

NEWSLETTER

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Do you need to pay back the whole of the EU subsidies in the case of violations? - a few words about the precedential judgment of the Supreme Court

We would like to inform you about a precedential ruling of the Supreme Court, having great importance for companies benefiting from EU support. Well, in one of the latest judgments of the Supreme Court leaned over the issue of the return of EU subsidies. **The Court held position that the infringement part of the provisions of the grant agreement can not justify reimbursement of all the financial support granted.**

1. Commented judgment was passed after a long dispute ongoing by the Treasury against the company for reimbursement of the total paid grant.
2. A contract on granting financial support to implement the innovative program was concluded between the parties. In the performance of the contract the company received funds for capital expenditures and measures to create new jobs. As a result of control on the correct performance of the agreement the Treasury raised concerns on the issue of employment of employees - the company committed to create 27 new jobs, while at the time of inspection, it turned out that the company employs 311 workers, while on the date of conclusion of the subsidy contract the company had more than 400 people.
3. Treasury found that the company violated contractual provisions concerning employment, then took to the road of Civil Procedure for reimbursement of the total financial support granted.
4. **After a long judicial 'battle' case went to the Supreme Court, which took the benefit of all users of EU subsidies.**
5. **The Court pointed out that the failure of a part of the contract for financing may not result in the loss of the entire grant.** According to the Supreme Court, the defendant should pay received financial aid only in this part, separated from the beginning, which was intended to increase employment and to the extent to which the company has not fulfilled its obligation for reasons attributable to her side.
6. It is essential that the primary purpose of the contract was completed. In the opinion of the Court it would be deep unfair to such interpretation of European Union law and harmonized with these provisions of Polish law, as well as the *ratio legis* contained in them solutions to drastically ordered the defendant company's obligation to repay the whole subsidy, and therefore also the parts that have been effectively for economy and properly spent.

7. Commented judgment is of great practical importance for many companies benefiting from EU subsidies, who often were forced to return the total received financial support, even if only partial violation of the provisions of the grant agreement.
8. The judgment is a signal of leaving the strict interpretation of contracts for public support and a promise of pro-investment approach. Irrational and contrary to the principle of proportionality, because it would penalize businesses receiving the entire grant in a situation where only a portion of the agreement has been violated.
