



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

30 January 2024*

(Reference for a preliminary ruling – European Union Cohesion Funds – Regulation (EC) No 1083/2006 – Articles 99 and 101 – Financial corrections in connection with detected irregularities – Regulation (EU) 2021/1060 – Article 104 – Financial corrections made by the Commission – Commission decision annulling in part a contribution from that fund – Validity – Charter of Fundamental Rights of the European Union – Article 41 – Right to good administration – Article 47, first paragraph – Right to an effective remedy before a tribunal)

In Case C-471/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria), made by decision of 4 July 2022, received at the Court on 13 July 2022, in the proceedings

Agentsia ‘Patna infrastruktura’

v

Rakovoditel na Upravlyavashitia organ na Operativna programa ‘Transport’ 2007-2013 i direktor na direktsia ‘Koordinatsia na programi i proekti’ v Ministerstvo na transporta (RUO),

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, N. Piçarra (Rapporteur), M. Safjan, N. Jääskinen and M. Gavalec, Judges,

Advocate General: T. Čapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Agentsia ‘Patna infrastruktura’, by I. Ivanov,

* Language of the case: Bulgarian.

- the Rakovoditel na Upravlyavashtia organ na Operativna programa 'Transport' 2007-2013 i direktor na direksia 'Koordinatsia na programi i proekti' v Ministerstvo na transporta (RUO), by M. Georgiev,
- the Bulgarian Government, by T. Mitova, acting as Agent,
- the European Commission, by P. Carlin, D. Drambozova and G. Wils, acting as Agents,

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

Judgment

- 1 This request for a preliminary ruling concerns, first, the validity of Commission Decision C(2021) 5739 final of 27 July 2021 cancelling part of the Cohesion Fund contribution to the operational programme 'Transport' 2007-2013 under the 'Convergence' objective in Bulgaria ('the decision of 27 July 2021') and, second, the interpretation of Articles 41 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), of the third paragraph of Article 296 TFEU, and of Articles 98 and 100 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).
- 2 The request has been made in proceedings between the Agentsia 'Patna infrastruktura' (Road Infrastructure Agency, Bulgaria; 'the API') and the Rakovoditel na Upravlyavashtia organ na Operativna programa 'Transport' 2007-2013 i direktor na direksia Koordinatsia na programi i proekti v Ministerstvo na transporta (Head of the Managing Authority of the Operational Programme 'Transport' 2007-2013 and Director of the Directorate for the coordination of programmes and projects in the Ministry of Transport; 'the management authority') concerning the financial correction in the amount of 5% of the value of a contract of 27 February 2012, funded by a grant awarded under the operational programme 'Transport' 2007-2013, that that authority had applied to the API by letter of 29 December 2021.

Legal context

European Union law

Regulation No 1083/2006

- 3 Recital 65 of Regulation No 1083/2006, applicable *ratione temporis* to the dispute in the main proceedings, stated:

'In accordance with the principles of subsidiarity and proportionality, Member States should have the primary responsibility for the implementation and control of the interventions.'

4 Pursuant to Article 2(7) of that regulation:

'For the purposes of this Regulation, the following terms shall have the meanings assigned to them here:

...

(7) "irregularity": 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 European Union by charging an unjustified item of expenditure to the general budget.'

5 Article 60 of that regulation, entitled 'Functions of the managing authority', provided:

'The managing authority shall be responsible for managing and implementing the operational programme in accordance with the principle of sound financial management and in particular for:

(a) ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with applicable Community and national rules for the whole of their implementation period;

...'

6 Article 70 of the same regulation, entitled 'Management and control', provided, in paragraphs 1 and 2 thereof:

'1. Member States shall be responsible for the management and control of operational programmes, in particular through the following measures:

(a) ensuring that management and control systems for operational programmes are set up in accordance with Articles 58 to 62 and function effectively;

(b) preventing, detecting and correcting irregularities and recovering amounts unduly paid together with interest on late payments where appropriate. They shall notify these to the [European] Commission and keep the Commission informed of the progress of administrative and legal proceedings.

2. When amounts unduly paid to a beneficiary cannot be recovered, the Member State shall be responsible for reimbursing the amounts lost to the general budget of the European Union, when it is established that the loss has been incurred as a result of fault or negligence on its part.'

7 Article 98 of Regulation No 1083/2006, entitled 'Financial corrections by Member States' was worded as follows:

'1. The Member States shall in the first instance bear the responsibility for investigating irregularities, acting upon evidence of any major change affecting the nature or the conditions for the implementation or control of operations or operational programmes and making the financial corrections required.

2. The Member State shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes. The corrections made by a Member State shall consist of cancelling all or part of the public contribution to the operational programme. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Funds.

...'

8 Article 99 of that regulation, entitled 'Criteria for the corrections', provided:

'1. The Commission may make financial corrections by cancelling all or part of the Community contribution to an operational programme where, after carrying out the necessary examination, it concludes that:

- (a) there is a serious deficiency in the management and control system of the programme which has put at risk the Community contribution already paid to the programme;
- (b) expenditure contained in a certified statement of expenditure is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph;
- (c) a Member State has not complied with its obligations under Article 98 prior to the opening of the correction procedure under this paragraph.

2. The Commission shall base its financial corrections on individual cases of irregularity identified, taking account of the systemic nature of the irregularity to determine whether a flat-rate or extrapolated correction should be applied.

3. The Commission shall, when deciding the amount of a correction, take account of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies found in the operational programme concerned.

4. Where the Commission bases its position on facts established by auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences after examining the measures taken by the Member State concerned under Article 98(2), the reports supplied under Article 70(1)(b), and any replies from the Member State.

5. When a Member State does not comply with its obligations as referred to in Article 15(4), the Commission may, in relation to the degree of non-compliance with these obligations, make a financial correction by cancelling all or part of the Structural Funds contribution to the Member State concerned.

The rate applicable to the financial correction referred to in this paragraph shall be laid down in the implementing rules of this Regulation adopted by the Commission in accordance with the procedure referred to in Article 103(3).'

9 Article 100 of that regulation, entitled 'Procedure', provided:

'1. Before taking a decision on a financial correction, the Commission shall open the procedure by informing the Member State of its provisional conclusions and requesting the Member State to submit its comments within two months.

...

2. The Commission shall take account of any evidence supplied by the Member State within the time limits mentioned in paragraph 1.

3. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership shall make efforts to reach an agreement concerning the observations and the conclusions to be drawn from them.

...

5. In the absence of agreement, the Commission shall take a decision on the financial correction within six months of the date of the hearing taking account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six-month period shall begin to run two months after the date of the letter of invitation sent by the Commission.'

10 Article 101 of the same regulation, entitled 'Obligations of Member States', provided:

'A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 98(2) of this Regulation and to recover State aid under Article [107 TFEU] and under Article 14 of 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)].'

Regulation (EU) 2021/1060

11 Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ 2021 L 231, p. 159), provides in Article 104 thereof, entitled 'Financial corrections by the Commission':

'...

2. Before taking a decision on a financial correction, the Commission shall inform the Member State of its conclusions and give the Member State the opportunity to present, within 2 months, its observations and to demonstrate that the actual extent of irregularity is less than the Commission's assessment. The deadline can be extended if mutually agreed.

3. Where the Member State does not accept the conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in order to ensure that all relevant

information and observations are available to form the basis for Commission conclusions on the application of the financial correction.

4. The Commission shall decide on a financial correction taking into account the extent, the frequency and financial implications of the irregularities or serious deficiencies, by means of an implementing act within 10 months of the date of the hearing or of the submission of additional information as required by the Commission.

When deciding on a financial correction, the Commission shall take account of all information and observations submitted.

...'

Bulgarian law

- 12 Article 70 of the *Zakon za upravljenie na sredstvata ot evropeyskite strukturni i investitsionni fondove* (Law on the management of resources from the European Structural and Investment Funds, DV No 101 of 22 December 2015), in the version applicable to the facts in the main proceedings ('the Law on European Funds'), provides, in paragraph 1 thereof:

'Financial support from the European Structural and Investment Funds may be cancelled in full or in part by effecting a financial correction for the following reasons:

...

9. for an irregularity constituting an infringement of the rules for appointing a contractor under Chapter 4, being the result of an act or omission of the beneficiary, which has, or would have, the effect of prejudicing the European Structural and Investment Funds;
10. for any other irregularity constituting an infringement of an applicable EU and/or Bulgarian law, being the result of an act or omission of the beneficiary, which has, or would have, the effect of prejudicing the European Structural and Investment Funds'.
- 13 In accordance with Article 71(1) of the Law on European Funds, 'by carrying out financial corrections, the financial support granted under Chapter 3 of the European Social Fund shall be withdrawn, or the amount of the funding spent (eligible costs of the project) shall be reduced, in order to reach or restore the situation in which all the expenses certified by the European Commission comply with the applicable EU law and Bulgarian legislation'.
- 14 Article 73 of the Law on European Funds provides:

'(1) The basis for and amount of the financial correction shall be determined by reasoned decision of the head of the managing authority that approved the project.

(2) Before adopting the decision referred to in paragraph 1, the management authority must ensure that the beneficiary has the opportunity to submit, within a reasonable period of time that may not be less than two weeks, its written objections regarding the basis for and amount of the financial correction and, as the case may be, to include evidence with that submission.'

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

- 15 The API had benefited from the operational programme 'Transport' 2007-2013 under a contract entered into with the management authority. In performance of that contract, following public procurement procedures, it entered into three contracts each for the design and construction of a road.
- 16 On 18 May 2017, the Commission opened a financial correction procedure and gave the Republic of Bulgaria a period of two months to submit its observations. A technical meeting between the Commission and that Member State took place on 4 December 2019 in order to clarify their positions. A hearing was also held on 2 March 2021, after which that Member State provided additional information to the Commission.
- 17 By decision of 27 July 2021 addressed to the Republic of Bulgaria, the Commission found that the three public procurement procedures in question had been organised by the API in infringement of certain provisions of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114). On the basis of Article 99(2) and (3) of Regulation No 1083/2006, the Commission, therefore, annulled part of the Cohesion Fund contribution to the operational programme in question and applied a flat-rate financial correction at the rate of 5% to the expenditure declared under the operations concerned by those public procurement contracts.
- 18 Following that decision, the management authority initiated a financial correction procedure in respect of API in connection with each of those public procurement contracts. By letter of 29 December 2021, it accordingly applied a financial correction of 5% of the value of one of the public procurement contracts in question. The API brought an action against that decision before the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria), the referring court.
- 19 The referring court has doubts as to the validity of the decision of 27 July 2021. It notes, in particular, that the Commission, in addition to the fact that it failed to provide an adequate statement of reasons and failed to take into account a possible contradiction between the published contract notice in question and the tender specifications, which formed part of the tender documents, relied on several occasions on case-law of the Court relating to the interpretation of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1), whereas the directive applicable to the case before it is Directive 2004/18.
- 20 The referring court wonders, moreover, whether Article 41 of the Charter allows the Commission to find an infringement of the applicable public procurement rules relying solely on the observations of the Member State and not on those of the contracting authority, whether the competent national authorities must establish the irregularity in the context of an autonomous procedure before applying a financial correction or whether they can rely on the finding of irregularity made by the Commission and, in that case, whether Article 47 of the Charter precludes the court or tribunal that has jurisdiction to review the national correction measure from being bound by the Commission's finding of irregularity.

21 In those circumstances, the Administrativen sad Sofia-grad (Administrative Court, Sofia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- '(1) Can [the decision of 27 July 2021] be regarded as valid in the light of the requirements concerning the legal basis, the statement of reasons, the completeness and the objectivity of the examination carried out, in accordance with the third paragraph of Article 296 TFEU and the principle of good administration under Article 41 of the Charter?
- (2) Must Article 100 of Council Regulation No 1083/2006 be interpreted as meaning that, for the purposes of the legality of its decisions, the European Commission is not required to establish, examine and qualify all the legally relevant facts in the proceedings, but is required to limit its conclusions to and base them solely on the communication with the Member State and the exchange of observations or notifications with that Member State?
- (3) In a situation such as the present one, in which there is a final act of the European Commission imposing a financial correction on a Member State for an irregularity in the expenditure of [EU] Funds in three separate procurement procedures, are the competent national authorities under an obligation to conduct their own procedure for establishing irregularities in order lawfully to make a financial correction under Article 98 of Regulation No 1083/2006?
- (4) If the previous question is answered in the negative, is it to be assumed that the right of persons to participate in the procedure in which Member States make financial corrections is guaranteed, in accordance with the right to good administration under Article 41 of the Charter?
- (5) Must Article 47 of the Charter be interpreted as meaning that, in a situation such as the present one, in which there is a final act of the European Commission imposing a financial correction on a Member State for an irregularity in the expenditure of [EU] Funds in three separate procurement procedures, a national court is bound by the findings and conclusions of the European Commission where it is called upon to rule on an action against the imposition of a financial correction by the competent national authority in connection with one of those procurement procedures, or does it follow from that legal provision that the court must, in the context of a full judicial procedure and using all the means provided for by law, establish and examine the legally relevant facts and circumstances of the dispute, thereby providing the appropriate legal solution?
- (6) If the previous question is answered to the effect that the national court is bound by the European Commission Decision, including its findings of fact, can it be assumed that persons on whom a financial correction has been imposed are guaranteed the rights to an effective remedy and to a fair hearing under Article 47 of the Charter?

Consideration of the questions referred

The first and second questions

- 22 As a preliminary point, it is necessary to note that, although the referring court refers, in its second question, to Article 100 of Regulation No 1083/2006, in the present case, the Commission followed the procedure established in Article 104 of Regulation 2021/1060, taking the view that the latter article was applicable *ratione temporis* given the procedural nature of the provisions it contains.
- 23 In those circumstances, the first two questions, which it is appropriate to examine together, must be understood as seeking to establish whether, in the light of the second paragraph of Article 296 TFEU, Article 41 of the Charter and Article 104 of Regulation 2021/1060, the decision of 27 July 2021 is vitiated by irregularity.
- 24 In the first place, as regards the alleged infringement, by the Commission, of the right to be heard guaranteed by Article 41(2)(a) of the Charter, on account of the fact that the beneficiary of the funds was not heard, it follows in particular from recitals 22 to 27 of the decision of 27 July 2021, as well as from the written observations of the management authority, of the Bulgarian Government and of the Commission that, despite the fact that Article 104 of Regulation 2021/1060 does not expressly impose on the Commission an obligation to hear the beneficiary of the funds, the representatives both of that authority and of the API participated, in the present case, in a technical meeting and a hearing, organised by the Commission, in the context of the procedure provided for by that article.
- 25 In the second place, as regards the Commission's alleged infringement of its obligation to state reasons, provided for in the second paragraph of Article 296 TFEU and in Article 41(2)(c) of the Charter, it is important to note that that statement of reasons must disclose in a clear and unequivocal fashion the reasoning followed by its author in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review (see, in particular, judgments of 2 April 1998, *Commission v Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 63; of 22 March 2001, *France v Commission*, C-17/99, EU:C:2001:178, paragraph 35; and of 2 September 2021, *EPSU v Commission*, C-928/19 P, EU:C:2021:656, paragraph 108).
- 26 The requirements to be satisfied by the statement of reasons thus depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is therefore not necessary for the reasoning to go into all the facts and points of law that could be considered to be relevant (see, to that effect, judgments of 2 April 1998, *Commission v Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 63, and of 14 October 2010, *Deutsche Telekom v Commission*, C-280/08 P, EU:C:2010:603, paragraph 131).
- 27 In that regard, first of all, the Commission, after having presented, in accordance with Article 104(2) of Regulation 2021/1060, the grounds for the finding of an irregularity, in recitals 28 to 36 of the decision of 27 July 2021, replied, in recitals 49 to 67 of that decision, to the arguments put forward by the Republic of Bulgaria during the various exchanges that took place during the procedure provided for in that Article 104. The Commission thus assessed whether

the justifications relied on by that Member State could be regarded as constituting exceptional circumstances justifying a derogation from the rules of Directive 2004/18 referred to in the present case.

- 28 Next, as regards the argument that the Commission did not take into consideration the specificities of each of the three contracts concerned by the financial correction measure, it is apparent from recitals 32, 33 and, in particular, 56 to 59 of the decision of 27 July 2021 that the contracting authority imposed on each member of the consortium with which the contracts had been signed, for each of those contracts, an identical requirement, namely experience in the construction of roads with a load-bearing capacity of 11.5 tonnes per axis, without this being justified by exceptional circumstances. The Commission, relying on paragraph 91 of the judgment of 5 April 2017, *Borta* (C-298/15, EU:C:2017:266), took the view that that requirement, imposed uniformly on all members of the consortium irrespective of their specific professional capacities within that consortium, was disproportionate.
- 29 The fact that, as the referring court notes, that judgment concerns Directive 2004/17 whereas the applicable directive in the case in the main proceedings is Directive 2004/18, does not exclude the relevance of Directive 2004/17 nor of that judgment. Indeed, those two directives have a similar objective, share the same legal bases and the relevant provision of Directive 2004/18 is worded in the same way as the corresponding provision in Directive 2004/17. Furthermore, the judgment of 5 April 2017, *Borta* (C-298/15, EU:C:2017:266), refers to the judgment of 7 April 2016, *Partner Apelski Dariusz* (C-324/14, EU:C:2016:214), which concerns the interpretation of Directive 2004/18.
- 30 Lastly, as regards the alleged contradiction between the published contract notice and the tender specification, which formed part of the tender documents, as to whether the selection criteria had to be fulfilled by each consortium or by each member of the consortium individually, it must be noted that such a contradiction, even if it were established, was not raised by the parties during the financial correction procedure that was conducted pursuant to Article 104 of Regulation 2021/1060. The Commission cannot therefore be criticised for having failed to fulfil its obligation to state reasons in that regard.
- 31 In the light of the foregoing considerations, it must be concluded that the joint examination of the first and second questions has revealed nothing capable of affecting the validity of the decision of 27 July 2021.

The third and fourth questions

- 32 By the third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 98(2) of Regulation No 1083/2006, in conjunction with Article 41 of the Charter, must be interpreted as meaning that, where, in a decision adopted on the basis of Article 99 of Regulation No 1083/2006, the Commission finds an irregularity within the meaning of Article 2(7) of that regulation, and imposes, as a result, a financial correction on a Member State, the competent national authorities must pursue the recovery of the sums unduly paid, by imposing a financial correction on the beneficiary of the funds, at the end of an autonomous administrative procedure.
- 33 It is apparent from Articles 98 and 99 of Regulation No 1083/2006, read in the light of recital 65 of that regulation, that it falls, in the first instance, on the Member State to monitor the proper use of the funds and to determine, as the case may be, the existence of an irregularity, within the

meaning of Article 2(7) of that regulation. The first subparagraph of Article 98(2) of that same regulation thus makes it clear that the Member States are under an obligation to carry out financial corrections when they detect irregularities in operations or operational programmes (see, to that effect, judgments of 26 May 2016, *Județul Neamț and Județul Bacău*, C-260/14 and C-261/14, EU:C:2016:360, paragraph 48, and of 6 December 2017, *Compania Națională de Administrare a Infrastructurii Rutiere*, C-408/16, EU:C:2017:940, paragraphs 64 and 65).

- 34 Such an interpretation is supported by Article 60(a) of Regulation No 1083/2006, according to which it is the responsibility of the managing authority to ensure that operations selected for funding comply with applicable EU and national rules for the whole of their implementation period.
- 35 It is therefore merely in the alternative, in order to mitigate a failure on the part of the Member State, that the Commission is able, on the basis of Article 99 of Regulation No 1083/2006, to adopt financial correction measures after concluding that a Member State did not discharge its obligations under Article 98 of that regulation. In the present case, the Commission observed, in the decision of 27 July 2021, that no decision had been adopted by the Republic of Bulgaria under Article 98 of that regulation.
- 36 In addition, it follows from Article 101 of Regulation No 1083/2006 that a financial correction by the Commission does not prejudice the Member State's obligation to pursue the recovery, under Article 98(2) of that regulation, of the European Funds unduly received from the beneficiaries of those funds.
- 37 Such an interpretation is supported by Article 70(1)(b) of Regulation No 1083/2006, which provides that Member States, which are responsible for the management and control of operational programmes, have an obligation to recover amounts unduly paid together with interest on late payments where appropriate.
- 38 It follows that, in so far as the Member States have an obligation to recover amounts unduly paid as a result of misuse or negligence on the part of the beneficiaries of those funds, the fact that they reimbursed the European Union in accordance with the Commission decision addressed to them, does not, in principle, dispense them from the obligation to recover those amounts from those beneficiaries (see, by analogy, judgments of 13 March 2008, *Vereniging Nationaal Overlegorgaan Sociale Werkvoorziening and Others*, C-383/06 to C-385/06, EU:C:2008:165, paragraph 38 and 58; of 21 December 2011, *Chambre de commerce et d'industrie de l'Indre*, C-465/10, EU:C:2011:867, paragraph 34; and of 18 December 2014, *Somvao*, C-599/13, EU:C:2014:2462, paragraphs 44 and 45).
- 39 Accordingly, when the Commission adopts a financial correction decision under Article 99 of Regulation No 1083/2006, the Member State is required, in accordance with Article 101 of that regulation, to pursue the recovery of the amounts unduly received by adopting financial correction measures, under Article 98(2) of that regulation, unless recovery has become impossible a result of fault or negligence on the part of that Member State (see, to that effect, judgment of 1 October 2020, *Elme Messer Metalurgs*, C-743/18, EU:C:2020:767, paragraph 71).

- 40 In adopting such measures implementing EU law, Member States are required to respect the general principles of that law and the provisions of the Charter (see, to that effect, judgments of 26 May 2016, *Județul Neamț and Județul Bacău*, C-260/14 and C-261/14, EU:C:2016:360, paragraph 54, and of 17 November 2022, *Avicarvil Farms*, C-443/21, EU:C:2022:899, paragraph 38).
- 41 Since, in that regard, the referring court makes reference, in particular, to Article 41 of the Charter regarding the right to good administration, it is important to point out that that article is addressed to the institutions, bodies, offices or agencies of the European Union and not to the institutions, bodies, offices or agencies of the Member States, with the result that an individual may not rely directly on that article in respect of national authorities (see, to that effect, judgment of 17 July 2014, *YS and Others*, C-141/12 and C-372/12, EU:C:2014:2081, paragraph 67). However, where a Member State implements EU law, the requirements pertaining to the right to good administration, as a general principle of EU law, including the right of any person to have his or her affairs handled impartially and within a reasonable period of time, are applicable in a procedure conducted by the competent national authority (see, to that effect, judgment of 8 May 2014, *N.*, C-604/12, EU:C:2014:302, paragraphs 49 and 50, and of 10 February 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Limitation period)*, C-219/20, EU:C:2022:89, paragraph 37).
- 42 Since the referring court also makes reference to the right to participate in the procedure, it is necessary to state that such a right, in as much as it makes it possible to exercise the right to be heard, is an integral part of the rights of the defence, the observance of which constitutes a general principle of EU law. The right to be heard guarantees every person the opportunity to make known his or her views usefully and effectively during an administrative procedure and before the adoption of any decision liable to affect his or her interests adversely, including where such a formality is not provided for by the applicable legislation. The purpose of the rule that the addressee of a decision affecting him or her adversely must be placed in a position to submit his or her observations before that decision is adopted is to enable the competent authority effectively to take into account all relevant information (see, to that effect, judgment of 5 November 2014, *Mukarubega*, C-166/13, EU:C:2014:2336, paragraphs 44 to 47 and 49).
- 43 That rule is therefore applicable to a financial correction procedure conducted by the national authorities under Article 98(2) of Regulation No 1083/2006, following a Commission decision finding an irregularity.
- 44 In the light of the foregoing considerations, the answer to the third and fourth questions is that Article 98(2) of Regulation No 1083/2006, in conjunction with the general EU law principles of good administration, protection of the rights of defence and equality of arms, must be interpreted as meaning that, where, in a decision adopted under Article 99 of that regulation, the Commission finds an irregularity, within the meaning of Article 2(7) of that regulation, and imposes, as a result, a financial correction on a Member State, the competent national authorities must, in principle, pursue the recovery of the sums unduly paid, by imposing a financial correction on the beneficiary of the funds, at the end of an autonomous administrative procedure during which that beneficiary has been able usefully and effectively to express its observations.

The fifth and sixth questions

- 45 By its fifth and sixth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 47 of the Charter must be interpreted as precluding a national court from being bound by a final Commission decision cancelling, on account of an irregularity, all or part of a contribution from an EU fund, where an action against the national act imposing, in implementation of that decision, a financial correction on the beneficiary of that fund, is brought before that court.
- 46 The right to effective judicial protection guaranteed under Article 47 of the Charter comprises various elements, including the rights of the defence, the principle of equality of arms, the right of access to a tribunal and the right to be advised, defended and represented (judgment of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 48).
- 47 As has been noted in paragraph 42 above, the right to be heard, which is an integral part of the right of defence, guarantees every person the opportunity to make known his or her views effectively and usefully during a procedure (judgment of 26 October 2021, *Openbaar Ministerie (Right to be heard by the executing judicial authority)*, C-428/21 PPU and C-429/21 PPU, EU:C:2021:876, paragraph 62). That right would be infringed if a judicial decision could be based on facts and documents of which the parties themselves, or one of them, have not been able to take cognisance and in relation to which they have not therefore been able to formulate an opinion (judgment of 17 November 2022, *Harman International Industries*, C-175/21, EU:C:2022:895, paragraph 63).
- 48 Similarly, the principle of equality of arms, which is, like the right to be heard, a corollary of the right to a fair hearing, implies that each party must be afforded a reasonable opportunity to present his or her case, including evidence, under conditions that do not place that party at a substantial disadvantage vis-à-vis his or her opponent. That principle thus guarantees the equality of rights and obligations of the parties as regards, in particular, the rules that govern the bringing of evidence and the adversarial hearing before the competent court. It follows that it must be possible for any document provided to that court to be examined and challenged by any party to the proceedings (see, to that effect, judgment of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraphs 71 and 72; of 10 February 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Limitation period)*, C-219/20, EU:C:2022:89, paragraph 46; and of 17 November 2022, *Harman International Industries*, C-175/21, EU:C:2022:895, paragraph 62).
- 49 It follows that, when a court of a Member State is called upon to rule in an action against a national measure imposing a financial correction on the beneficiary of an EU fund, adopted in implementation of a final decision of the Commission annulling all or part of the contribution from such a fund, on account of an irregularity, that court must also be able to assess the validity of that decision. If that court considers that one or more grounds of invalidity raised by the parties, or of the court's own motion, against the decision of the Commission is well founded, it must stay proceedings and make a reference to the Court of Justice for a preliminary ruling on the act's validity, since the Court alone has jurisdiction to declare an EU act invalid (see, to that effect, judgment of 25 February 2021, *VodafoneZiggo Group v Commission*, C-689/19 P, EU:C:2021:142, paragraph 144).

- 50 The preliminary ruling procedure, inasmuch as it makes it possible to contest, before the Court, the finding of irregularity made by the Commission, guarantees the right to an effective remedy, provided for in Article 47 of the Charter, from which the addressees of the national recovery measure benefit, since, by that measure, the authorities of the Member State are implementing EU law.
- 51 In the light of the foregoing considerations, the answer to the fifth and sixth questions is that Article 47 of the Charter must be interpreted as not precluding a national court from being bound by a final Commission decision cancelling, on account of an irregularity, all or part of a contribution from an EU fund, where an action against the national act imposing, in implementation of that decision, a financial correction on the beneficiary of that fund, is brought before that court, since it falls to that court to make a reference to the Court for a preliminary ruling on that act's validity if it has doubts as to its validity.

Costs

- 52 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Third Chamber) hereby rules:

- 1. The joint examination of the first and second questions has revealed nothing capable of affecting the validity of Commission Decision C(2021) 5739 final of 27 July 2021 cancelling part of the Cohesion Fund contribution to the operational programme 'Transport' 2007-2013 under the 'Convergence' objective in Bulgaria.**
- 2. Article 98(2) of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, in conjunction with the general EU law principles of good administration, protection of the rights of defence and equality of arms,**

must be interpreted as meaning that where, in a decision adopted under Article 99 of that regulation, the European Commission finds an irregularity, within the meaning of Article 2(7) of that regulation, and imposes, as a result, a financial correction on a Member State, the competent national authorities must pursue the recovery of the sums unduly paid, by imposing a financial correction on the beneficiary of the funds, at the end of an autonomous administrative procedure during which that beneficiary has been able usefully and effectively to express its observations.

- 3. Article 47 of the Charter of Fundamental Rights of the European Union**

must be interpreted as not precluding a national court from being bound by a final Commission decision cancelling, on account of an irregularity, all or part of a contribution from an EU fund, where an action against the national act imposing, in implementation of that decision, a financial correction on the beneficiary of that fund, is brought before that court, since it falls to that court to make a reference to the Court for a preliminary ruling on that act's validity if it has doubts as to its validity.

[Signatures]