded as penalties.'

8 Article 5 of that regulation reads as follows:

'1. Intentional irregularities or those caused by negligence may lead to the following administrative penalties:

- (a) payment of an administrative fine;
- (b) payment of an amount greater than the amounts wrongly received or evaded, plus interest where appropriate; this additional sum shall be determined in accordance with a percentage to be set in the specific rules, and may not exceed the level strictly necessary to constitute a deterrent;

- (c) total or partial removal of an advantage granted by Community rules, even if the operator wrongly benefited from only a part of that advantage;
- (d) exclusion from, or withdrawal of, the advantage for a period subsequent to that of the irregularity;
- (e) temporary withdrawal of the approval or recognition necessary for participation in a Community aid scheme;
- (f) the loss of a security or deposit provided for the purpose of complying with the conditions laid down by rules or the replenishment of the amount of a security wrongly released;
- (g) other penalties of a purely economic type, equivalent in nature and scope, provided for in the sectoral rules adopted by the Council in the light of the specific requirements of the sectors concerned and in compliance with the implementing powers conferred on the Commission by the Council.

2. Without prejudice to the provisions laid down in the sectoral rules existing at the time of entry into force of this Regulation, other irregularities may give rise only to those penalties not equivalent to a criminal penalty that are provided for in paragraph 1, provided that such penalties are essential to ensure correct application of the rules.'

9 Article 6 of the regulation provides:

'1. Without prejudice to the Community administrative measures and penalties adopted on the basis of the sectoral rules existing at the time of entry into force of this Regulation, the imposition of financial penalties such as administrative fines may be suspended by decision of the competent authority if criminal proceedings have been initiated against the person concerned in connection with the same facts. Suspension of the administrative proceedings shall suspend the period of limitation provided for in Article 3.

2. If the criminal proceedings are not continued, the suspended administrative proceedings shall be resumed.

3. When the criminal proceedings are concluded, the suspended administrative proceedings shall be resumed, unless that is precluded by general legal principles.

4. Where the administrative procedure is resumed, the administrative authority shall ensure that a penalty at least equivalent to that prescribed by Community rules is imposed, which may take into account any penalty imposed by the judicial authority on the same person in respect of the same facts.

5. Paragraphs 1 to 4 shall not apply to financial penalties which form an integral part of financial support systems and may be applied independently of any criminal penalties, if and in so far as they are not equivalent to such penalties.'

Regulation (EC) No 1782/2003

10 According to recital 21 in the preamble to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1, and corrigendum OJ 2004 L 94, p. 70), as amended by Commission Regulation (EC) No 118/2005 of 26 January 2005 (OJ 2005 L 24, p. 15) ('Regulation No 1782/2003'):

'The support schemes under the common agricultural policy provide for direct income support in particular with a view to ensuring a fair standard of living for the agricultural community. This objective is closely related to the maintenance of rural areas. In order to avoid misallocations of Community funds, no support payments should be made to farmers who have artificially created the conditions required to obtain such payments.'

11 Under Article 24 of Regulation No 1782/2003:

‘1. Without prejudice to reductions and exclusions provided for in Article 6 of this Regulation, where it is found that the farmer does not comply with the eligibility conditions relevant to the granting of the aid as provided for in this Regulation or by Article 2a of Regulation (EC) No 1259/1999, the payment or part of the payment granted or to be granted for which the conditions of eligibility have been met shall be subject to reductions and exclusions to be laid down in accordance with the procedure referred to in Article 144(2) of this Regulation.

2. The percentage of reduction shall be graduated according to the severity, extent, permanence and repetition of the non-compliance found and may go as far as total exclusion from one or several aid schemes for one or more calendar years.’

Regulation No 1973/2004

12 Recital 69 in the preamble to Regulation No 1973/2004 states:

‘Article 143b of Regulation ... No 1782/2003 allows the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (the new Member States) to replace the direct payments with a single payment (“the single area payment scheme”). The Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Poland and Slovakia have made that choice. Therefore detailed rules for the application of the single area payment scheme should be laid down.’

13 Article 138 of that regulation provides:

‘1. Except in cases of *force majeure* or exceptional circumstances as defined in Article 72 of Regulation (EC) No 796/2004, where, as a result of an administrative or on-the-spot check, it is found that the established difference between the area declared and the area determined, within the meaning of point (22) of Article 2 of Regulation (EC) No 796/2004, is more than 3% but no more than 30% of the area determined, the amount to be granted under the single area payment scheme shall be reduced, for the year in question, by twice the difference found.

If the difference is more than 30% of the area determined, no aid shall be granted for the year in question.

If the difference is more than 50%, the farmer shall be excluded once again from receiving aid up to an amount which corresponds to the difference between the area declared and the area determined. That amount shall be off-set against aid payments to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding.

2. Where differences between the area declared and the area determined result from irregularities committed intentionally, the aid to which the farmer would have been entitled shall not be granted for the calendar year in question.

Moreover, where that difference is more than 20% of the area determined, the farmer shall be excluded once again from receiving aid up to an amount which corresponds to the difference between the area declared and the area determined. That amount shall be off-set against aid payments to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding.

3. For the purpose of establishing the area determined within the meaning of point (22) of Article 2 of Regulation (EC) No 796/2004, Article 143b(5) and the first subparagraph of Article 143b(6) of Regulation ... No 1782/2003 and Article 137 of this Regulation shall apply.’

Polish legislation

- 14 Article 297(1) of the Law of 6 June 1997 — Criminal Code (Ustawa z dnia 6 czerwca 1997 r. — Kodeks karny, Dz. U. 1997, No 88, 553) provides:

‘A person who with the intention of obtaining for himself or another person from a bank or organisational entity carrying on a similar economic activity on the basis of a law, or from a body or institution in receipt of public funds, a credit, pecuniary loan, guarantee, warranty, letter of credit, grant, subsidy, confirmation by a bank of an obligation under a guarantee or warranty or a similar financial provision for a specific economic aim, an electronic payment instrument or public order, submits a document that is forged, altered, attests falsehoods or is dishonest, or a dishonest written statement concerning circumstances of essential importance for obtaining the said financial support, payment instrument or order, shall be liable to a penalty of deprivation of liberty for a period of three months to five years.’

- 15 Under Article 17(1), points (7) and (11), of the Law of 6 June 1997 — Criminal Procedure Code (Ustawa z dnia 6 czerwca 1997 r. — Kodeks postępowania karnego, Dz. U. 1997, No 89, 555, ‘the Criminal Procedure Code’):

‘Proceedings shall not be initiated, and those initiated shall be discontinued, if:

...

criminal proceedings concerning the same act and the same person have been definitively concluded or those already initiated are continuing,

...

there are other circumstances excluding prosecution.

...’

The dispute in the main proceedings and the question referred for a preliminary ruling

- 16 On 16 May 2005 Mr Bonda made an application to the Biuro Powiatowe Agencji Restrukturyzacji i Modernizacji Rolnictwa (District Office of the Agricultural Restructuring and Modernisation Agency, ‘the Office’) for a single area payment for 2005.
- 17 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.
- 18 On 25 June 2006 the director of the Office, on the basis of Article 138(1) of Regulation No 1973/2004, adopted a decision refusing Mr Bonda the single area payment for 2005 and imposing a penalty on him consisting in 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 three years following the year in which the incorrect declaration had been made.
- 19 By judgment of 14 July 2009, the Sąd Rejonowy w Goleniowie (District Court, Goleniów) convicted Mr Bonda of subsidy fraud in accordance with Article 297(1) of the Law of 6 June 1997 — 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.

- 20 Mr Bonda appealed against that judgment to the Sąd Okręgowy w Szczecinie (Regional Court, Szczecin), which set it aside on the ground that the criminal proceedings were inadmissible because an administrative penalty had already been imposed on Mr Bonda for the same act. That court consequently, pursuant to Article 17(1)(11) of the Criminal Procedure Code, discontinued the criminal proceedings by decision of 19 March 2010.
- 21 The Prokurator Generalny (Principal Public Prosecutor) appealed on a point of law against that decision to the Sąd Najwyższy (Supreme Court), arguing that there had been a gross infringement of the procedural rule in Article 17(1)(11).
- 22 According to the Sąd Najwyższy, while there is no doubt that that the act on the basis of which the measure referred to in Article 138(1) of Regulation No 1973/2004 was taken in respect of Mr Bonda was the same as that which was the subject of the criminal conviction, the discontinuance of the criminal proceedings against Mr Bonda was nevertheless erroneous, in that it was based on Article 17(1)(11) of the Criminal Procedure Code.
- 23 The Sąd Najwyższy takes the view that only Article 17(1)(7) of the Criminal Procedure Code could constitute a correct legal basis for discontinuing those proceedings. Consequently, in order to decide the dispute in the main proceedings, it must be determined whether the proceedings brought by the Office may be regarded as criminal within the meaning of that provision. The Sąd Najwyższy states that, while a literal interpretation of that provision requires the question to be answered in the negative, the provision must however be interpreted in the light of Article 4(1) of Protocol No 7.
- 24 In those circumstances, the Sąd Najwyższy considers that the legal nature of the penalty imposed on the farmer under Article 138(1) of Regulation No 1973/2004 must be assessed.
- 25 Since it considered that the outcome of the dispute before it depended on an interpretation of Article 138 of that regulation, the Sąd Najwyższy decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘What is the legal nature of the penalty provided for in Article 138 of [Regulation No 1973/2004] which consists in refusing a farmer direct payments in the years following the year in which he submitted an incorrect statement as to the size of the area forming the basis for [the single area payment]?’

Consideration of the question referred

- 26 By its question, the referring court essentially asks whether Article 138(1) of Regulation No 1973/2004 must be interpreted as meaning that the measures provided for in the second and third subparagraphs of that provision, consisting in excluding a farmer from receiving aid for the year in which he made a false declaration of the eligible area and reducing 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.
- 27 It should be noted at the outset that the Sąd Najwyższy asks the Court for an interpretation of Article 138(1) of Regulation No 1973/2004 in so far as the *ne bis in idem* principle, as it appears in Article 17(1)(7) of the Criminal Procedure Code, can be applied in the main proceedings only if the measures provided for in Article 138(1) may be classified as criminal penalties.
- 28 It must be recalled that the Court has previously held that penalties laid down in 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 (see Case 137/85 *Maizena and Others* [1987] ECR 4587, paragraph 13; Case C-240/90 *Germany v Commission* [1992] ECR I-5383, paragraph 25; and Case C-210/00 *Käserei Champignon Hofmeister* [2002] ECR I-6453, paragraph 43).

- 29 The Court considered 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 European Union 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 (see *Käserei Champignon Hofmeister*, paragraph 38).
- 30 In support of that view, the Court further observed that the rules breached are aimed solely at economic operators who have freely chosen to take advantage of an agricultural aid scheme (see *Maizena and Others*, paragraph 13; *Germany v Commission*, paragraph 26; and *Käserei Champignon Hofmeister*, paragraph 41). It added that, in the context of a European Union aid scheme in which the granting of the aid is necessarily subject to the condition that the beneficiary offers all guarantees of probity and trustworthiness, the penalty imposed in the event of non-compliance with those requirements constitutes a specific administrative instrument forming an integral part of the scheme of aid and intended to ensure the sound financial management of public funds of the European Union (*Käserei Champignon Hofmeister*, paragraph 41).
- 31 There is nothing to justify a different answer being given with respect to the measures provided for in the second and third subparagraphs of Article 138(1) of Regulation No 1973/2004.
- 32 It is not disputed that only operators who have applied to benefit from the aid scheme established by Regulation No 1973/2004 can be subject to the measures provided for in the second and third subparagraphs of Article 138(1) of Regulation No 1973/2004, if it appears that the information provided by such operators in support of their application is incorrect. Moreover, those measures too constitute a specific administrative instrument forming an integral part of a specific scheme of aid and intended to ensure the sound financial management of public funds of the European Union.
- 33 It may be added that, first, it follows from Article 1 of Regulation No 2988/95, which lays down a common set of legal rules for all fields covered by Community policies, that any infringement of a provision of European Union 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 European Union or budgets managed by it is regarded as an 'irregularity' and gives rise to the application of 'administrative measures and penalties'.
- 34 Next, it may be seen from Article 5(1)(c) and (d) of Regulation No 2988/95 that the total or partial removal of an advantage granted by Community rules, even if the operator has wrongly benefited from only a part of that advantage, and the exclusion from or withdrawal of an advantage for a period subsequent to that of the irregularity constitute administrative penalties. Those two cases are referred to in Article 138(1) of Regulation No 1973/2004.
- 35 Finally, while Article 6(1) to (4) of Regulation No 2988/95 contain rules concerning the taking into account of national criminal proceedings in administrative proceedings based on European Union law, it follows from the ninth recital in the preamble to and Article 6(5) of that regulation that administrative penalties laid down in pursuance of the objectives of the common agricultural policy form an integral part of the schemes of aid, that they have a purpose of their own, and that they may be applied independently of any criminal penalties, if and in so far as they are not equivalent to such penalties.
- 36 The administrative nature of the measures provided for in the second and third subparagraphs of Article 138(1) of Regulation No 1973/2004 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' within the meaning of Article 4(1) of Protocol No 7, to which the Sąd Najwyższy refers.
- 37 According to that case-law, three criteria are relevant in this respect. 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 (see, inter alia, ECHR, *Engel and Others v. the Netherlands*, 8 June 1976, §§ 80 to 82, Series A no. 22, and *Sergey Zolotukhin v. Russia*, no. 14939/03, §§ 52 and 53, 10 February 2009).

- 38 As regards the first criterion, it must be observed that the measures provided for in Article 138(1) of Regulation No 1973/2004 are not regarded as criminal in nature by European Union law, which must in the present case be equated to 'national law' within the meaning of the case-law of the European Court of Human Rights.
- 39 As regards the second criterion, it must be ascertained whether the purpose of the penalty imposed on the farmer is punitive.
- 40 In the present case, the analysis in paragraphs 28 to 32 above shows that the measures provided for in the second and third subparagraphs of Article 138(1) of Regulation No 1973/2004 are to apply only to economic operators who have recourse to the aid scheme set up by that regulation, and that the purpose of those measures is not punitive, but is essentially to protect the management of European Union funds by temporarily excluding a recipient who has made incorrect statements in his application for aid.
- 41 As the Advocate General observes in point 65 of her Opinion, it also points against a punitive nature of those measures 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. Thus if the farmer makes no application for the following years, the penalty which may be imposed on him under Article 138(1) of Regulation No 1973/2004 becomes ineffective. That is also the case if the farmer no longer satisfies the conditions for the grant of the aid. Finally, the penalty also becomes partly ineffective where the amount of aid the farmer can claim in respect of the following years is lower than the amount of aid to be withheld pursuant to the measure reducing the aid wrongly paid.
- 42 It follows that the second criterion mentioned in paragraph 37 above does not suffice to make the measures provided for in Article 138(1) of Regulation No 1973/2004 criminal in nature.
- 43 As regards the third criterion, it should be noted, as pointed out in paragraph 41 above, that the sole effect of the penalties provided for in the second and third subparagraphs of Article 138(1) of Regulation No 1973/2004 is to deprive the farmer in question of the prospect of obtaining aid.
- 44 Consequently, those penalties cannot be equated to criminal penalties on the basis of the third criterion mentioned in paragraph 37 above.
- 45 It follows from all the above considerations that the characteristics of the penalties provided for in Article 138(1) of Regulation No 1973/2004 do not allow it to be considered that they must be classified as criminal penalties.
- 46 The answer to the question is therefore that Article 138(1) of Regulation No 1973/2004 must be interpreted as meaning that the measures provided for in the second and third subparagraphs of that provision, consisting in excluding a farmer from receiving aid for the year in which he made a false declaration of the eligible area and reducing 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, do not constitute criminal penalties.

Costs

- 47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 138(1) of 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 must be interpreted as meaning that the measures provided for in the second and third subparagraphs of that provision, consisting in excluding a farmer from receiving aid for the year in which he made a false declaration of the eligible area and reducing 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, do not constitute criminal penalties.

[Signatures]