



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

11 June 2015*

(Reference for a preliminary ruling — Protection of the financial interests of the European Union — Regulation (EC, Euratom) No 2988/95 — Article 3(1) — Limitation period — Dies a quo — Repeated irregularities — Interruption of the limitation period — Conditions — Competent authority — Person in question — Act relating to investigation or legal proceedings concerning the irregularity — Time-limit equal to twice the limitation period)

In Case C-52/14,

REQUEST for a preliminary ruling under Article 267 TFEU, from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany), made by decision of 17 January 2014, received at the Court on 4 February 2014, in the proceedings

Pfeifer & Langen GmbH & Co. KG

v

Bundesanstalt für Landwirtschaft und Ernährung,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, K. Jürimäe (Rapporteur), J. Malenovský, M. Safjan and A. Prechal, Judges,

Advocate General: M. Wathelet,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 7 January 2015,

after considering the observations submitted on behalf of:

- Pfeifer & Langen GmbH & Co. KG, by D. Ehle, Rechtsanwalt,
- the Bundesanstalt für Landwirtschaft und Ernährung, by W. Wolski and J. Jakubiec, acting as Agents,
- the Greek Government, by I. Chalkias, E. Leftheriotou and O. Tsirkinidou, acting as Agents,
- the European Commission, by P. Rossi and G. von Rintelen, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: German.

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 3(1) 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).
- 2 The reference was made in the course of proceedings between Pfeifer & Langen GmbH & Co. KG ('Pfeifer & Langen') and the Bundesanstalt für Landwirtschaft und Ernährung (Federal Authority for Agriculture and Food; 'the BLE') concerning the reimbursement of storage costs allegedly wrongly received by Pfeifer & Langen to the detriment of the financial interests of the European Union.

Legal context

Regulation (EEC) No 1998/78

- 3 Article 13(1) of Commission Regulation (EEC) No 1998/78 of 18 August 1978 laying down detailed rules for the offsetting of storage costs for sugar (OJ 1978 L 231, p. 5), as amended by Commission Regulation (EEC) No 1714/88 of 13 June 1988 (OJ 1988 L 152, p. 23; 'Regulation No 1998/78') provides:

'Every person entitled to reimbursement shall communicate to the Member State concerned, at the latest on the 15th day of each month, the following particulars:

- (a) the total quantities, expressed as net weight, of sugar and syrup eligible for reimbursement held in his store at 24.00 hours on the last day of the month preceding that of such communication;

...'

Regulation No 2988/95

- 4 The third to fifth recitals in the preamble to Regulation No 2988/95 state:

'...acts detrimental to the [European Union's] financial interests must, however, be countered in all areas;

... the effectiveness of the combating of fraud against the [European Union's] financial interests calls for a common set of legal rules to be enacted for all areas covered by [EU] policies;

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

- 5 Article 1 of that regulation is worded as follows:

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

2. “Irregularity” shall mean any infringement of a provision of [EU] 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 [EU] or budgets managed by [it], either by reducing or losing revenue accruing from own resources collected directly on behalf of the [EU], or by an unjustified item of expenditure.’

6 Article 3(1) of that regulation provides:

‘The limitation period for proceedings shall be four years as from the time when the irregularity referred to in Article 1(1) was committed. However, the sectoral rules may make provision for a shorter period which may not be less than three years.

In the case of continuous or repeated irregularities, the limitation period shall run from the day on which the irregularity ceases. ...

The limitation period shall be interrupted by any act of the competent authority, notified to the person in question, relating to investigation or legal proceedings concerning the irregularity. The limitation period shall start again following each interrupting act.

However, limitation shall become effective at the latest on the day on which a period equal to twice the limitation period expires without the competent authority having imposed a penalty, except where the administrative procedure has been suspended in accordance with Article 6(1).’

7 In accordance with Article 4(1) and (4) of the same regulation:

‘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,

...

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

8 Article 6(1) of Regulation No 2988/95 reads as follows:

‘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.’

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

9 It is apparent from the order for reference that Pfeifer & Langen, a sugar-processing undertaking, received reimbursement of storage costs for the storage of white sugar, in the context of the COM in sugar, for the marketing years 1987/1988 to 1996/1997.

10 On 9 October 1997, an inspection carried out by the German customs authorities at the premises of Pfeifer & Langen showed that the company had failed to declare, in its applications for reimbursement of storage costs in respect of those marketing years, certain quantities of sugar produced above the production quotas, namely C sugar, so that it had applied for and received some

reimbursement which were not due. Following that inspection, a criminal investigation was opened by the public prosecutor in respect of persons in positions of authority within Pfeifer & Langen for tax evasion and subsidy fraud with regard to the storage of sugar.

- 11 In the course of the criminal investigation, a special committee of the customs investigation services ('the special committee'), bringing together representatives of the various administrations involved, including the BLE, was instituted. In October 1999, the special committee seized, for assessment, documents held by Pfeifer & Langen relating to the marketing years 1987/1988 to 1996/1997. In 2000, moreover, a number of Pfeifer & Langen's employees were interviewed as witnesses.
- 12 In February 2002, the BLE drew up a final report on the subsidy fraud ('the final report'). That report found, in particular, that the facts noted by the special committee establish that sums were wrongfully applied for and received by Pfeifer & Langen in respect of reimbursement of storage costs for white sugar for marketing years 1987/1988 to 1996/1997.
- 13 By decision of 30 January 2003, the BLE, on the basis of the final report, annulled in part the decisions on the calculation of the reimbursements of storage costs for the months of July 1988 to June 1989 and demanded repayment from Pfeifer & Langen of the sums wrongfully received. Pfeifer & Langen therefore appealed to the BLE, contending, inter alia, that any claim in respect of the irregularities of which it was accused concerning the marketing year 1988/1989 was time-barred.
- 14 In 2004, the customs authorities dropped the proceedings concerning tax evasion following an amicable agreement with Pfeifer & Langen.
- 15 By decision of 4 October 2006, the BLE upheld in part Pfeifer & Langen's appeal and, consequently, reduced the sums to be repaid. The BLE none the less took the view that the irregularities concerning the marketing year 1988/1989 were not time-barred, since the limitation period of four years laid down in Article 3(1) of Regulation No 2988/95 had been interrupted by the different investigative or procedural acts concerning those irregularities, as adopted by the special committee and the public prosecutor. Furthermore, the BLE considered that the conduct of Pfeifer & Langen had to be regarded as repeated irregularities, so that the limitation period had started to run only with effect from the last irregularity found, in 1997.
- 16 On 7 November 2006, Pfeifer & Langen brought an action against that decision before the Verwaltungsgericht Köln (Administrative Court, Cologne). In its action, the company submitted, inter alia, that the limitation period of eight years laid down in the fourth subparagraph of Article 3(1) of Regulation No 2988/95 had expired, so far as the irregularities of which it was accused in respect of marketing year 1988/1989 are concerned, in July 1997, without any penalty being imposed on it before that expiry.
- 17 Since the Verwaltungsgericht Köln dismissed Pfeifer & Langen's action as regards the time-bar on the proceedings, the company appealed to the referring court.
- 18 According to that court, the outcome of Pfeifer & Langen's appeal depends on the interpretation of the rules on the limitation period laid down in Article 3(1) of Regulation No 2988/95.
- 19 In those circumstances, the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court of the *Land* of North Rhineland-Westphalia) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) (a) In respect of interruption of the limitation period, is the competent authority within the meaning of the third subparagraph of Article 3(1) of Regulation No 2988/95 the authority which is responsible for the act relating to investigation or legal proceedings, irrespective of whether it had granted the financial resources?'

- (b) Must the act relating to investigation or legal proceedings be directed at the adoption of an administrative measure or penalty?
- (2) Can the “person in question” within the meaning of the third subparagraph of Article 3(1) of Regulation No 2988/95 also be an employee of an undertaking who has been interviewed as a witness?
- (3) (a) Must “any [notified] act ... relating to investigation or legal proceedings” (third subparagraph of Article 3(1) of Regulation No 2988/95) relate to specific errors in the assessment of sugar production (irregularities) by the sugar manufacturer which are normally assumed or determined only in the context of a duly conducted market supervision inspection?

(b) Can a final report concluding or evaluating the result of the inspection, in which no further questions on specific irregularities are asked, also be a notified “act ... relating to investigation proceedings”?
- (4) (a) Does the occurrence of “repeated irregularities” within the meaning of the second subparagraph of Article 3(1) of Regulation No 2988/95 require that the acts or omissions assessed as irregularities be closely linked in time in order to be regarded as a “repetition”?

(b) If so, are they no longer closely linked in time if, inter alia, the irregularity in the assessment of a sugar quantity occurs only once in a sugar marketing year and occurs again only in a following or subsequent sugar marketing year?
- (5) Can the occurrence of repeated irregularities within the meaning of the second subparagraph of Article 3(1) of Regulation No 2988/95 be ended by the fact that the competent authority, while aware of the complexity of the facts, has not, or has not regularly or carefully, inspected the undertaking?
- (6) When does the double limitation period of eight years under the fourth subparagraph of Article 3(1) of Regulation No 2988/95 begin in the case of continuous or repeated irregularities? Does this limitation period begin to run after any act regarded as an irregularity (first subparagraph of Article 3(1) of the regulation) or after the last repeated act (second subparagraph of Article 3(1) of the regulation)?
- (7) Can the double limitation period of eight years under the fourth subparagraph of Article 3(1) of Regulation No 2988/95 be interrupted by acts of the competent authority relating to investigation or legal proceedings?
- (8) Where there are different sets of facts affecting the assessment of subsidies, must the limitation periods to be calculated under Article 3(1) of Regulation No 2988/95 be determined separately in respect of each set of facts (irregularities)?
- (9) Is the running of the double limitation period under the fourth subparagraph of Article 3(1) of Regulation No 2988/95 conditional on the authority’s awareness of the irregularity?

Consideration of the questions referred

Preliminary observations

- 20 Firstly, it is appropriate to recall that Regulation No 2988/95 introduces, in accordance with Article 1 thereof, ‘general rules ... relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to [EU] law’ and, as is apparent from the third recital in the preamble to that regulation, in order to ‘[counter] acts detrimental to the [EU’s] financial interests ... in all areas’ (see judgments in *Handlbauer*, C-278/02, EU:C:2004:388, paragraph 31; *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, C-278/07 to C-280/07, EU:C:2009:38, paragraph 20; and *Pfeifer & Langen*, C-564/10, EU:C:2012:190, paragraph 36).
- 21 In that regard, Article 3(1) of Regulation No 2988/95 establishes a limitation period for proceedings of four years as from the time when the irregularity was committed or, in the case of continuous or repeated irregularities, the limitation period shall run from the day on which the irregularity ceases. However, under that provision, the sectoral rules may make provision for a shorter period which may not be less than three years.
- 22 Since the sectoral rules relevant to the main proceedings, comprising EU rules on reimbursement for storage costs in the sugar sector and, in particular, Regulation No 1998/78, do not lay down specific provisions as regards limitation, the limitation period of four years set out in Article 3(1) of Regulation No 2988/95 must be applied.
- 23 That period is applicable both to the irregularities leading to the imposition of an administrative penalty, within the meaning of Article 5 of that regulation, and to irregularities, such as those at issue in the main proceedings, which are penalised by an administrative measure consisting of the withdrawal of the advantage wrongly obtained, in accordance with Article 4 of that regulation (see, to that effect, judgments in *Handlbauer*, C-278/02, EU:C:2004:388, paragraphs 33 and 34; *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, C-278/07 to C-280/07, EU:C:2009:38, paragraph 22; and *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraph 45).
- 24 Secondly, it must be borne in mind that the limitation period referred to in Article 3(1) of Regulation No 2988/95 seeks to ensure legal certainty for economic operators (see, to that effect, judgments in *Handlbauer*, C-278/02, EU:C:2004:388, paragraph 40, and *SGS Belgium and Others*, C-367/09, EU:C:2010:648, paragraph 68). Those operators must be in a position to determine which among their transactions are definitive and which may still be the subject of legal proceedings.
- 25 It is in the light of those considerations that the questions posed by the referring court must be answered.

Question 1(a)

- 26 By its question 1(a), the referring court asks, in essence, whether the third subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the concept of ‘competent authority’, within the meaning of that provision, is to be understood as the authority which is responsible, under national law, for awarding or recovering sums wrongfully received to the detriment of the EU’s financial interests.
- 27 In that regard, it is apparent from the file placed before the Court that, by virtue of German law, the BLE is responsible for the reimbursement of storage costs and for the recovery of reimbursements wrongfully received, while the customs authorities have investigative powers as regards subsidy fraud

in respect of the reimbursement of storage costs. The customs authorities have thus adopted the majority of the acts concerning the investigation and legal proceedings in respect of the irregularities at issue in the main proceedings.

- 28 In that context, Pfeifer & Langen are of the opinion that only the BLE should be regarded, in this situation, as the ‘competent authority’ within the meaning of the third subparagraph of Article 3(1) of Regulation No 2988/95, since it alone is responsible for granting and recovering reimbursements of storage costs. It follows that the acts concerning the investigation and legal proceedings adopted by the customs authorities did not have the effect of interrupting the limitation period as regards the main proceedings.
- 29 It must be borne in mind that, under the third subparagraph of Article 3(1) of Regulation No 2988/95, the limitation period is interrupted by any act of the competent authority, notified to the person in question, relating to investigation or legal proceedings concerning the irregularity.
- 30 In the light of that wording, it must be found that the concept of ‘competent authority’, within the meaning of that provision, designates the authority which has responsibility for adopting acts concerning the investigation or legal proceedings in question.
- 31 However, there is nothing in the wording of the third subparagraph of Article 3(1) of Regulation No 2988/95 which suggests that that authority must be the same as that responsible for awarding or recovering the sums wrongfully received to the detriment of the EU’s financial interests.
- 32 In that regard, it must be emphasised that, in the absence of any rules of EU law, it is for each Member State to designate the authorities responsible, under national law, for the adoption of acts concerning the investigation or legal proceedings in respect of irregularities, within the meaning of Article 1(2) of Regulation No 2988/95. Consequently, the Member States are free to grant the power to bring legal proceedings in respect of irregularities to an authority different from that which awards or recovers, in that situation, the reimbursement of storage costs, provided that those States do not thereby undermine the effective application of EU law.
- 33 Having regard to all the foregoing considerations, the answer to Question 1(a) is that the third subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the concept of ‘competent authority’, within the meaning of that provision, is to be understood as designating the authority which has responsibility, under national law, for adopting acts relating to the investigation or legal proceedings in question, which authority may be different from that which is responsible for awarding or recovering sums wrongfully received to the detriment of the EU’s financial interests.

The second question

- 34 By its second question, the referring court asks, in essence, whether the third subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that acts relating to the investigation or legal proceedings in respect of an irregularity have been notified to the ‘person in question’, within the meaning of that provision when, if that person is a legal person, those acts have been communicated to employees of that person in the course of their being heard as witnesses.
- 35 In that regard, the referring court states that a number of employees of Pfeifer & Langen were heard as witnesses during the investigation into that company. In that context, the court asks whether it is sufficient, for the limitation period for legal proceedings in respect of the irregularities at issue in the main proceedings to be interrupted, that those persons have been made aware of the acts in the investigation or legal proceedings.

- 36 Firstly, it must be noted that it is apparent from the wording of the third subparagraph of Article 3(1) of Regulation No 2988/95 that the concept of ‘person in question’ designates the economic operator suspected of having committed the irregularities in respect of which an investigation was initiated or legal proceedings were brought, namely, here, Pfeifer & Langen.
- 37 Next, it must be held that Regulation No 2988/95 does not lay down any specific rules concerning the details of how the person in question must be made aware of an ‘act relating to investigation or legal proceedings’ within the meaning of the third subparagraph of Article 3(1) of that regulation.
- 38 That requirement must be regarded as satisfied where a set of facts lead to the conclusion that the person in question has effectively been made aware of those acts relating to investigation or legal proceedings. In the case of a legal person, that requirement is satisfied if the act in question has actually been brought to the attention of a person whose conduct may be ascribed, under national law, to that legal person, which it is for the referring court to ascertain.
- 39 Having regard to all the foregoing considerations, the answer to the second question is that the third subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that acts relating to investigation or legal proceedings concerning an irregularity have been notified to the ‘person in question’, within the meaning of that provision, where a set of facts lead to the conclusion that the person in question has effectively been made aware of those acts relating to investigation or legal proceedings. In the case of a legal person, that requirement is satisfied if the act in question has actually been brought to the attention of a person whose conduct may be ascribed, under national law, to that legal person, which it is for the referring court to ascertain.

Question 1(b) and the third question

- 40 By Question 1(b) and its third question, which it is appropriate to examine together, the referring court asks, in essence, whether the third subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted, firstly, as meaning that an act must relate to a specific irregularity committed by the operator and the adoption of a measure or administrative penalty in order to be classified as an ‘act relating to investigation or legal proceedings’, within the meaning of that provision and, secondly, whether a report, such as the final report at issue in the main proceedings, which assesses the results of an investigation into the suspicions of irregularities, without making any request for additional information addressed to the person in question concerning the transactions at issue, may constitute such an act.
- 41 As regards the concept of ‘act relating to investigation or legal proceedings’ within the meaning of the third subparagraph of Article 3(1) of Regulation No 2988/95, the Court has previously held that limitation periods, such as that at issue in the main proceedings, fulfil the function of ensuring legal certainty and that such a function would not be wholly fulfilled if that limitation period could be interrupted by any act relating to a general check by the national authorities which bears no relation to any suspicion concerning the existence of irregularities regarding sufficiently precisely circumscribed transactions (see judgment in *SGS Belgium and Others*, C-367/09, EU:C:2010:648, paragraph 68).
- 42 However, when the national authorities send a person a report drawing attention to an irregularity in which that person is said to have played a part in connection with a specific operation, ask the person for further information concerning that operation or apply a penalty to the person in connection with that operation, those authorities adopt acts relating to investigation or legal proceedings concerning the irregularity which are sufficiently specific for the purposes of the third subparagraph of Article 3(1) of Regulation No 2988/95 (judgments in *SGS Belgium and Others*, C-367/09, EU:C:2010:648, paragraph 69, and *Chambre de commerce et d’industrie de l’Indre*, C-465/10, EU:C:2011:867, paragraph 61).

- 43 It follows therefrom that an act must set out with sufficient precision the transactions to which the suspicions of irregularities relate in order to constitute an ‘act relating to investigation or legal proceedings’, within the meaning of the third subparagraph of Article 3(1) of Regulation No 2988/95. That requirement for precision does not, however, require the act to state the possibility that a penalty or particular administrative measure may be imposed.
- 44 The referring court points out, nevertheless, that the judgments in *SGS Belgium and Others* (C-367/09, EU:C:2010:648) and *Chambre de commerce et d’industrie de l’Indre* (C-465/10, EU:C:2011:867) could be interpreted as meaning that a report, such as the final report at issue in the main proceedings, must necessarily contain a request for additional information addressed to the person in question in order to constitute an ‘act relating to investigation or legal proceedings’ within the meaning of the third subparagraph of Article 3(1) of Regulation No 2988/95.
- 45 In that regard, it must be noted that, in those judgments, the Court merely listed, as examples, acts which may be regarded as setting out with sufficient precision the transactions to which the suspicions of irregularities relate.
- 46 It follows that a report, such as the final report at issue in the main proceedings, may be regarded as an ‘act relating to investigation or legal proceedings’, within the meaning of the third subparagraph of Article 3(1) of Regulation No 2988/95, if it sets out with sufficient precision the transactions to which the suspicions of irregularities relate, which it is for the referring court to ascertain. This is the case even where it does not contain a request for additional information addressed to the person in question.
- 47 Having regard to the foregoing, the answer to Question 1(b) and the third question is that the third subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that an act must set out with sufficient precision the transactions to which the suspicions of irregularities relate in order to constitute an ‘act relating to investigation or legal proceedings’, within the meaning of that provision. That requirement for precision does not, however, require the act to state the possibility that a penalty or particular administrative measure may be imposed. It is for the referring court to ascertain whether the report at issue in the main proceedings satisfies that requirement.

The fourth and eighth questions

- 48 By its fourth and eighth questions, which it is appropriate to examine together, the referring court asks, in essence, whether the second subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning, firstly, that several irregularities must be closely linked in time to be regarded as a ‘repeated irregularity’, within the meaning of that provision, and, secondly, whether irregularities in the calculation of the quantities of sugar stored by the manufacturer, committed in different marketing years, leading to incorrect declarations of those quantities by that manufacturer and, accordingly, the wrongful payment of sums as reimbursements of storage costs may constitute a ‘repeated irregularity’ within the meaning of that provision.
- 49 As a preliminary point, it must be borne in mind that, in accordance with the case-law of the Court, an irregularity is ‘continuous or repeated’ for the purposes of the second subparagraph of Article 3(1) of Regulation No 2988/95 where it is committed by an operator who derives economic advantages from a body of similar transactions which infringe the same provision of EU law (see judgment in *Vonk Dairy Products*, C-279/05, EU:C:2007:18, paragraph 41).

- 50 In the light of that definition, the referring court is doubtful, firstly, as to whether two or more irregularities need be closely linked in time to constitute a ‘repeated irregularity’ within the meaning of the second subparagraph of Article 3(1) of Regulation No 2988/95. In the present case, according to the referring court, some of the transactions in respect of which the applicant in the main proceedings is accused took place only in different marketing years.
- 51 In that regard, it must be recalled that, as stated in paragraph 24 of the present judgment, the limitation period referred to in Article 3(1) of Regulation No 2988/95 seeks to ensure legal certainty for economic operators and those operators must be in a position to determine which among their transactions are definitive and which may still be the subject of legal proceedings.
- 52 There are grounds for taking the view that irregularities cannot constitute a ‘repeated irregularity’, within the meaning of the second subparagraph of Article 3(1) of Regulation No 2988/95, if they are separated by a period greater than the limitation period of four years provided for in the first subparagraph of Article 3(1) thereof. In such a situation, those separate irregularities are not sufficiently closely linked in time. In the absence of any act relating to investigation or legal proceedings issued by the competent authority, an operator could thus legitimately believe the first of those irregularities to be time-barred. However, there is such a link in time where the period between each irregularity is shorter than that limitation period.
- 53 Next, with regard to the classification of the irregularities at issue in the main proceedings, it is for the referring court to ascertain, in accordance with the rules of evidence of national law applicable to the main proceedings, provided that the effectiveness of EU law is not undermined, whether the elements constituting a continued or repeated irregularity, recalled in paragraph 49 of this judgment, are present (see, to that effect, judgment in *Vonk Dairy Products*, C-279/05, EU:C:2007:18, paragraph 43). None the less, the Court may provide that court, on the basis of the information in the order for reference, with the points of interpretation which are likely to enable the referring court to give its ruling.
- 54 In that regard, in particular, it appears that the irregularities of which Pfeifer & Langen is accused all go to confirm the inaccuracy of the declarations made by that company as regards the classification of part of its white sugar production in respect of which it applied for the reimbursement of storage costs (A and/or B quotas rather than C sugar). Accordingly, those irregularities are likely to constitute a repeated infringement of Article 13(1) of Regulation No 1998/78, which requires sugar manufacturers to declare stocks eligible for reimbursement of storage costs.
- 55 It cannot, therefore, be ruled out that the irregularities of which Pfeifer & Langen is accused in the main proceedings form as a whole a ‘repeated irregularity’ within the meaning of the second subparagraph of Article 3(1) of Regulation No 2988/95, which it is for the referring court to ascertain.
- 56 In the light of the foregoing considerations, the answer to the fourth and eighth questions is that the second subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that, with regard to the fact that irregularities must be closely linked in time in order to be regarded as a ‘repeated irregularity’, within the meaning of that provision, it is required only that the period between each irregularity be shorter than the limitation period of four years provided for in the first subparagraph of Article 3(1). Irregularities such as those at issue in the main proceedings, concerning the calculation of the quantities of sugar stored by the manufacturer, committed in different marketing years, leading to incorrect declarations of those quantities by that manufacturer and, accordingly, the wrongful payment of sums as reimbursements of storage costs, constitute, in principle, a ‘repeated irregularity’ within the meaning of the second subparagraph of Article 3(1) of Regulation No 2988/95, which it is for the referring court to ascertain.

The fifth question

- 57 By its fifth question, the referring court asks, in essence, whether the second subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that classification of a series of irregularities as a ‘continuous or repeated irregularity’, within the meaning of that provision, is not excluded where the competent authorities have not made regular and in-depth checks on the person in question.
- 58 According to Pfeifer & Langen, the BLE did not fulfil its obligation of due diligence by failing to carry out regular and in-depth checks on the company during the marketing years at issue in the main proceedings. It argues that the BLE cannot, in such circumstances, claim that the irregularities were continuous or repeated in order to extend the limitation period for legal proceedings.
- 59 As has been pointed out in paragraph 49 of the present judgment, an irregularity is ‘continuous or repeated’ for the purposes of the second subparagraph of Article 3(1) of Regulation No 2988/95 only where it is committed by an operator who derives economic advantages from a body of similar transactions which infringe the same provision of EU law.
- 60 It follows therefrom that that concept is based on objective criteria, specific to that category of irregularities and independent of the conduct of the national authority towards the operator in question. In particular, the classification of a series of irregularities as a ‘continuous or repeated irregularity’, within the meaning of the second subparagraph of Article 3(1) of Regulation No 2988/95, cannot depend on whether or not the competent authorities made regular and in-depth checks on the person in question.
- 61 In the light of the foregoing considerations, the answer to the fifth question is that the second subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that classification of a series of irregularities as a ‘continuous or repeated irregularity’, within the meaning of that provision, is not excluded where the competent authorities have not made regular and in-depth checks on the person in question.

The sixth and ninth questions

- 62 By its sixth and ninth questions, which it is appropriate to examine together, the referring court asks, in essence, whether the fourth subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the limitation period laid down in that provision runs, as regards continuous or repeated irregularities, with effect from the day on which the last irregularity ceased, or from the day on which each of the various repeated irregularities was committed, or from the day on which the competent national authorities became aware of those irregularities.
- 63 Firstly, it is apparent from both the wording and scheme of Article 3(1) of Regulation No 2988/95 that, in its fourth subparagraph, that provision sets an absolute limit applying to the time-bar of legal proceedings in respect of an irregularity, that limitation becoming effective at the latest on the day on which a period equal to twice the limitation period laid down in the first subparagraph thereof expires without the competent authority having imposed a penalty, except where the administrative procedure has been suspended in accordance with Article 6(1) of that regulation.
- 64 The limitation period laid down in the fourth subparagraph of Article 3(1) of Regulation No 2988/95 thus helps to reinforce the legal certainty of the economic operators, in accordance with the essential requirement referred to in paragraph 24 of this judgment, by preventing the limitation period of legal proceedings in respect of an irregularity from being extended indefinitely by repeated interrupting acts.

- 65 Next, with regard to the starting date of that limitation period, it is also apparent from the scheme of Article 3(1) of Regulation No 2988/95, and particularly from the absence of particular rules on the matter, that that starting date must be determined on the basis of the first two subparagraphs of that provision.
- 66 In accordance with the second subparagraph of Article 3(1) of that regulation, in the case of repeated irregularities, the limitation period runs from the day on which the irregularity ended. As has been recalled in paragraph 49 of this judgment, where in order to derive economic advantages therefrom, an operator carries out a body of similar transactions which infringe the same provision of EU law, those transactions must be regarded as forming a single continuous or repeated irregularity. Consequently, the concept of an 'irregularity ceasing' referred to in that provision must be understood as referring to the day on which the last transaction forming part of a single repeated irregularity ceased.
- 67 Accordingly, the date on which the national authorities became aware of an irregularity is irrelevant to the starting point of that limitation period. Apart from the fact that there is nothing in the wording of Article 3(1) of Regulation No 2988/95 enabling an inference to the contrary, it has already been pointed out, in paragraph 64 of the present judgment, that the national administration has a general obligation of due diligence in the verification of payments which it makes from the EU budget, which means that it must take steps to rectify irregularities promptly (see, to that effect, judgments in *Ze Fu Fleischhandel and Vion Trading*, C-201/10 and C-202/10, EU:C:2011:282, paragraph 44, and *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraph 62).
- 68 In those circumstances, to accept that the limitation period laid down in the fourth subparagraph of Article 3(1) of Regulation No 2988/95 does not begin to run until the administration has discovered those irregularities could encourage inertia on the part of the national authorities in bringing proceedings in respect of irregularities, whilst exposing operators, firstly, to a long period of legal uncertainty and, secondly, to the risk of no longer being in a position to prove at the end of such a period that the transactions in question were lawful (see, to that effect, judgments in *Ze Fu Fleischhandel and Vion Trading*, C-201/10 and C-202/10, EU:C:2011:282, paragraph 45, and *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraph 62).
- 69 Having regard to the foregoing, the answer to the sixth and ninth questions is that the fourth subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the limitation period laid down in that subparagraph begins to run, in the case of a continuous or repeated irregularity, from the day on which that irregularity ceased, irrespective of the date on which the national administration became aware of that irregularity.

The seventh question

- 70 By its seventh question, the referring court asks, in essence, whether Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that acts relating to investigation or legal proceedings adopted by the competent authority and notified to the person in question, in accordance with the third subparagraph of that provision, have the effect of interrupting the limitation period laid down in the fourth subparagraph thereof.
- 71 As has been stated in paragraph 63 of this judgment, the fourth subparagraph of Article 3(1) of Regulation No 2988/95 sets an absolute limit applying to the time-bar of legal proceedings in respect of an irregularity, that limitation becoming effective at the latest on the day on which a period equal to twice the limitation period laid down in the first subparagraph of Article 3(1) of that regulation expires without the competent authority having imposed a penalty, except where the administrative procedure has been suspended in accordance with Article 6(1) of the regulation.

- 72 It follows therefrom that, except in the latter case, the acts relating to investigation or legal proceedings adopted by the competent authority and notified to the person in question, in accordance with the third subparagraph of Article 3(1) of Regulation No 2988/95, do not have the effect of interrupting the limitation period laid down in the fourth subparagraph of Article 3(1) of that regulation.
- 73 That conclusion is corroborated by the purpose of that limitation period, which is precisely intended, as has been pointed out in paragraph 64 of the present judgment, to prevent the limitation period of legal proceedings in respect of an irregularity from being extended indefinitely by repeated interrupting acts.
- 74 Having regard to the foregoing, the answer to the seventh question is that Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that acts relating to investigation or legal proceedings adopted by the competent authority and notified to the person in question, in accordance with the third subparagraph of that provision, do not have the effect of interrupting the limitation period laid down in the fourth subparagraph thereof.

Costs

- 75 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 (Fourth Chamber) hereby rules:

- 1. The third subparagraph of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests must be interpreted as meaning that the concept of 'competent authority', within the meaning of that provision, is to be understood as designating the authority which has responsibility, under national law, for adopting acts relating to the investigation or legal proceedings in question, which authority may be different from that which is responsible for awarding or recovering sums wrongfully received to the detriment of the European Union's financial interests.**
- 2. The third subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that acts relating to investigation or legal proceedings concerning an irregularity have been notified to the 'person in question', within the meaning of that provision, where a set of facts lead to the conclusion that the person in question has effectively been made aware of those acts relating to investigation or legal proceedings. In the case of a legal person, that requirement is satisfied if the act in question has actually been brought to the attention of a person whose conduct may be ascribed, under national law, to that legal person, which it is for the referring court to ascertain.**
- 3. The third subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that an act must set out with sufficient precision the transactions to which the suspicions of irregularities relate in order to constitute an 'act relating to investigation or legal proceedings', within the meaning of that provision. That requirement for precision does not, however, require the act to state the possibility that a penalty or particular administrative measure may be imposed. It is for the referring court to ascertain whether the report at issue in the main proceedings satisfies that requirement.**
- 4. The second subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that, with regard to the fact that irregularities must be closely linked in time in order to be regarded as a 'repeated irregularity', within the meaning of that provision, it is**

required only that the period between each irregularity be shorter than the limitation period of four years provided for in the first subparagraph of Article 3(1). Irregularities such as those at issue in the main proceedings, concerning the calculation of the quantities of sugar stored by the manufacturer, committed in different marketing years, leading to incorrect declarations of those quantities by that manufacturer and, accordingly, the wrongful payment of sums as reimbursements of storage costs, constitute, in principle, a 'repeated irregularity' within the meaning of the second subparagraph of Article 3(1) of Regulation No 2988/95, which it is for the referring court to ascertain.

5. The second subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that classification of a series of irregularities as a 'continuous or repeated irregularity', within the meaning of that provision, is not excluded where the competent authorities have not made regular and in-depth checks on the person in question.
6. The fourth subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the limitation period laid down in that subparagraph begins to run, in the case of a continuous or repeated irregularity, from the day on which that irregularity ceased, irrespective of the date on which the national administration became aware of that irregularity.
7. Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that acts relating to investigation or legal proceedings adopted by the competent authority and notified to the person in question, in accordance with the third subparagraph of that provision, do not have the effect of interrupting the limitation period laid down in the fourth subparagraph thereof.

[Signatures]