



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

3 September 2015*

(Reference for a preliminary ruling — Protection of the European Union's financial interests — Regulation (EC, Euratom) No 2988/95 — Article 3 — Recovery of Community aid — Administrative penalty — Administrative measures — Limitation period)

In Case C-383/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (France), made by decision of 28 May 2014, received at the Court on 11 August 2014, in the proceedings

Établissement national des produits de l'agriculture et de la mer (FranceAgriMer)

v

Sodiaal International SA,

THE COURT (Sixth Chamber),

composed of S. Rodin, President of the Chamber, E. Levits (Rapporteur) and M. Berger, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Sodiaal International SA, by F. Plottin and J.-C. Cavaillé, avocats,
- the French Government, by D. Colas and S. Ghiandoni, acting as Agents,
- the Greek Government, by I. Chalkias and A. Vasilopoulou, acting as Agents,
- the European Commission, by A. Sauka and D. Triantafyllou, acting as Agents,

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

gives the following

* Language of the case: French.

Judgment

- 1 This request 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 request has been made in proceedings between *Établissement national des produits de l'agriculture et de la mer* (the National institute for products from agriculture and the sea; 'FranceAgriMer') and Sodiaal International SA ('Sodiaal International') concerning Community aid wrongly received by the latter for the production of caseinates.

Legal context

EU law

- 3 The third recital in the preamble to Regulation No 2988/95 states:

'whereas detailed rules governing this decentralised administration and the monitoring of their use are the subject of differing detailed provisions according to the Community policies concerned; whereas acts detrimental to the Communities' financial interests must, however, be countered in all areas.'
- 4 Article 1 of Regulation No 2988/95 states:

'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.'
- 5 Article 3 of Regulation No 2988/95 states:

'1. 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. In the case of multiannual programmes, the limitation period shall in any case run until the programme is definitively terminated.

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).

...

3. Member States shall retain the possibility of applying a period which is longer than that provided for in paragraphs 1 and 2 respectively.'

6 Article 4 of the regulation states:

'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,

..

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.

...

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

7 Article 5(1) of Regulation No 2988/95 is worded 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; ...

(c) total or partial removal of an advantage granted by Community rules, ...

(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 ...'

French law

8 Article 2262 of the Code civil (French Civil code) states:

'No action, whether real or personal, shall be brought after the expiration of 30 years.'

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

- 9 During the course of 1998, Sodiaal Industrie SA received Community aid for the production of caseinates under the conditions laid down in Commission Regulation (EEC) No 2921/90 of 10 October 1990 on aid for the production of casein and caseinates from skimmed milk (OJ 1990 L 279, p. 22).
- 10 In 2001, an inspection was carried out by staff of the Agence centrale des organismes d'intervention dans le secteur agricole (Central Agency for intervention agencies in the agricultural sector; ACOFA). That inspection revealed that the quantity of caseinates produced by Sodiaal Industrie SA during the summer of 1998 was less than the quantity for which the company had received aid.
- 11 By decision of 11 July 2007, the Office national interprofessionnel de l'élevage et de ses productions (Oniep) requested Sodiaal Industrie SA to repay EUR 288051.14 corresponding to the amount of aid wrongly received.
- 12 On 30 June 2008, Sodiaal Industrie SA was acquired by Sodiaal International.
- 13 By judgment of 11 February 2010, the Tribunal administratif de Paris (Administrative Court, Paris) upheld the request of Sodiaal International, successor in law to Sodiaal Industrie SA, to annul that decision.
- 14 The appeal brought by FranceAgriMer, successor in law to the Office national interprofessionnel de l'élevage et de ses productions, against that judgment was dismissed by the Cour administrative d'appel de Paris (Administrative Court of Appeal, Paris) by judgment of 29 May 2012.
- 15 FranceAgriMer brought an appeal in cassation before the Conseil d'État (Council of State) against that judgment.
- 16 In support of its appeal in cassation, FranceAgriMer has submitted inter alia that the limitation period mentioned in the fourth subparagraph of Article 3(1) of Regulation No 2988/95 is not applicable to the decision at issue since that decision did not concern an administrative penalty but rather an administrative measure.
- 17 According to FranceAgriMer, the provisions of the fourth subparagraph of Article 3(1) of Regulation No 2988/95 apply exclusively where the competent authority has not imposed any administrative penalty, within the meaning of Article 5 of that regulation, on the expiry of a period equal to twice the limitation period. Where no administrative measures, within the meaning of Article 4 of the regulation, have been imposed within that period those provisions do not apply. Thus, according to FranceAgriMer, the 30-year limitation period laid down in Article 2262 of the Code civil, nevertheless reduced in accordance with the applicable case-law, should have been applied.
- 18 In those circumstances the Conseil d'État decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do the provisions of the fourth subparagraph of Article 3(1) of Regulation No 2988/95, pursuant to which limitation becomes 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) thereof, apply exclusively where the competent authority has not imposed any sanction within the meaning of Article 5 of the regulation, on the expiry of a period equal to twice the limitation period, or do they also apply in the absence of any administrative measure, within the meaning of Article 4 thereof, being taken within that period?'

Consideration of the question referred

- 19 By its question, the national 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 which it lays down is applicable not only to proceedings concerning irregularities which lead to the imposition of administrative penalties within the meaning of Article 5 thereof but also to proceedings which lead to the adoption of administrative measures within the meaning of Article 4 thereof.
- 20 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see judgments in *Yaesu Europe*, C-433/08, EU:C:2009:750, paragraph 13; *ebookers.com Deutschland*, C-112/11, EU:C:2012:487, paragraph 12; *Brain Products*, C-219/11, EU:C:2012:742, paragraph 13; and *Utopia*, C-40/14, EU:C:2014:2389, paragraph 27).
- 21 It should therefore be recalled, in the first place, that Article 1(1) of Regulation No 2988/95 introduces general rules ‘relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to [EU] law’, in order, as is clear from the third recital in the preamble to the regulation, to counter, in all areas, ‘acts detrimental to the [European Union’s] financial interests’.
- 22 Moreover, the first subparagraph of Article 3(1) of Regulation No 2988/95 lays down a limitation period for proceedings which runs from the time of the commission of the irregularity, which, according to Article 1(2) of that regulation, refers to ‘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 [European Union]’.
- 23 In that regard, the fourth subparagraph of Article 3(1) of that regulation refers to the imposition of a ‘penalty’, which could indicate that that paragraph is applicable only to proceedings concerning irregularities culminating in the imposition of an administrative penalty within the meaning of Article 5 of that regulation.
- 24 That literal interpretation is not, however, conclusive. It follows that, in the second place, a contextual analysis of Article 3(1) of that regulation is necessary.
- 25 Accordingly, such a contextual analysis of Article 3(1) of Regulation No 2988/95 leads, first, to the conclusion that the paragraphs of which it is composed form a whole the provisions of which cannot be taken in isolation. For instance, the fourth subparagraph of that article sets a ‘final’ limitation period in addition to the limitation period of four years which runs from the time when the irregularity was committed and which is laid down in the first subparagraph of that article. To attribute different fields of application to those paragraphs would run contrary to the general logic of the system of limitation established by that article. Thus, such an approach would run contrary to the objective pursued by Regulation No 2988/95 of providing a coherent framework for that system.
- 26 A contextual and teleological interpretation of Article 3(1) of that regulation therefore requires the ‘final’ limitation period provided for in the fourth subparagraph of Article 3(1) of that regulation to be regarded as applicable to administrative measures.
- 27 Next, it should be noted that that approach corresponds to the settled case-law of the Court, confirmed in the judgment in *Pfeifer & Langen* (C-52/14, EU:C:2015:381). According to that case-law, there is no distinction to be drawn between an administrative penalty and an administrative measure in the application of Article 3(1) of Regulation No 2988/95. The Court clearly ruled that that provision is applicable both to irregularities leading to the imposition of an administrative penalty within the meaning of Article 5 of that regulation and to irregularities which are the subject of an administrative measure within the meaning of Article 4 of that regulation, where that measure is intended to withdraw the wrongly obtained advantage without however constituting a penalty (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; *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraph 45; and *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 23).

- 28 The Court has already stated that irregularities involving the adoption of administrative measures within the meaning of Article 4 of Regulation No 2988/95, such as those at issue in the main proceedings, must be considered to be time-barred after four years from the date on which they were committed, taking into account any interruptions in the limitation period provided for in the third subparagraph of Article 3(1) of that regulation and in compliance with the maximum limit laid down in the fourth subparagraph of Article 3(1) thereof (judgment in *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraph 64).
- 29 Thus, it is apparent from the Court's recent case-law that the interpretation of the third subparagraph of Article 3(1) of Regulation No 2988/95 applies equally to the possibility of an administrative penalty as to that of an administrative measure (judgment in *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraphs 40, 43 and 47).
- 30 Finally, the objectives underlying Article 3(1) of Regulation No 2988/95 are relevant. In that regard, the period referred to in this provision clearly 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 (judgment in *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraphs 24 and 64).
- 31 In the light of the foregoing, the case-law cited in the preceding paragraph of the present judgment cannot be understood either as limited to the interpretation of the first subparagraph of Article 3(1) of Regulation No 2988/95 or as meaning that the fourth subparagraph of Article 3(1) of the regulation refers solely and limitatively to the administrative penalties which are laid down in Article 5 thereof.
- 32 For the sake of completeness, it should be emphasised that that interpretation is without prejudice to Article 3(3) of Regulation No 2988/95 according to which Member States are to retain the possibility of applying a period which is longer than that provided for in Article 3(1) and (2) of that regulation respectively (see, to that effect, judgments in *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraph 54, and *Ze Fu Fleischhandel and Vion Trading*, C-201/10 and C-202/10, EU:C:2011:282, paragraph 25).
- 33 In the light of the foregoing considerations, the answer to the question referred is that the fourth subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the limitation which it lays down is applicable not only to proceedings concerning irregularities which lead to the imposition of administrative penalties within the meaning of Article 5 thereof but also to proceedings which lead to the adoption of administrative measures within the meaning of Article 4 thereof.

Costs

- 34 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 (Sixth Chamber) hereby rules:

The fourth 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 limitation which it lays down is applicable not only to proceedings concerning irregularities which lead to the imposition of administrative penalties within the meaning of Article 5 thereof but also to proceedings which lead to the adoption of administrative measures within the meaning of Article 4 thereof.

[Signatures]