

ECJ: Double Penalties for an Energy Company May be Justified

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News

On 30 January 2025, the ECJ ruled on the limitation of the *ne bis in idem* principle (Art. 50 of the Charter of Fundamental Rights of the European Union [CFR]) in case of two fines imposed on an economic operator in administrative proceedings. The [ruling](#) consolidates the ECJ's case law on the interpretation of Art. 50 CFR for administrative punitive proceedings. The case is referred as [Case C-205/23, Engie România](#).

Facts and background of the case

The case at issue results from a Romanian natural gas supplier, Engie România SA, which was subject to two administrative penalties for identical facts: On the basis of the Romanian laws transposing Directive 2009/73 concerning common rules for the internal market in natural gas, the Romanian Energy Sector Regulatory Authority imposed a fine of RON 800,000 (€160,000) to the company for breach of transparency rules. On the basis of the Romanian laws transposing Directive 2005/29 concerning unfair business-to-consumer commercial practices in the internal market, the Romanian Consumer Protection Authority imposed a fine of RON 150,000 (€30,000) for "misleading and aggressive commercial practice with regard to consumers". Both fines have been based on the company's conduct of obscure adjustments of prices for the supply of natural gas to its customers. The referring court, the Tribunalul București (Regional Court, Bucharest, Romania), wondered in essence whether the duplication of the "penalties" were in line with Art. 50 CFR, read in conjunction with Art. 52(1) CFR.

The ECJ's reasoning

The ECJ first recalled that the two administrative fines imposed can be regarded as "criminal penalties", as required by Art. 50 CFR, if - regardless of the classification in national law - there is account of the intrinsic nature of the offence or the degree of severity of the penalty which the person concerned is liable to incur. The degree of severity must be assessed by reference to the maximum penalty for which the relevant provisions provide. The criterion regarding the intrinsic nature of the offence, involves ascertaining whether the penalty at issue has, *inter alia*, a punitive purpose, without regard to the fact that it also pursues a deterrent purpose. By contrast, measures which merely repair the damage caused by the offence at issue are not criminal in nature. The ECJ here refers to its previous judgments in *bpost* (→ [eucrim 2/2022, 116-118](#)) and *Volkswagen Group Italia* (→ [eucrim 2/2023, 155-156](#)). Whether the requirements are fulfilled in the present case is for the referring court to ascertain.

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In the affirmative, the ECJ reiterated its case law that the protection from double penalties under Art. 50 CFR is limited: Duplication of criminal proceedings or penalties can be justified on the basis of Art. 52(1) CFR. This is the case if the following conditions are met:

- There are clear and precise rules making it possible to predict which acts or omissions may be subject to a duplication of proceedings and penalties, and to ensure coordination between the two competent authorities;
- The two sets of proceedings concerned have been conducted in a sufficiently coordinated manner and within a proximate timeframe; and
- All the penalties imposed correspond to the seriousness of the offences.

Also this is finally up to the referring court to determine. However, the judges in Luxembourg indicated that, according to the case file, there has been a close connection in time between the two sets of administrative (punitive) proceedings at issue, both proceedings pursued different objectives (compliance with energy sector rules vs consumer protection), and there has been cooperation and exchanges of information between the two Romanian authorities. Thus, it is likely that the duplication of the two administrative proceedings leading to two fines against Engie Romania can be justified.

Put in focus

The judgment in *Engie România* essentially reiterates the ECJ's previous case law on the culmination of two or more administrative penalty proceedings. Firstly, the scope of protection of the European ne bis in idem principle in Art. 50 of the Charter must be interpreted broadly. If a sanction has a punitive – not necessarily deterrent – purpose, fines imposed by administrative/regulatory authorities must also be regarded as "criminal penalties".

Secondly, the ECJ confirms that, provided that different legal interests are being pursued and there is sufficient coordination between the authorities involved, an economic operator must expect to be sanctioned more than once for the same misconduct. The criteria established by the ECJ for permissible double punishment are not very strict. Thus, there may be often green light for the imposition of double sanctions. Companies must adapt to this and adjust their compliance strategies accordingly.

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