



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

30 April 2020*

(Reference for a preliminary ruling – State aid – Article 108 TFEU – Aid scheme that is incompatible with the internal market – Decision of the European Commission ordering the recovery of unlawful aid – Regulation (EU) 2015/1589 – Article 17(1) – Limitation period of 10 years – Application to the recovery powers of the Commission – Article 16(2) and (3) – National legislation laying down a limitation period of a lesser duration – Principle of effectiveness)

In Case C-627/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Administrativo e Fiscal de Coimbra (Administrative and Tax Court, Coimbra, Portugal), made by decision of 31 July 2018, received at the Court on 5 October 2018, in the proceedings

Nelson Antunes da Cunha Lda

v

Instituto de Financiamento da Agricultura e Pescas IP (IFAP),

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, P.G. Xuereb (Rapporteur) and T. von Danwitz, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 September 2019,

after considering the observations submitted on behalf of:

- the Instituto de Financiamento da Agricultura e Pescas IP (IFAP), by J. Saraiva de Almeida and P. Estevão, advogados,
- the Portuguese Government, by L. Inez Fernandes, P. Barros da Costa, H. Almeida and A. Gameiro, acting as Agents,
- the European Commission, by M. França, B. Stromsky and G. Braga da Cruz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 December 2019,

* Language of the case: Portuguese

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 16(2) and (3) and Article 17(1) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).
- 2 The request has been made in proceedings between Nelson Antunes da Cunha Lda and the Instituto de Financiamento da Agricultura e Pescas IP (IFAP) (Institute for the Financing of Agriculture and Fisheries, Portugal) concerning the forced recovery of unlawful aid worth an overall amount of EUR 14 953.56 from Nelson Antunes da Cunha, following a recovery decision of the European Commission.

Legal context

EU Law

- 3 Recitals 25 and 26 of Regulation 2015/1589 provide:
 - (25) In cases of unlawful aid which is not compatible with the internal market, effective competition should be restored. For this purpose it is necessary that the aid, including interest, be recovered without delay. It is appropriate that recovery be effected in accordance with the procedures of national law. The application of those procedures should not, by preventing the immediate and effective execution of the Commission decision, impede the restoration of effective competition. To achieve this result, Member States should take all necessary measures ensuring the effectiveness of the Commission decision.
 - (26) For reasons of legal certainty it is appropriate to provide for a period of limitation of 10 years with regard to unlawful aid, after the expiry of which no recovery can be ordered.'
- 4 Article 16 of Regulation 2015/1589, entitled 'Recovery of aid', provides:
 1. Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary ('recovery decision'). The Commission shall not require recovery of the aid if this would be contrary to a general principle of Union law.
 2. The aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission. Interest shall be payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery.
 3. Without prejudice to any order of the Court of Justice of the European Union pursuant to Article 278 [TFEU], recovery shall be effected without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow the immediate and effective execution of the Commission's decision. To this effect and in the event of a procedure before national courts, the Member States concerned shall take all necessary steps which are available in their respective legal systems, including provisional measures, without prejudice to Union law.'

5 Article 17 of Regulation 2015/1589, entitled ‘Limitation period for the recovery of aid’, provides in paragraph 1:

‘The powers of the Commission to recover aid shall be subject to a limitation period of 10 years.’

6 The preceding provisions were reproduced from Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1), as amended by Council Regulation (EU) No 734/2013 of 22 July 2013 (OJ 2013 L 204, p. 15), which is repealed by Regulation 2015/1589.

Portuguese law

7 Under Article 306(1) of the Código Civil (Civil Code), the limitation period starts to run from the time at which the right can be exercised.

8 Article 309 of the Civil Code, entitled ‘Ordinary period’, provides:

‘The ordinary limitation period shall be [20] years’.

9 Article 310 of the Civil Code provides:

‘The following shall be time-barred after a period of five years:

...

(d) contractual or statutory interest, even if not yet due, and dividends from companies;

...’

10 Under Article 323(1) of that Code, the limitation is interrupted by a summons or the judicial notification of any form of document which expresses, directly or indirectly, the intention to exercise the right.

11 Article 40 of decreto-lei n.º 155/92 (Decree Law No 155/92) of 28 July 1992 (*Diário da República*, Series I-A, No 172/1992 of 28 July 1992), lays down the State system of financial administration. That provision, entitled ‘Limitation’, provides:

‘1 – Obligatory repayment of the amounts received shall be limited to five years following their receipt.

2 – The abovementioned period shall be interrupted or suspended by the occurrence of general causes of interruption or suspension of the limitation.’

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

12 On 8 April 1993 and 7 July 1993, the applicant in the main proceedings, Nelson Antunes da Cunha, concluded with the Caixa de Crédito Agrícola Mútuo – Coimbra (CCAM Coimbra), credit agreements relating to a credit line for the recovery of agricultural and breeding livestock activities.

- 13 The decreto-lei n.º 146/94 (Decree Law No 146/94) of 24 May 1994 (*Diário da República*, Series I-A, No 120 of 24 May 1994), established a scheme for granting credit lines intended to promote, first, the reduction of the debt burden of intensive stock farms and assisting recovery in the pig-farming sector. That scheme was not notified by the Portuguese Republic to the Commission, contrary to the requirements of Article 88(3) EC.
- 14 Under those credit agreements, the IFAP's predecessor in law, in accordance with Decree-Law No 146/94, paid to Nelson Antunes da Cunha, between 1994 and 1996, an overall amount of EUR 7 526.90 by way of interest rate subsidies (EUR 4 189.90 was paid on 12 July 1994, EUR 2 513.94 on 12 July 1995 and EUR 823.06 on 30 April 1996; the 'aid at issue').
- 15 On 25 November 1999, the Commission adopted Decision 2000/200/EC concerning an aid scheme implemented by Portugal with a view to reducing the debt burden of intensive stock farms and assisting recovery in the pig-farming sector (OJ 2000 L 66, p. 20; the 'Commission decision of 25 November 1999').
- 16 It is clear, in essence, from the operative part of that decision, addressed to the Portuguese Republic, that the scheme for granting credit lines established by Decree Law No 146/94 is an aid scheme that is incompatible with the common market. It is also clear that the Portuguese Republic is required to withdraw that aid scheme and to take all the necessary measures to recover, from the recipients, the aid already granted to them unlawfully. It is stated that the recovery is to be effected in accordance with the procedures under Portuguese national law and that the amounts to be recovered accrue interest from the date on which they were granted to the recipients until the date on which they are actually recovered. It is also stated that the Portuguese Republic is to inform the Commission, within two months of the notification of that decision, of the measures it has taken to comply with it.
- 17 On 23 July 2002, the IFAP's predecessor in law sent Nelson Antunes da Cunha a letter requesting that it repay the aid at issue. Nelson Antunes da Cunha did not respond to that letter.
- 18 On 12 August 2009, the IFAP sent Nelson Antunes da Cunha a new letter, which that company received on 13 August 2009, asking it to repay the aid at issue within 10 working days from receipt of that letter.
- 19 On 7 July 2013, a tax execution procedure was initiated by the Serviço de Finanças de Cantanhede (Tax Office, Cantanhede, Portugal) against Nelson Antunes da Cunha for the purposes of recovering the debt owed to the IFAP in the amount of EUR 7 526.90 in respect of the aid at issue, plus default interest of EUR 7 426.66.
- 20 Nelson Antunes da Cunha challenged that procedure before the referring court, namely the Tribunal Administrativo e Fiscal de Coimbra (Administrative and Tax Court, Coimbra, Portugal). The applicant claims, first, that, under Article 40 of Decree Law No 155/92, the obligation to repay amounts received is discharged after the expiry of a period of five years of their receipt, and therefore the obligation to repay the aid at issue is time-barred. Secondly, in respect of the default interest, it submits that, since more than five years have passed since the due date of the obligation with which those amounts are associated, that interest is also time-barred under Article 310(d) of the Civil Code.
- 21 The referring court notes that national law does not provide for a limitation period that is specific to the enforcement of the order for recovery of unlawful aid, and that, consequently, the higher national courts have ruled that the debt owed to the IFAP, corresponding to the recovery of financial aid granted by the Portuguese State and which, by a Commission decision, is considered to be aid which is incompatible with the internal market, is subject to the ordinary limitation period of 20 years provided for in Article 309 of the Civil Code.

- 22 The referring court adds that, as regards the interest relating to the aid itself, the higher national courts consider that it cannot be concluded, without further formalities, that such interest is subject to the 20-year limitation period provided for in Article 309 of the Civil Code. According to those courts, contractual or statutory interest, even if not yet due, is time-barred after a period of five years under Article 310(d) of the Civil Code, a period which, in accordance with the rule in Article 306 of that code, starts to run from the date on which the obligation becomes due.
- 23 Bearing in mind, on the one hand, the settled case-law of the Court on State aid, under which the application of national procedures must not, by preventing the immediate and effective execution of the Commission's recovery decision, impede the restoration of effective competition, and, on the other hand, the intention of the EU legislature stated in recital 26 of Regulation 2015/1589, the referring court seeks to ascertain whether the limitation period of 10 years provided for in Article 17(1) of Regulation 2015/1589 applies solely to relations between the European Union and the Member State that has granted the aid or whether it also applies to relations between that State and the beneficiary of the unlawful aid.
- 24 The referring court also seeks to ascertain whether Article 16(2) of Regulation 2015/1589, according to which the aid to be recovered includes interest, and the principle of effectiveness preclude the application of the five-year limitation period, provided for in Article 310(d) of the Civil Code, to the recovery of interest relating to such State aid.
- 25 According to that court, since the interest payable for the period prior to the five years before the act interrupting the limitation period referred to in Article 323(1) of the Civil Code is regarded as time-barred, the debt relating to interest on State aid could be time-barred even before the Commission's right to require the recovery of that aid is itself time-barred.
- 26 In response to a request for clarification sent to it by the Court under Article 101 of the Rules of Procedure of the Court of Justice of the European Union, the referring court stated, as regards the situation at issue in the case in the main proceedings, that since the five-year limitation period had been interrupted only by registered letter of 26 July 2013, all interest accrued before 26 June 2008 was time-barred.
- 27 The referring court added that the five-year limitation period provided for in Article 310(d) of the Civil Code cannot, in the light of national law, be considered to be interrupted by any kind of letter sent by the Commission to the Portuguese authorities, or from those authorities to the recipient of the aid, where that letter does not amount to a summons or the notification of a judicial document within the meaning of Article 323(1) of the Civil Code.
- 28 In those circumstances the Tribunal Administrativo e Fiscal de Coimbra (Administrative and Tax Court, Coimbra), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Does the limitation period for the exercise of the powers [of the Commission] to recover aid, provided for in Article 17(1) of ... Regulation ... 2015/1589 apply only to relations between the European Union and the Member State to which the decision to recover aid is addressed, or does it apply also to relations between that Member State and the opponent, as the beneficiary of the aid considered incompatible with the [internal] market?
- (2) Should it be found that that limitation period is applicable to relations between the Member State to which the decision to recover aid is addressed and the beneficiary of the aid considered incompatible with the [internal] market, must it be understood that that period is applicable only at the procedural stage, or also to the enforcement of the recovery decision?

- (3) Should it be found that that limitation period is applicable to relations between the Member State to which the decision to recover aid and the beneficiary of the aid considered incompatible with the [internal] market, must it be understood that that period may be interrupted by any measure concerning illegal aid adopted by the Commission or by the Member State, even where such measures have not been notified to the beneficiary of the aid to be recovered?
- (4) Does Article 16(2) of ... Regulation ... 2015/1589 ... together with the [general] principles of EU law, namely the principles of effectiveness and of the incompatibility of State aid with the [internal] market, preclude the application of a limitation period of a lesser duration than that laid down in Article 17 [of that] regulation, such as that provided for in Article 310 ... (d) of the Civil Code, to the interest accruing on the aid to be recovered?

The questions referred for a preliminary ruling

The first question

- 29 By its first question, the referring court asks, in essence, whether Article 17(1) of Regulation 2015/1589 must be interpreted as meaning that the limitation period of 10 years laid down by that provision for the exercise of the powers of the Commission to recover aid applies only to relations between the Commission and the Member State to which the Commission's recovery decision is addressed, or also to relations between that State and the beneficiary of the aid considered incompatible with the internal market.
- 30 Article 17(1) of Regulation 2015/1589, which provides for a limitation period of 10 years, refers only to the powers of the Commission to recover aid (see, to that effect, judgment of 23 January 2019, *Fallimento Traghetti del Mediterraneo*, C-387/17, EU:C:2019:51, paragraph 52).
- 31 That period cannot therefore be applied to the procedure applicable to the recovery of unlawful aid by the competent national authorities (see, to that effect, judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraphs 108 and 109).
- 32 It is clear from the case-law of the Court that, in so far as Regulation 2015/1589 contains rules of a procedural nature which apply to all administrative procedures in the matter of State aid pending before the Commission, it codifies and reinforces the Commission's practice in reviewing State aid and does not contain any provision relating to the powers and obligations of the national courts, which continue to be governed by the provisions of the Treaty as interpreted by the Court (see, by analogy, judgments of 23 January 2019, *Fallimento Traghetti del Mediterraneo*, C-387/17, EU:C:2019:51, paragraph 66, and of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 110). Those considerations are no less valid with respect to the powers and obligations of the national administrative authorities (judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 111).
- 33 In the light of the foregoing, the answer to the first question is that Article 17(1) of Regulation 2015/1589 must be interpreted as meaning that the limitation period of 10 years laid down by that provision for the exercise of the powers of the Commission to recover aid applies only to relations between the Commission and the Member State to which the Commission's recovery decision is addressed.

The second and third questions

- 34 In the light of the answer given to the first question, there is no need to answer the second and third questions.

The fourth question

35 By its fourth question, the referring court asks, in essence, whether Article 16(2) of Regulation 2015/1589, according to which the aid to be recovered includes interest, and the principle of effectiveness, referred to in Article 16(3) of that regulation, must be interpreted as precluding the application of a national limitation period, of a lesser duration than the 10-year limitation period laid down in Article 17(1) of that regulation, to the recovery of that interest.

Preliminary observations

36 Both the IFAP and the Portuguese Government dispute the referring court's interpretation according to which the five-year limitation period, laid down in Article 310(d) of the Civil Code, may apply to the recovery of interest relating to the aid to be recovered and prevent the recovery of that interest.

37 The IFAP considers that, in the present case, it may exercise its right of claim against Nelson Antunes da Cunha only from the end of the administrative procedure initiated with a view to recovering aid, that is to say from the date of the letter of 23 July 2002, referred to in paragraph 17 of this judgment. It contends, therefore, that the right to recover the interest relating to the aid at issue is not time-barred. The Portuguese Government submits, for its part, that, in so far as Portuguese law does not provide for a limitation period that is specific to the recovery of State aid unduly received, the limitation period applicable, both to the recovery of the aid itself and default interest relating to that aid, is the normal national limitation period of 20 years.

38 In that regard, it suffices to recall that the Court, when a question is referred to it by a national court, bases itself on the interpretation of national law as described to it by that court (see, to that effect, judgment of 14 June 2017, *Online Games and Others*, C-685/15, EU:C:2017:452, paragraph 45 and the case-law cited). Thus, whatever criticism the parties to the main proceedings and the interested parties may have made of the interpretation of national law adopted by the referring court, this reference for a preliminary ruling must be examined in the light of that court's interpretation of that law (see, to that effect, judgment of 21 June 2016, *New Valmar*, C-15/15, EU:C:2016:464, paragraph 25).

Consideration of the question

39 It is common ground that the Portuguese Republic was required to recover the aid referred to in the Commission Decision of 25 November 1999, including interest, in accordance with the operative part of that decision and Article 16(2) of Regulation 2015/1589.

40 Under Article 16(3) of that regulation, recovery of such aid is to be effected in accordance with the procedures under national law, provided that they allow the immediate and effective execution of the Commission's decision.

41 Although national limitation rules are, in principle, applicable to the recovery of unlawful aid, those rules must, however, be applied in such a way that the recovery required by EU law is not rendered practically impossible and the interests of the European Union are taken fully into consideration (see, to that effect, judgment of 26 June 2003, *Commission v Spain*, C-404/00, EU:C:2003:373, paragraph 51 and the case-law cited).

42 It should also be pointed out that the main purpose of the repayment of unlawfully paid State aid is to eliminate the distortion of competition caused by the competitive advantage afforded (judgment of 7 March 2018, *SNCF Mobilités v Commission*, C-127/16 P, EU:C:2018:165, paragraph 104 and the case-law cited). Restoring the situation prior to the payment of aid which was unlawful or

incompatible with the internal market is a necessary requirement for preserving the effectiveness of the provisions of the Treaties concerning State aid (judgment of 19 December 2019, *Arriva Italia and Others*, C-385/18, EU:C:2019:1121, paragraph 85 and the case-law cited).

- 43 The recovery obligation is met only when the Member State concerned has effectively recovered the amount of incompatible aid, including the interest (see, to that effect, judgments of 12 February 2008, *CELF and ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79, paragraph 54, and of 3 September 2015, *A2A*, C-89/14, EU:C:2015:537, paragraph 42).
- 44 It should also be pointed out that it is clear from the settled case-law of the Court that, in general, limitation periods fulfil the function of ensuring legal certainty (judgment of 23 January 2019, *Fallimento Traghetti del Mediterraneo*, C-387/17, EU:C:2019:51, paragraph 71 and the case-law cited).
- 45 However, although it is necessary to ensure compliance with the requirements of legal certainty, it is also important to strike a balance between complying with those requirements and the public interest in preventing the functioning of the market from being distorted by State aid that is injurious to competition, which requires, according to the settled case-law of the Court, that unlawful aid must be recovered in order to restore the previously existing situation (see, to that effect, judgment of 14 January 1997, *Spain v Commission*, C-169/95, EU:C:1997:10, paragraph 47 and the case-law cited).
- 46 It should also be noted that it is in accordance with the Court's settled case-law that, in view of the mandatory nature of the supervision of State aid by the Commission pursuant to Article 108 TFEU, undertakings to which aid has been granted may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in that article, and furthermore, an economic operator exercising due care should normally be able to determine whether that procedure has been followed. In particular, where aid is implemented without prior notification to the Commission, with the result that it is unlawful under Article 108(3) TFEU, the recipient of the aid cannot have at that time a legitimate expectation that its grant is lawful (judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 98 and the case-law cited). As Advocate General Saugmandsgaard Øe noted in point 67 of his Opinion, the same is true in the case of individual aid and aid granted under an aid scheme.
- 47 It is clear from the explanations given by the referring court that, in the case in the main proceedings, the five-year limitation period applicable to the interest relating to the aid at issue, laid down in Article 310(d) of the Civil Code, was interrupted only on 26 July 2013 and that all the interest payable for the period prior to 26 June 2008 is time-barred, under that provision. It is therefore clear that the application of that limitation period prevents the recovery of part of the interest relating to the aid at issue and, therefore, the full recovery of that aid.
- 48 Furthermore, the referring court pointed out that, since the interest payable for the period prior to the five years before the act interrupting the limitation period is regarded as time-barred, the debt relating to the interest on aid could be time-barred even before the right of the Commission to order the recovery of that aid is time-barred. At the hearing before the Court, the Commission also highlighted that the application, in the present case, of such a national limitation period would lead to part of the interest relating to the first payment of the aid at issue being time-barred, as more than five years had passed between that first payment made in 1994 and the Commission Decision of 25 November 1999.
- 49 In the first place, as regards part of the interest relating to the aid at issue being time-barred before the adoption of the Commission Decision of 25 November 1999, it should be noted that any such time-barring would make it impossible to effect the full recovery required by EU law.

- 50 As noted by Advocate General Saugmandsgaard Øe in point 59 of his Opinion, the Commission can still, within the 10-year period provided for in Article 17(1) of Regulation 2015/1589, request the recovery of unlawful aid, despite the fact that a limitation period applied in the national proceedings may have expired (see, to that effect, judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 114).
- 51 Moreover, as is clear from the case-law cited in paragraph 46 of the present judgment, Nelson Antunes da Cunha cannot in the present case validly rely on a legitimate expectation that the aid at issue is lawful, as that aid was implemented by the Portuguese Republic without prior notification to the Commission.
- 52 The referring court must therefore refuse of its own motion to apply a national limitation period, applicable to the recovery of aid that is to be recovered, which expired even before the adoption of the Commission recovery decision.
- 53 In the second place, as regards part of the interest relating to the aid at issue being time-barred after the adoption of the Commission Decision of 25 November 1999, it should be noted that, in accordance with Article 16(3) of Regulation 2015/1589, the execution of a Commission recovery decision must be immediate.
- 54 It is clear from the IFAP's written observations that, to follow up on that decision, its predecessor in law sent a letter to Nelson Antunes da Cunha on 23 July 2002, that is to say nearly three years after the adoption of that decision, requesting from it the repayment of EUR 7 526.90, with the corresponding interest. As Nelson Antunes da Cunha failed to follow up on that request, the IFAP sent it, on 12 August 2009, that is to say nearly 10 years after the adoption of that decision, a new letter asking it to repay the aid at issue. Following several exchanges between Nelson Antunes da Cunha and the IFAP, a procedure for the recovery of that debt was finally initiated on 26 July 2013, which interrupted the limitation period.
- 55 The time-barring of part of the interest relating to the aid at issue, after the adoption of the Commission Decision of 25 November 1999, therefore results primarily from the fact that the IFAP's predecessor in law and the IFAP were slow to implement that decision, since nearly 14 years had passed between the adoption of that decision and the interruption of the limitation period, as was pointed out by the Commission at the hearing before the Court.
- 56 Accepting the time-barring of interest relating to unlawful aid on the ground that the national authorities were late in complying with the Commission recovery decision of 25 November 1999 would make the full recovery of that aid practically impossible and would deprive of effectiveness the EU legislation on State aid (see, to that effect, judgment of 20 March 1997, *Alcan Deutschland*, C-24/95, EU:C:1997:163, paragraph 37).
- 57 Furthermore, as regards State aid that is found by the Commission to be incompatible, the role of the national authorities is merely to give effect to the Commission's decision. The authorities do not, therefore, have any discretion as regards the recovery of that aid (see, to that effect, judgment of 20 March 1997, *Alcan Deutschland*, C-24/95, EU:C:1997:163, paragraph 34).
- 58 Since the national authorities have no discretion in the matter, the recipient of unlawfully granted aid ceases to be in a state of uncertainty once the Commission has adopted a decision finding the aid incompatible with the common market and requiring recovery (see, to that effect, judgment of 20 March 1997, *Alcan Deutschland*, C-24/95, EU:C:1997:163, paragraph 36). Thus, as Advocate General Saugmandsgaard Øe noted in points 77 and 78 of his Opinion, that assessment applies just as much to aid granted under an aid scheme.

- 59 In the present case, the situation of Nelson Antunes da Cunha cannot be treated in the same way as the situation where a trader does not know whether the competent administrative authorities are going to reach a decision, and where the principle of legal certainty requires that such uncertainty be brought to an end after a certain period has elapsed (see, to that effect, judgment of 20 March 1997, *Alcan Deutschland*, C-24/95, EU:C:1997:163, paragraph 35).
- 60 In such circumstances, the principle of legal certainty, which the limitation periods seek to ensure, cannot preclude repayment of aid that is found to be incompatible with the internal market, as pointed out by Advocate General Saugmandsgaard Øe in point 81 of his Opinion.
- 61 In the light of the foregoing considerations, the answer to the fourth question is that Article 16(2) of Regulation 2015/1589, according to which the aid to be recovered includes interest, and the principle of effectiveness, referred to in Article 16(3) of that regulation, must be interpreted as precluding the application of a national limitation period to the recovery of aid where that period has expired even before the adoption of the Commission decision finding that aid to be unlawful and ordering its recovery, or where that limitation period has elapsed, primarily, as a result of the delay on the part of the national authorities in implementing that decision.

Costs

- 62 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 (Second Chamber) hereby rules:

- 1. Article 17(1) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union must be interpreted as meaning that the limitation period of 10 years laid down by that provision for the exercise of the powers of the European Commission to recover aid applies only to relations between the Commission and the Member State to which the Commission's recovery decision is addressed.**
- 2. Article 16(2) of Regulation 2015/1589, according to which the aid to be recovered includes interest, and the principle of effectiveness, referred to in Article 16(3) of that regulation, must be interpreted as precluding the application of a national limitation period to the recovery of aid where that period has expired even before the adoption of the Commission decision finding that aid to be unlawful and ordering its recovery, or where that limitation period has elapsed, primarily, as a result of the delay on the part of the national authorities in implementing that decision.**

[Signatures]