



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

2 March 2017**

(Reference for a preliminary ruling — Regulation (EC, Euratom) No 2988/95 — Protection of the European Union's financial interests — Article 3 — Regulation (EEC) No 3665/87 — Article 11 — Recovery of an export refund unduly granted — Regulation (EEC) No 3002/92 — Article 5a — Security wrongly released — Interest due — Limitation period — Point from which time begins to run — Interruption of the period — Maximum limit — Longer period — Whether applicable)

In Case C-584/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal administratif de Melun (Administrative Court, Melun, France), made by decision of 5 November 2015, received at the Court on 11 November 2015, in the proceedings

Glencore Céréales France

v

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

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, C. Vajda, K. Jürimäe (Rapporteur) and C. Lycourgos, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 9 June 2016,

after considering the observations submitted on behalf of:

- Glencore Céréales France, by F. Citron and S. Le Roy, avocats,
- the French Government, by D. Colas, S. Ghiandoni and A. Daly, acting as Agents,
- the European Commission, by A. Bouquet, J. Baquero Cruz and G. von Rintelen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 September 2016,

gives the following

* Language of the case: French.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3 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), Article 11 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1), as amended by Commission Regulation (EC) No 495/97 of 18 March 1997 (OJ 1997 L 77, p. 12) ('Regulation No 3665/87'), and Article 5a of Commission Regulation (EEC) No 3002/92 of 16 October 1992 laying down common detailed rules for verifying the use and/or destination of products from intervention (OJ 1992 L 301, p. 17), as amended by Commission Regulation (EC) No 770/96 of 26 April 1996 (OJ 1996 L 104, p. 13, 'Regulation No 3002/92').
- 2 The request has been made in proceedings between Glencore Céréales France ('Glencore'), and Établissement national des produits de l'agriculture et de la mer (FranceAgriMer) concerning the payment of interest on export refunds wrongly received by Glencore.

Legal context

EU law

Regulation No 2988/95

- 3 The third recital of Regulation No 2988/95 states:

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

- 4 Article 1 of that regulation provides:

'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 [European Union] or budgets managed by [it], either by reducing or losing revenue accruing from own resources collected directly on behalf of the [European Union], or by an unjustified item of expenditure.'

- 5 Article 3 of Regulation No 2988/95 provides:

'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 ...

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).

2. The period for implementing the decision establishing the administrative penalty shall be three years. That period shall run from the day on which the decision becomes final.

Instances of interruption and suspension shall be governed by the relevant provisions of national law.

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 Title II of Regulation No 2988/95 is entitled 'Administrative measures and penalties'. That title contains Article 4, paragraphs 1 and 2 of which provide:

'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.'

7 Article 5 of that regulation lays down the administrative penalties to which intentional irregularities or those caused by negligence may lead.

Regulation No 3665/87

8 Regulation No 3665/87 was repealed and replaced by Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11 and corrigendum OJ 1999 L 180, p. 53). The dispute in the main proceedings, however, remains governed by Regulation No 3665/87.

9 Article 11(3) of Regulation No 3665/87 provided:

'... where a refund is unduly paid, the beneficiary shall reimburse the amounts unduly received, which includes any sanction applicable pursuant to the first subparagraph of paragraph 1, with interest calculated on the basis of the period between payment and reimbursement. However:

- (a) where reimbursement is covered by a security which has not yet been released, seizure of that security in accordance with Article 23(1) or Article 33(1) shall constitute recovery of the amounts due,
- (b) where the security has been released, the beneficiary shall pay the amount of the security which would have been forfeit, with interest calculated on the basis of the period from the date of release to the day preceding the date of payment.

The payment shall be made within 30 days from the day of receipt of the demand for payment.

...'

Regulation No 3002/92

10 Regulation No 3002/92 was repealed and replaced by Commission Regulation (EC) No 1130/2009 of 24 November 2009 laying down common detailed rules for verifying the use and/or destination of products from intervention (OJ 2009 L 310, p. 5). The dispute in the main proceedings, however, remains governed by Regulation No 3002/92.

11 Article 5a(1) and (2) of Regulation No 3002/92 was worded as follows:

‘1. Where, after the release in whole or in part of the security referred to in Article 5, it is established that the products in whole or in part did not reach the prescribed use and/or destination the competent authority of the Member State where the security has been released shall require ... the operator concerned to pay an amount equal to the amount of the security which would have been forfeited if the failure would have been taken into account before the release of the security. This amount shall be increased by interest calculated from the date of release to the day preceding the date of payment.

The receipt by the competent authority of the amount referred to in the preceding subparagraph shall constitute the recovery of the economic advantage unduly granted.

2. The payment shall be made within 30 days from the day of receipt of the demand for payment.

...’

French law

12 The Loi No 2008-561, du 17 juin 2008, portant réforme de la prescription en matière civile (JORF No 141 of 18 June 2008, p. 9856) (Law No 2008-561 of 17 June 2008 on the reform of limitation periods in civil law) laid down new general limitation rules, included in Article 2224 of the French Civil Code, according to which:

‘The limitation period for bringing personal actions or actions involving moveable property shall be five years from the date on which the owner of a right was aware or should have been aware of the facts entitling him to exercise the right.’

13 Article 26 of that Law provides:

I. – The provisions of the present Law which prolong a limitation period shall apply where the limitation period had not yet expired at the time when the present Law came into force. Account shall then be taken of the period which has already elapsed.

II. – The provisions of the present Law which reduce the limitation period shall apply to limitation periods from the date on which the present Law comes into force; the total period may not, however, exceed the period laid down by the Law previously in force.

III. – Where an action has been commenced before the entry into force of the present Law, the case shall be administered and determined in accordance with the old Law. That Law shall also apply to appeals and appeals in cassation ...’

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

- 14 On 26 May 1999, Glencore obtained a certificate authorising it to export 3 300 tonnes of barley for malting in bulk, for which it was eligible for export refunds.
- 15 As a result of a Customs inspection which brought to light irregularities in the way in which cereals were loaded onto the ships on which that barley was to be exported, the Office national interprofessionnel des céréales (National Cereals Trade Board, France) issued an order for payment against Glencore in the total amount of EUR 93933.85, corresponding to the export refunds wrongly received, plus a penalty and sanction equivalent to 50% and 15% of the amount of those refunds respectively. The company was given notification of the order for payment on 25 February 2004.
- 16 Between May and September 2000, Glencore submitted to the Customs authorities export declarations in respect of 43630.13 tonnes of common wheat.
- 17 As a result of a Customs inspection which brought to light irregularities in the way in which that wheat was stored prior to export, on 30 November 2005 the National Cereals Trade Board issued three orders for payment against Glencore in the amounts of EUR 113685.40, EUR 22285.60 and EUR 934598.28, respectively, seeking the repayment of the amounts wrongly received by that company. Those orders for payment were notified to Glencore by letter of 5 January 2006.
- 18 After unsuccessfully challenging the orders for payment referred to in paragraphs 15 and 17 above before the relevant court, Glencore paid the sums claimed, on 6 April 2010 in so far as concerns the aid received for the export of barley for malting, and on 27 September 2010 in so far as concerns the amounts relating to the export of common wheat.
- 19 By decision of 16 April 2013, which was accompanied by an order for payment dated 12 April 2013, FranceAgriMer requested Glencore to pay the sum of EUR 289569.05 by way of interest accrued on the aid and amounts wrongly received by that company.
- 20 Glencore brought an action against that decision before the national court, arguing that the recovery of that interest was time-barred in the light of Article 3(1) of Regulation No 2988/95.
- 21 In those circumstances the tribunal administratif de Melun (Administrative Court, Melun, France) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is it possible to infer from the terms of [the judgment of 29 March 2012, *Pfeifer & Langen* (C-564/10, EU:C:2012:190)], that Article 3 of [Regulation No 2988/95] is applicable to measures seeking payment of interest due pursuant to [Article 11(3) of Regulation No 3665/87] and Article 5a of [Regulation No 3002/92]?
- (2) Is the claim for interest to be regarded as naturally arising from a “continuous or repeated” irregularity which ceases on the date on which the principal is repaid, thus deferring until that date the point at which the limitation period in respect of the claim for interest starts to run?
- (3) If [the second question] is answered in the negative, must the point at which the limitation period starts to run be the day on which the irregularity giving rise to the principal claim was committed, or may it only be the day on which the aid is paid or the security released, corresponding to the starting point for the calculation of such interest?

- (4) For the purpose of the application of the rules on limitation laid down by Regulation No 2988/95, must any act which interrupts the limitation period in so far as concerns the principal claim be regarded as also interrupting the time running in respect of interest, even if no mention is made of interest in the acts directed at the principal claim that interrupt the limitation period?
- (5) Does limitation become effective as a result of the fact that the maximum period provided for in the fourth subparagraph of Article 3(1) of Regulation No 2988/95 has expired if, within that period, the paying agency seeks recovery of the aid unduly paid without demanding at the same time the payment of interest?
- (6) Is it possible for the general five-year limitation period provided for under national law in Article 2224 of the Civil Code by Law No 2008-561 ... to have replaced, as regards limitation periods that had not yet expired on the date when that Law entered into force, the four-year limitation period laid down by Regulation No 2988/95, in the light of the derogation provided for in Article 3(3) of that regulation?

Consideration of the questions referred

The first question

- 22 By its first question, the national courts asks, in essence, whether Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the limitation period laid down in that provision is applicable to the recovery of claims for interest, such as those at issue in the main proceedings, due on the basis of Article 11(3) of Regulation No 3665/87 and Article 5a of Regulation No 3002/92.
- 23 First of all, it is appropriate to recall that, in accordance with Article 1 of Regulation No 2988/95 and as is apparent from the third recital of that regulation, 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 to ‘[counter] acts detrimental to the [EU’s] financial interests ... in all areas’ (judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 20 and the case-law cited).
- 24 In that context, 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 a continuous or repeated irregularity, 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.
- 25 In the present case, the EU sectoral rules relevant to the main proceedings, that is Regulation No 3665/87, governing the system of export refunds on agricultural products, and Regulation No 3002/92, on verifying the use and/or destination of products from intervention, do not provide for any specific provisions on limitation.
- 26 It is apparent from the settled case-law of the Court that the four-year limitation period referred to in Article 3(1) of Regulation No 2988/95 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 resulting in the withdrawal of the advantage wrongly obtained, in accordance with Article 4 of that regulation (see, to that effect, judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 23 and the case-law cited).

- 27 Under Article 4(1) of Regulation No 2988/95, any irregularity, within the meaning of Article 1(2) of the regulation, is to involve, as a general rule, withdrawal of the wrongly obtained advantage, in particular by an obligation to pay or repay the amounts due or wrongly received. It is also stated in Article 4(2) of that regulation that application of the measures referred to in Article 4(1) must be limited to the withdrawal of the advantage obtained plus, where so provided for, interest which may be determined on a flat-rate basis.
- 28 In the present case, it is not disputed that the orders for payment at issue in the main proceedings, issued by the competent administrative authority with a view to recovering the aid and amounts wrongly received by Glencore on account of the irregularities committed by it, were adopted on the basis of Article 11(3) of Regulation No 3665/87, as regards the barley for malting in bulk, and Article 5a of Regulation No 3002/92, as regards the intervention wheat. It is also apparent from the documents before the Court that the order for payment relating to the recovery of interest in addition to that aid and those amounts was adopted on the basis of those provisions.
- 29 In that regard, it is to be noted that those articles expressly provide that the reimbursement of the aid and amounts unduly received by the operator concerned is to be supplemented by interest, calculated on the basis of that aid and those amounts, according to the time elapsed between their receipt and reimbursement. The second subparagraph of Article 5a(1) of Regulation No 3002/92 states, in that regard, that the receipt by the competent authority of the amount thus calculated is to constitute the recovery of the economic advantage unduly granted to the operator concerned.
- 30 Consequently, the orders for payment at issue in the main proceedings must be classified as ‘administrative measures’, within the meaning of Article 4(1) and (2) of Regulation No 2988/95, both in so far as they relate to the principal and the interest, since those orders contribute jointly to the withdrawal of the advantage wrongly obtained by the operator concerned.
- 31 It follows that the limitation period laid down in Article 3(1) of that regulation is applicable in circumstances such as those in the main proceedings.
- 32 That conclusion is not called into question by the case-law stemming from the judgment of 29 March 2012, *Pfeifer & Langen* (C-564/10, EU:C:2012:190), to which the national court refers. Although the Court held, in paragraph 53 of that judgment, that Article 3 of Regulation No 2988/95 must be interpreted as meaning that the limitation period that it lays down for the recovery of the principal claim does not apply to the recovery of interest arising from that claim, such an interpretation related to a situation, as is apparent from that paragraph, in which the interest was due under national law alone not, as in the present case, under EU law.
- 33 In the light of the foregoing considerations, the answer to the first question is that Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the limitation period laid down in that provision is applicable to the recovery of claims for interest, such as those at issue in the main proceedings, due on the basis of Article 11(3) of Regulation No 3665/87 and of Article 5a of Regulation No 3002/92.

The second question

- 34 By its second question, the national court asks, in essence, whether the second subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the fact that an operator is liable for claims for interest, such as those at issue in the main proceedings, constitutes a ‘continuous or repeated irregularity’, within the meaning of that provision, for which the limitation period starts to run from the date on which the aid or amounts wrongly received, constituting the principal, were repaid.

- 35 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 (judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 49 and the case-law cited).
- 36 In the light of that definition, the French Government contends, in essence, in its observations to the Court, that the irregularity, within the meaning of Article 1(2) of Regulation No 2988/95, giving rise to each of the claims for interest at issue in the main proceedings must be regarded as being separate from the irregularity giving rise to the principal claims. There is, therefore, a continuous irregularity in the persistent failure to settle the principal claim, during the entire period in which the operator remains liable for that claim.
- 37 However, in the light of the considerations set out in paragraph 29 above, interest such as that at issue in the main proceedings cannot be regarded as stemming from an irregularity, within the meaning of Article 1(2) of Regulation No 2988/95, which is separate from the irregularity resulting in the recovery of the aid and amounts constituting the principal amount.
- 38 It must be borne in mind that the commission of an irregularity, within the meaning of Article 1(2) of Regulation No 2988/95, requires two conditions to be satisfied, namely an economic operator’s act or omission that infringed EU law and a prejudice, or potential prejudice, caused to the budget of the European Union (see, to that effect, judgment of 6 October 2015, *Firma Ernst Kollmer Fleischimport und -export*, C-59/14, EU:C:2015:660, paragraph 24).
- 39 As regards the condition relating to the existence of an infringement of EU law, it follows from Article 11(3) of Regulation No 3665/87 and Article 5a of Regulation No 3002/92 that the same infringement of a provision of EU law gives rise both to the recovery of the sums wrongly received on account of that infringement and the receipt of interest in addition to those sums, which jointly contribute to the recovery of the economic advantage unduly granted to the operator concerned.
- 40 As regards the condition relating to the existence of prejudice, or potential prejudice, caused to the budget of the European Union, it must be stated that, as the Advocate General observed, in essence, in points 51 and 60 of his Opinion, the interest provided for in Article 11(3) of Regulation No 3665/87 and Article 5a of Regulation No 3002/92 amounts to compensatory interest intended to reflect the current value of the ‘prejudice’, within the meaning of Article 1(2) of Regulation No 2988/95, between the date on which the prejudice was caused and the date on which the actual amount of the prejudice is reimbursed by the operator concerned.
- 41 It follows that — contrary to the French Government’s contentions, as regards an infringement of the provisions of Regulations No 3665/87 and 3002/92 — an irregularity within the meaning of Article 1(2) of Regulation No 2988/95 gives rise to the recovery of the economic advantage unduly granted to the operator concerned, which, in accordance with Article 11(3) of Regulation No 3665/87 and Article 5a of Regulation No 3002/92, is composed of the aid or amounts wrongly received by that operator plus the interest provided for in those articles.
- 42 Consequently, the answer to the second question is that the second subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the fact that an operator is liable for claims for interest, such as those at issue in the main proceedings, does not constitute a ‘continuous or repeated irregularity’, within the meaning of that provision. Such claims must be regarded as resulting from the same irregularity, within the meaning of Article 1(1) of Regulation No 2988/95, as that giving rise to the recovery of the aid and amounts wrongly received, constituting the principal claims.

The third question

- 43 By its third question, the national court asks, in essence, whether the first subparagraph of Article 3(1) of Regulation 2988/95 must be understood as meaning that, as regards proceedings resulting in the adoption of administrative measures for the recovery of claims for interest, such as those at issue in the main proceedings, the limitation period laid down in the first subparagraph of Article 3(1) starts to run from the date on which the irregularity which gives rise to the recovery of the aid and amounts not due, on the basis of which that interest is calculated, was committed or whether that period starts to run from the day corresponding to the starting point for the calculation of such interest.
- 44 First of all, it is apparent from the answer to the second question that claims such as those at issue in the main proceedings must be regarded as resulting from the same irregularity, within the meaning of Article 1(2) of Regulation No 2988/95, both in relation to the principal and the interest.
- 45 Consequently, in accordance with the wording of the first subparagraph of Article 3(1) of Regulation No 2988/95, the limitation period for proceedings for the recovery of such claims is four years from the date on which the irregularity was committed
- 46 The date on which that irregularity was committed must be determined in the light of the sequence of events at issue in the main proceedings.
- 47 The Court has held that, in the light of the conditions which must be satisfied before it may be found that there is an irregularity, noted in paragraph 38 above, the date from which the limitation period begins to run is the date of the event that last occurs, namely either the date of the occurrence of the prejudice, where the prejudice occurs after the act or omission infringing EU law, or the date of that act or omission, where the advantage at issue has been granted before the act or omission (see, to that effect, judgment of 6 October 2015, *Firma Ernst Kollmer Fleischimport und -export*, C-59/14, EU:C:2015:660, paragraph 26).
- 48 In that regard, the Court has stated that, as regards export refunds, ‘prejudice’ within the meaning of Article 1(2) of Regulation No 2988/95 occurs on the date that the definitive decision is made to grant the advantage at issue. It is from that time that a prejudice is in fact caused to the budget of the European Union. That prejudice could not be considered to exist before the date on which the advantage was definitively granted unless it were accepted that the limitation period for recovering an advantage is capable of running already from a time at which the advantage has not yet been granted (see, to that effect, judgment of 6 October 2015, *Firma Ernst Kollmer Fleischimport und -export*, C-59/14, EU:C:2015:660, paragraph 32). As regards a security, such as that referred to in Article 5a of Regulation No 3002/92, it must be held that prejudice, within the meaning of Article 1(2) of Regulation No 2988/95, occurs on the date of release of that security.
- 49 In the present case, the chronology of the events at issue in the main proceedings, as set out in the order for reference, does not enable, first, the date on which the ‘prejudice’, within the meaning of Article 1(2) of Regulation No 2988/95, occurred to be determined and, secondly, whether that prejudice occurred before or after the act or omission constituting an infringement of EU law.
- 50 It is, in any event, for the national court, which has full knowledge of the events at issue in the main proceedings, to determine whether, in the present case, the advantage concerned was definitively granted before the act or omission constituting an infringement of EU law. If that is the case, the limitation period for proceedings for the recovery of the claims constituted by the interest at issue starts to run as from that act or omission. If, conversely, it is apparent that that advantage was granted after that act or omission, the *dies a quo* is the date on which that advantage is granted and, therefore, the day corresponding to the starting point for the calculation of such interest.

51 In the light of the foregoing considerations, the answer to the third question is that the first subparagraph of Article 3(1) of Regulation 2988/95 must be understood as meaning that, as regards proceedings resulting in the adoption of administrative measures for the recovery of claims for interest, such as those at issue in the main proceedings, the limitation period laid down in the first subparagraph of Article 3(1) starts to run from the date on which the irregularity which gives rise to the recovery of the aid and amounts not due, on the basis of which that interest is calculated, was committed, that is, on the date of the factor constituting that irregularity, namely, either the date of the act or omission or the date of the prejudice, which occurs last.

The fourth and fifth questions

- 52 By its fourth and fifth questions, which must be examined together, 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, as regards proceedings resulting in the adoption of administrative measures for the recovery of interest, such as those at issue in the main proceedings, limitation becomes effective on the expiry of the period laid down in the fourth subparagraph of Article 3(1), when within that period the competent authority, while having sought recovery of the aid or amounts wrongly received by the operator concerned, has not adopted a decision regarding that interest.
- 53 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 (judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 63).
- 54 Having regard to the Court's case-law, it must be found that that absolute limit is applicable also to the adoption of administrative measures within the meaning of Article 4 of that regulation (judgment of 3 September 2015, *Sodiaal International*, C-383/14, EU:C:2015:541, paragraph 33).
- 55 In addition, the Court has held that that limitation period helps to reinforce the legal certainty of the economic operators by preventing the limitation period of legal proceedings in respect of an irregularity from being extended indefinitely by repeated interrupting acts (see, to that effect, judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 64).
- 56 Consequently, except where the administrative procedure has been suspended in accordance with Article 6(1) of Regulation No 2988/95, 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 that regulation, do not have the effect of interrupting the limitation period laid down in the fourth subparagraph of Article 3(1) of that regulation (see, to that effect, judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 72).
- 57 It follows that, as regards irregularities, such as those at issue in the main proceedings, the competent authority is required to adopt the administrative measures for the recovery of the economic advantage unduly granted in any event within the period laid down in the fourth subparagraph of Article 3(1) of Regulation No 2988/95.
- 58 In the light of the considerations in paragraphs 30 and 45 above, that period applies both to measures for the recovery of the amounts referred to in Article 11(3) of Regulation No 3665/87 and Article 5a of Regulation No 3002/92 and also to the measures relating to the interest provided for in those

provisions, and it begins to run as from the date on which the irregularity, within the meaning of Article 1(2) of Regulation No 2988/95, constituting the infringement of the provisions of Regulations No 3665/87 and 3002/92, was committed.

- 59 Consequently, in a situation, such as that at issue in the main proceedings, in which the competent authority sought, initially, the reimbursement of the principal claims, before subsequently seeking the reimbursement of the interest, even if acts interrupting the limitation period have been adopted in respect of that interest, that authority was required to adopt its decision relating to the reimbursement of that interest within the period laid down in the fourth subparagraph of Article 3(1) of Regulation No 2988/95.
- 60 It follows that, when irregularities with regard to Regulations Nos 3665/87 and 3002/92 had been committed, as in the main proceedings during the years 1999 and 2000 respectively, the fourth subparagraph of Article 3(1) of Regulation No 2988/95 did not allow the competent authority to adopt in 2013 a decision on the interest due under Article 11(3) of Regulation No 3665/87 and Article 5a of Regulation No 3002/92, since the claims relating to that interest were, subject to verification by the national court, time-barred at time date. In the light of the absolute nature of the period provided for in the fourth subparagraph of Article 3(1) of Regulation No 2988/95, that conclusion also applies when, within the period referred to in that provision, the authority adopted a decision on the reimbursement of the amounts constituting the principal.
- 61 In the light of the foregoing considerations, the answer to the fourth and fifth questions is that the fourth subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that, as regards proceedings resulting in the adoption of administrative measures for the recovery of interest, such as those at issue in the main proceedings, limitation becomes effective on the expiry of the period laid down in the fourth subparagraph of Article 3(1), when within that period the competent authority, while having sought recovery of the aid or amounts wrongly received by the operator concerned, has not adopted a decision regarding that interest.

The sixth question

- 62 By its sixth question, the national court asks, in essence, whether Article 3(3) of Regulation No 2988/95 must be interpreted as meaning that a limitation period laid down under national law, which is longer than that laid down in Article 3(1) of that regulation, may be applied, in a situation such as that at issue in the main proceedings, as regards the recovery of claims for interest arising before the date on which that period entered into force, not yet time-barred under Article 3(1).
- 63 It must be borne in mind that, in accordance with Article 3(3) of Regulation No 2988/95, Member States may apply limitation periods which are longer than that minimum period of four years laid down in Article 3(1) thereof (see, to that effect, judgment of 17 September 2014, *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraph 54).
- 64 In that regard, Member States retain wide discretion in fixing longer limitation periods which they intend to apply in cases involving an irregularity that is detrimental to the European Union's financial interests (judgment of 17 September 2014, *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraph 55 and the case-law cited).
- 65 It is also apparent from the case-law of the Court that under Article 3(3) of Regulation No 2988/95 Member States can, first, continue to apply longer limitation periods which existed at the date when that regulation was adopted and, secondly, introduce new rules on limitation providing for such longer limitation periods after that date (judgment of 29 January 2009, *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, C-278/07 to C-280/07, EU:C:2009:38, paragraph 42).

- 66 As regards the main proceedings, it is apparent from the order for reference that at the date on which the irregularities at issue were committed, there were no limitation rules under national law capable of being applied in place of those laid down in Regulation No 2988/95.
- 67 The national court makes clear, however, that Law No 2008-561, the transitional provisions of which are set out in paragraph 13 above, laid down new general limitation rules, which set that limitation period at five years.
- 68 In those circumstances, the question asked by the national court concerns whether EU law precludes the application of a longer limitation period, within the meaning of Article 3(3) of Regulation No 2988/95, in so far as its effect would be to extend by one year the limitation period applicable as a rule to claims not yet time-barred.
- 69 It must be noted from the outset that the application of a limitation period longer than that laid down in Article 3(1) of that regulation could be envisaged only if, on the date on which that period enters into force, the claims concerned are time-barred neither in the light of the first subparagraph of Article 3(1), nor the fourth subparagraph of Article 3(1) which constitutes an absolute limit, as is apparent from paragraphs 53 and 59 above.
- 70 In addition, while Member States provide for longer limitation periods pursuant to Article 3(3) of Regulation No 2988/95, they are not required, in the context of that provision, to provide for those longer limitation periods in specific and/or sectoral rules (see, to that effect, judgment of 29 January 2009, *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, C-278/07 to C-280/07, EU:C:2009:38, paragraph 46). It is also open to them to adopt legislative provisions establishing a limitation period of a general nature (see, to that effect, judgment of 17 September 2014, *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraphs 57 and 63 and the case-law cited).
- 71 If a longer limitation period is applied pursuant to Article 3(3) of Regulation No 2988/95 limitation becomes effective, notwithstanding the adoption of an act interrupting the limitation period, in any event at the latest on the day on which a period equal to twice that longer limitation period expires.
- 72 In addition, although, as is apparent from paragraph 64 above, the Member States retain a broad discretion as regards setting longer limitation periods, those Member States must, however, observe the general principles of EU law, in particular the principles of legal certainty and proportionality.
- 73 As regards the principle of legal certainty, as is apparent from the Court's case-law in criminal matters, it is as a rule open to the Member States to extend limitation periods where the relevant offences have never become subject to limitation (see, to that effect, judgment of 8 September 2015, *Taricco and Others*, C-105/14, EU:C:2015:555, paragraph 57).
- 74 As regards the principle of proportionality, it is to be noted that the application of a longer national limitation period, such as is referred to in Article 3(3) of Regulation No 2988/95, with a view to bringing proceedings in respect of irregularities, within the meaning of that regulation, must not go clearly beyond what is necessary to achieve the objective of protecting the European Union's financial interests (see, to that effect, judgment of 17 September 2014, *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraph 59 and the case-law cited). As regards a five-year limitation period, such as that laid down in Article 2224 of the Civil Code, in the version resulting from Law No 2008-561, it must be pointed out that that period is only one year longer than the period laid down in Article 3(1) of Regulation No 2988/95. Consequently, such a period does not go beyond what is necessary to enable the national authorities to bring proceedings in respect of irregularities prejudicing the European Union's budget and complies with the requirement for proportionality.

- 75 As regards specifically the situation in the main proceedings, it is for the national court, having regard to the answer to the second and third questions and the considerations in paragraph 58 above concerning the point at which the limitation period in respect of the claims for interest, such as those at issue in the main proceedings, starts to run to ascertain whether, on the date on which Law No 2008-561 establishing a five-year limitation period entered into force, those claims were time-barred in the light of the first and fourth subparagraphs of Article 3(1) of Regulation No 2988/95. If it were established that limitation had not become effective by that date, it would be apparent, under the fourth subparagraph of Article 3(1) of Regulation No 2988/95, that the period equal to twice the five-year limitation period provided for by that Law had, in any event, expired as at the date on which the competent authority had adopted its decision as regards the interest at issue in the main proceedings, in April 2013, which it is, however, for the national court to verify.
- 76 In the light of the foregoing considerations, the answer to the sixth question is that Article 3(3) of Regulation No 2988/95 must be interpreted as meaning that a limitation period laid down under national law, which is longer than that laid down in Article 3(1) of that regulation, may be applied, in a situation such as that at issue in the main proceedings, as regards the recovery of claims arising before the date on which that period entered into force, not yet time-barred under Article 3(1).

Costs

- 77 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. 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 period laid down in that provision is applicable to the recovery of claims for interest, such as those at issue in the main proceedings, due on the basis of Article 11(3) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EC) No 495/97 of 18 March 1997, and Article 5a of Commission Regulation (EEC) No 3002/92 of 16 October 1992 laying down common detailed rules for verifying the use and/or destination of products from intervention, as amended by Commission Regulation (EC) No 770/96 of 26 April 1996.**
- 2. The second subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the fact that an operator is liable for claims for interest, such as those at issue in the main proceedings, does not constitute a ‘continuous or repeated irregularity’ within the meaning of that provision. Such claims must be regarded as resulting from the same irregularity, within the meaning of Article 1(1) of Regulation No 2988/95, as that giving rise to the recovery of the aid and amounts wrongly received, constituting the principal claims.**
- 3. The first subparagraph of Article 3(1) of Regulation 2988/95 must be understood as meaning that, as regards proceedings resulting in the adoption of administrative measures for the recovery of claims for interest, such as those at issue in the main proceedings, the limitation period laid down in the first subparagraph of Article 3(1) starts to run from the date on which the irregularity which gives rise to the recovery of the aid and amounts not due, on the basis of which that interest is calculated, was committed, that is, on the date of the factor constituting that irregularity, namely, either the date of the act or omission or the date of the prejudice, which occurs last.**

4. **The fourth subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that, as regards proceedings resulting in the adoption of administrative measures for the recovery of interest, such as those at issue in the main proceedings, limitation becomes effective on the expiry of the period laid down in the fourth subparagraph of Article 3(1), when within that period the competent authority, while having sought recovery of the aid or amounts wrongly received by the operator concerned, has not adopted a decision regarding that interest.**
5. **Article 3(3) of Regulation No 2988/95 must be interpreted as meaning that a limitation period laid down under national law, which is longer than that laid down in Article 3(1) of that regulation, may be applied, in a situation such as that at issue in the main proceedings, as regards the recovery of claims arising before the date on which that period entered into force, not yet time-barred under Article 3(1).**

[Signatures]