Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

7 April 2022 * [i]

(Reference for a preliminary ruling – Regulation (EC, Euratom) No 2988/95 – Own resources of the European Union – Protection of the European Union's financial interests – Proceedings relating to irregularities – Article 4 – Adoption of administrative measures – Article 3(1) – Limitation period for proceedings – Expiry – Whether it may be relied on in the context of the enforced recovery procedure – Article 3(2) – Period for implementation – Applicability – Starting point of the limitation period – Interruption and suspension – Discretion of the Member States)

In Joined Cases C-447/20 and C-448/20,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal), made by decisions of 1 July 2020, received at the Court on 22 September 2020, in the proceedings

Instituto de Financiamento da Agricultura e Pescas IP (IFAP)

v

LM (C-447/20),

BD,

Autoridade Tributária e Aduaneira (C-448/20),

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, S. Rodin, J.-C. Bonichot (Rapporteur), L.S. Rossi and O. Spineanu-Matei, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Portuguese.

after considering the observations submitted on behalf of:

– the Instituto de Financiamento da Agricultura e Pescas IP (IFAP), by J. Saraiva de Almeida and N. Domingues, advogados,

– the Portuguese Government, by L. Inez Fernandes, P. Barros da Costa and H. Almeida, acting as Agents,

– the Greek Government, by E.-E. Krompa, E. Leftheriotou, E. Tsaousi and K. Boskovits, acting as Agents,

– the European Commission, by J. Baquero Cruz and B. Rechena, acting as Agents,

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

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 3(1) and (2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the financial interests [of the European Union] (OJ 1995 L 312, p. 1).

2 The requests have been made in proceedings between the Instituto de Financiamento da Agricultura e Pescas IP (IFAP) (Institute for the Financing of Agriculture and Fisheries IP (IFAP)) and LM (C-447/20) and BD and the Autoridade Tributária e Aduaneira (Tax and Customs Authority, Portugal) (C-448/20) concerning the enforced recovery, by way of tax enforcement proceedings, of aid granted under a programme co-financed by the European Agricultural Guidance and Guarantee Fund (EAGGF).

Legal context

European Union law

3 The third and fourth recitals of Regulation No 2988/95 read as follows:

‘…acts detrimental to the [European Union’s] financial interests must … be countered in all areas;

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

4 Under Article 1 of that regulation:

‘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 that regulation, set out under Title I thereof, relating to ‘General principles’, is worded as follows:

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

In the case of continuous or repeated irregularities, the limitation period shall run from the day on which the irregularity ceases. In the case of multiannual programmes, the limitation period shall in any case run until the programme is definitively terminated.

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

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

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 that regulation contains rules on ‘administrative measures and penalties’, in particular in Article 4 thereof, which provides:

‘1. As a general rule, any irregularity shall involve withdrawal of the wrongly obtained advantage:

…

2. Application of the measures referred to in paragraph 1 shall be limited to the withdrawal of the advantage obtained plus, where so provided for, interest which may be determined on a flat-rate basis.

…

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

Portuguese law

7 Decreto-Lei No 163 A/2000 (Decree-Law No 163-A/2000) of 27 July 2000 (*Diário da República* I, Series I-A, No 172, of 27 July 2000), which establishes, inter alia, the general rules for the implementation of the Operational Programme for Agriculture and Rural Development, provides, in Article 11(1) thereof:

'[IFAP] may unilaterally terminate contracts if the beneficiary fails to comply with any of his obligations or if, for a reason attributable to the beneficiary, any of the conditions governing the grant of the aid is not or is no longer met.'

8 Article 12 of that decree-law, entitled 'Repayment of aid and expenditure', provides:

'1. In the event that the contract is terminated by [IFAP], the beneficiary shall repay the amounts received by way of aid, together with the statutory interest accrued since the date on which the aforementioned amounts were made available to him, without prejudice to the possible application of other penalties provided for by law.

2. The repayment provided for in the foregoing paragraph shall be made within 15 days of notification of termination of the contract, it being noted that the beneficiary must be expressly notified of any such termination.

…'

9 Under Article 15 of that decree-law:

'Debt certificates issued by [IFAP] are enforceable instruments.

…'

10 The Código do Procedimento Administrativo (Code of Administrative Procedure), in the version applicable to the disputes in the main proceedings ('the CPA'), provides, in Article 163 thereof, entitled 'Measures amenable to annulment and the rules governing amenability to annulment':

'1. Measures amenable to annulment shall be those which have been adopted in breach of principles or rules of law for the infringement of which no other penalty is available.

…

3. Measures amenable to annulment may be appealed to the administration itself or to the competent administrative courts within the time limits laid down by law.

…'

11 Article 179 of the CPA, entitled 'Enforcement of financial obligations', provides:

'1. Where, under an administrative measure, a sum must be paid to or by order of a legal person governed by public law, any voluntary non-payment of that sum within the time limit prescribed shall trigger the tax enforcement procedure provided for in the legislation governing the taxation procedure.

2. For the purposes of the provisions contained in the foregoing paragraph, the competent body shall, in accordance with the provisions laid down by law, issue a certificate having the value of an enforceable instrument which it shall submit to the competent department of the tax administration, together with the file relating to the administrative proceedings.'

12 Article 58(1) of the Código do Processo nos Tribunais Administrativos (Code of Procedure before the Administrative Courts), in the version applicable to the disputes in the main proceedings ('the CPTA'), provides:

'Unless otherwise provided for by law, the bringing of an administrative action against void measures shall not be subject to a time limit, whereas, in the case of measures amenable to annulment, such an action must be brought within the following time limits:

(a) one year, if it is brought by the Public Prosecutor's Office;

(b) three months, in all other cases.'

13 Article 59(2) of the CPTA is worded as follows:

'The period during which a challenge may be brought against an administrative act by the addressees thereof, to whom that act must be notified, shall only begin to run from the date of notification of the person concerned or, where the latter has elected to be represented in the procedure, of his or her representative, or from the date on which notice was given in the last place in the event that both have been notified, even if that act has been published, compulsorily or otherwise.'

14 Article 148(2) of the Código de Procedimento e de Processo Tributário (Code of administrative and judicial procedure in tax matters), in the version applicable to the disputes in the main proceedings, provides:

'The following may also be recovered by way of the tax enforcement procedure, in the circumstances and under the conditions provided for by law:

(a) other debts contracted with the State or with other legal persons governed by public law which must be paid under an administrative measure;

(b) reimbursements or refunds.'

15 Article 204 of that code, entitled 'Grounds for opposition to enforced recovery', provides, in paragraph 1 thereof:

'1. An opposition to enforced recovery may be based only on the following grounds:

…

(d) time barring of the debt forming the subject of the enforced recovery'.

16 Decreto-Lei No 155/92 (Decree-Law No 155/92) of 28 July 1992 (*Diário da República* I, Series I-A, No 172, of 28 July 1992) provides, in Article 40(2) thereof, in so far as concerns the interruption and suspension of the time barring of the debt, in the case of a debt which must follow the legal

rules applicable to debts owed to the State which are not fiscal in nature, that 'the limitation period shall be interrupted and suspended under the same conditions as the civil limitation period'.

17 Article 323 of the Código Civil (Civil Code) provides that 'the limitation period shall be interrupted by summons or judicial service of any act which expresses, directly or indirectly, the intention to exercise that right, whatever the procedure governing that act and even if the court lacks jurisdiction'.

The disputes in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

18 As regards the facts in the main proceedings in Case C-447/20, it is apparent from the order for reference in that case that, on 13 February 2002, IFAP, an independent administrative body, and LM entered into a contract for the grant of aid under a programme co-financed by the EAGGF.

19 It is common ground that LM amended the approved investment without authorisation. The date of that amendment is not known. According to LM, the irregularity in the performance of the contract took place on 15 February 2002.

20 More than four years later, on 26 February 2006, IFAP sent a letter to LM showing that it intended to review the amount of aid granted to the latter. LM signed an acknowledgement of receipt of that letter on 1 March 2006.

21 More than five years later, by letter of 23 June 2011, IFAP informed LM of its decision to demand repayment of the financial assistance granted on 13 February 2002.

22 On 8 August 2012, tax enforcement proceedings were brought against LM with a view to recovering the amounts wrongly received.

23 In an opposition brought before it by LM against the tax enforcement proceedings, the Tribunal Administrativo e Fiscal do Porto (Administrative and Tax Court, Oporto, Portugal) upheld that opposition, by judgment of 23 October 2018, on the ground that the period limiting the proceedings against the irregularity in question had expired.

24 As regards the facts in the main proceedings in Case C-448/20, it is apparent from the order for reference in that case that, by letter of 12 December 2006, IFAP informed BD that it had identified irregularities in the performance of the contract for the grant of aid under regional operational programmes, concluded on 20 April 2004, and that those irregularities had taken place prior to 31 December 2004.

25 On 20 December 2006, BD lodged a complaint.

26 More than four years later, by letter of 13 July 2011, BD was notified of IFAP's decision unilaterally to terminate the contract for the grant of the aid at issue and to require repayment of the amounts wrongly received.

27 More than four years later, on 16 December 2015, the tax authority initiated tax enforcement proceedings against BD on the basis of the 'debt certificate' issued on 1 December 2015 by IFAP, which serves as an enforceable instrument.

28 In an opposition brought before it by BD against the tax enforcement proceedings, the Tribunal Administrativo e Fiscal de Mirandela (Administrative and Tax Court, Mirandela, Portugal), upheld that opposition, by judgment of 16 April 2018, on the ground that the four-year period for bringing proceedings, which had started to run on 12 December 2006, had expired.

29 IFAP brought actions before the referring court against the decisions referred to in paragraphs 23 and 28 of the present judgment.

30 It is apparent from the orders for reference in the present cases that, in those cases, IFAP adopted recovery decisions by which it demanded that LM and BD repay aid wrongly received. Since they were not challenged in due time before the administrative court with jurisdiction, those decisions became final.

31 For the purposes of enforcing recovery decisions, Portuguese law allows IFAP to have recourse to judicial proceedings, known as 'tax enforcement' proceedings. In that context, LM and BD lodged oppositions against the tax enforcement proceedings, claiming that the recovery decisions issued to them were adopted after the administrative proceedings became time-barred.

32 According to the referring court, it is therefore necessary to determine whether an opposition to tax enforcement is the appropriate procedural avenue for determining the limitation period in respect of the proceedings laid down in Article 3(1) of Regulation No 2988/95 and, if so, to determine the period applicable to such limitation and the rules for calculating that period.

33 That court points out that the information before it is incomplete, with the result that the starting point of the limitation period cannot be precisely determined. It also states that it does not know whether IFAP has adopted acts other than those mentioned above which could have interrupted the limitation period.

34 According to the referring court, in the event that an opposition to tax enforcement cannot be based on the limitation period for proceedings, it is necessary to interpret Article 3(2) of Regulation No 2988/95, which lays down a period limiting the possibility of proceeding to the enforced recovery of amounts wrongly received.

35 As regards the content of Portuguese law, the referring court states that an objection to tax enforcement makes it possible to claim that the debt is time barred, which involves ascertaining whether the period prescribed for the creditor validly to require the debtor to pay a duly constituted debt has or has not been exceeded. By contrast, Article 3(1) of Regulation No 2988/95 governs the limitation period applicable to proceedings with a view to the possible adoption of a decision to recover aid wrongly received.

36 In the latter connection, the referring court states that, in its view, the three-year period, laid down in Article 3(2) of that regulation for the implementation of such decisions, is not taken into account in the limitation periods for proceedings, referred to Article 3(1).

37 That court observes, furthermore, that a recovery decision must be challenged by legal action within the period prescribed for that purpose. It is solely in that context that Portuguese law makes it possible to rely on the illegalities vitiating that decision, including, in particular, the limitation period for proceedings. An opposition to enforced recovery allows a ruling to be given only on the limitation period for the debt and not on the limitation period for proceedings.

38 However, according to that court, the expiry of the periods laid down in Article 3 of Regulation No 2988/95 could result in a claim arising from aid wrongly received no longer being enforceable. It therefore seeks to ascertain whether the provisions of Portuguese law, pursuant to which the opposition to tax enforcement cannot be based on the limitation period for proceedings referred to Article 3(1), are in compliance with EU law.

39 Moreover, the referring court notes that Portuguese law provides that the period applicable to enforcement of the recovery decision runs from its adoption, whereas Article 3(2) of Regulation No 2988/95 refers to the date on which that decision becomes final.

40 Similarly, it is unclear whether instances of interruption and suspension of that time period, laid down by Portuguese law, satisfy the requirements of Regulation No 2988/95. The summons of the person concerned in the context of enforcement proceedings interrupts the period for implementation, to which must be added the periods of suspension in the event of complaint, dispute, appeal or objection where such procedural measures have the effect of suspending the recovery of the debt. Such a suspension continues until the adoption of a final judicial decision bringing the enforcement proceedings to an end.

41 In those circumstances, the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal) decided to stay the proceedings and to refer the following questions, worded identically in each of the two present cases, to the Court of Justice for a preliminary ruling:

‘(1) Does Article 3(1) of Regulation No 2988/95 preclude national legislation which imposes on the beneficiary of a subsidy the burden of bringing before the competent court an administrative action against a measure ordering the repayment of amounts received wrongly by reason of the occurrence of an irregularity, failing which that measure will become final if it not appealed in time (that is to say, if the beneficiary does not avail himself or herself in time of the means of defence available to him or her under national law) and, in consequence, the amount wrongly received will be recoverable in accordance with the rules and time limits laid down by national law?

(2) Does Article 3(1) of Regulation No 2988/95 preclude national legislation according to which the beneficiary of a subsidy may not rely on the expiry of the four- or eight-year time limit in the course of judicial proceedings for enforcement which have been brought against him or her, since that issue can be assessed only in the context of an administrative-law action brought against the measure ordering repayment of the amounts received wrongly by reason of the establishment of an irregularity?

…

(3) [In the event that those questions are answered in the negative,] must the three-year limitation period provided for in Article 3(2) of Regulation No 2988/95 be regarded as a limitation period for the debt that is created by the measure requiring repayment of amounts wrongly received by reason of the occurrence of irregularities in the financing? Does that period start to run from the date on which that measure was adopted?

…

(4) Does Article 3 of Regulation No 2988/95 preclude national legislation according to which the three-year limitation period for the debt that is created by the measure requiring repayment of amounts wrongly received by reason of the occurrence of irregularities in the financing must start to run from the date on which that measure was adopted and must be interrupted by a notification of the institution of proceedings for the enforced recovery of those amounts, remaining suspended until such time as those proceedings culminate in a definitive or final decision in cases involving a complaint, a challenge, an appeal or an opposition, where these suspend recovery of the debt?'

42 By decision of the President of the Court of 27 October 2020, Cases C-447/20 and C-448/20 were joined for the purposes of the written and oral parts of the procedure and of the judgment.

43 By letter of 16 September 2021, the Court Registry sent the referring court a request for clarification. In response to that request, the referring court stated, first, in so far as concerns the starting point of the period laid down in Article 3(2) of Regulation No 2988/95, that it follows from Article 160 of the CPA that the decision imposing a penalty becomes final (effective) from the date of its notification. Second, as regards instances of interruption and suspension of that period, it stated that, 'in the case of a debt which must follow the legal rules applicable to debts owed to the State which are not fiscal in nature', it is apparent from Portuguese law that 'the limitation period is interrupted and suspended under the same conditions as the civil limitation period' and that it 'also follows from the civil law applicable in the present case that there are no grounds for suspending that limitation period', while confirming that 'the limitation period is interrupted by summons or judicial notification of an act'.

Consideration of the questions referred

The first and second questions

44 By its first and second questions, which it is appropriate to examine together, the referring court seeks, in essence, to ascertain whether Article 3(1) of Regulation No 2988/95 must be interpreted as precluding national legislation under which, for the purposes of contesting a decision to recover amounts wrongly paid, adopted after the expiry of the limitation period for proceedings referred to in that provision, the addressee thereof is required to plead the irregularity of that decision within a certain period before the administrative court having jurisdiction, failing which the challenge will be time-barred, and the addressee is no longer able to object to the enforcement of that decision by relying on that irregularity in the context of the judicial proceedings for enforced recovery brought against that addressee.

45 It should be borne in mind that Article 1(1) of Regulation No 2988/95 introduces 'general rules … relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to [EU] law' in order, as is clear from the third recital in the preamble

to that regulation, to '[counter] acts detrimental to the [European Union's] financial interests … in all areas' (judgments of 24 June 2004, *Handlbauer*, C-278/02, EU:C:2004:388, paragraph 31, and of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 20).

46 As is clear from Article 4(1) of that regulation, those administrative measures may consist, as is the case in the main proceedings, in the withdrawal of the wrongly obtained advantage.

47 The first subparagraph of Article 3(1) of Regulation No 2988/95 fixes a limitation period which is applicable, inter alia, to such administrative measures and which runs from the time when the irregularity was committed, such irregularity, according to Article 1(2) of that regulation, being '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]' (judgment of 22 December 2010, *Corman*, C-131/10, EU:C:2010:825, paragraph 38 and the case-law cited).

48 By adopting Regulation No 2988/95, in particular the first subparagraph of Article 3(1) thereof, the European Union legislature decided to establish a general rule on limitation which was applicable in that area, whereby it intended, first, to define a minimum period applied in all the Member States and, secondly, to waive the possibility of bringing proceedings concerning an irregularity that is detrimental to the European Union's financial interests after the expiry of a four-year period after the irregularity was committed (judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 116 and the case-law cited).

49 It follows that, as from the date on which Regulation No 2988/95 entered into force, proceedings may be brought by the competent authorities of the Member States within a period of four years, as a rule, and other than in the sectors for which the European Union legislature has prescribed a shorter period, concerning any irregularity that is detrimental to the European Union's financial interests. (judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 117 and the case-law cited).

50 Moreover, it must be borne in mind that the limitation period referred to in Article 3(1) of Regulation No 2988/95 seeks to ensure legal certainty for economic operators. Those operators must be in a position to determine which among their transactions are definitive and which may still be the subject of legal proceedings (judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 24).

51 That provision therefore confers a right on economic operators, which means that they must be able to rely on the limitation period for proceedings relating to an irregularity in order to challenge the application, in respect of them, of administrative measures and penalties.

52 In that regard, it should be noted that Regulation No 2988/95 determines neither the remedies available for contesting decisions imposing administrative measures and penalties nor the courts which have jurisdiction to hear and determine them; nor does it lay down any time limit or limitation period on expiry of which those decisions become final since they have not been challenged before the court having jurisdiction.

53 In the absence of EU rules in the field, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, provided, first, that such rules are not less favourable than those governing similar domestic actions

(principle of equivalence) and, second, that they do not render practically impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (judgment of 12 February 2008, *Kempter*, C-2/06, EU:C:2008:78, paragraph 57 and the case-law cited).

54 In the present cases, there is nothing in the orders for reference to suggest that the three-month time limit laid down in Article 58(1) of the CPTA for challenging an administrative decision, such as the recovery decisions called into question, indirectly, in the cases in the main proceedings – is contrary to the principle of equivalence which, however, is a matter for the referring court to ascertain.

55 As regards the principle of effectiveness, the Court has repeatedly held that the laying down of reasonable limitation periods satisfies, in principle, the requirement for effectiveness, inasmuch as it constitutes an application of the fundamental principle of legal certainty. Such periods are not by their nature liable to make it practically impossible or excessively difficult to exercise the rights conferred by EU law, even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought (see, to that effect, judgment of 12 February 2008, *Kempter*, C-2/06, EU:C:2008:78, paragraph 58, and of 14 February 2019, *Nestrade*, C-562/17, EU:C:2019:115, paragraph 41).

56 In respect of national legislation which comes within the scope of EU law, it is for the Member States, however, to establish those periods in the light of, inter alia, the significance for the parties concerned of the decisions to be taken, the complexities of the procedures and of the legislation to be applied, the number of persons who may be affected and any other public or private interests which must be taken into consideration. Subject to that reservation, the Member States are free to provide for longer or shorter time limits (judgment of 21 December 2016, *TDC*, C-327/15, EU:C:2016:974, paragraph 98).

57 In that regard, national provisions, such as Article 58(1) and Article 59(2) of the CPTA, which provide that the addressee of an administrative decision, such as the recovery decisions called into question, indirectly, in the cases in the main proceedings, has three months from notification of that decision in order to challenge it, failing which it will be time-barred, do not appear to be contrary to the principle of effectiveness.

58 Such a period is reasonable in that it enables the person concerned to assess whether there are grounds for challenging the decision concerning him or her and, if necessary, to prepare the action against that decision. Furthermore, the time limit which starts to run from notification of the measure guarantees that the person concerned does not find him or herself in a situation in which that time limit has expired without him or her being aware of the adoption of that measure (see, by analogy, judgment of 11 September 2019, *Călin*, C-676/17, EU:C:2019:700, paragraphs 47 and 48).

59 Furthermore, in so far as concerns the remedies available for challenging administrative decisions such as the recovery decisions called into question, indirectly, in the cases in the main proceedings, it must be held that, in principle, an obligation to apply to the administrative court having jurisdiction, such as that laid down in Article 163(3) of the CPA, is not contrary to the principles of equivalence and effectiveness, but constitutes the legitimate exercise of the procedural autonomy of the Member States. In particular, such an obligation cannot, in itself, render the exercise of rights conferred by EU law practically impossible or excessively difficult.

60 The fact remains that the principle of legal certainty, the corollary of which is the principle of protection of legitimate expectations, requires, first, that rules of law must be clear and precise and, second, that their application must be foreseeable by those subject to them (judgments of 15 February 1996, *Duff and Others*, C-63/93, EU:C:1996:51, paragraph 20, and of 11 September 2019, *Călin*, C-676/17, EU:C:2019:700, paragraph 50).

61 In the present cases, subject to the checks to be carried out by the referring court, it does not appear, in particular, that Portuguese law does not allow individuals who are the addressees of an administrative decision to determine precisely which court has jurisdiction to hear actions against such a decision.

62 In the light of all the foregoing considerations, the answer to the first and second questions is that Article 3(1) of Regulation No 2988/95 must be interpreted as not precluding, subject to the principles of equivalence and effectiveness, national legislation under which, for the purposes of challenging a decision to recover amounts wrongly paid, adopted after the expiry of the limitation period for proceedings referred to in that provision, the addressee thereof is required to plead the irregularity of that decision within a certain period before the administrative court having jurisdiction, failing which the challenge will be time-barred, and the addressee is no longer able to object to the enforcement of that decision by relying on that irregularity in the context of the judicial proceedings for enforced recovery brought against that addressee.

The first part of the third question

63 By the first part of its third question, the referring court seeks to ascertain whether the first subparagraph of Article 3(2) of Regulation No 2988/95 must be interpreted as meaning that the expiry of the period laid down therein results in the extinction of the debt which is the subject of a recovery decision.

The scope of Article 3(2) of Regulation No 2988/95

64 As a preliminary point, it should be noted that, according to the wording of the first subparagraph of Article 3(2) of Regulation No 2988/95, the period for the enforcement of a decision imposing an ‘administrative penalty’ is three years.

65 In the present cases, as is clear from paragraph 46 of the present judgment, the national decisions to be implemented do not impose a penalty, but impose an administrative measure, namely the recovery of aid wrongly received. Accordingly, it is necessary to examine whether the first subparagraph of Article 3(2) of Regulation No 2988/95 also applies to such decisions.

66 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only the wording of that provision, but also its context and the objectives pursued by the rules of which it is part (judgment of 3 September 2015, *Sodiaal International*, C-383/14, EU:C:2015:541, paragraph 20).

67 As regards, in the first place, the context of Article 3(2) of Regulation No 2988/95, it must be recalled that the fourth subparagraph of Article 3(1) of Regulation No 2988/95 refers to the imposition of a ‘penalty’, which could indicate that that subparagraph is applicable only to

proceedings concerning irregularities culminating in the imposition of an administrative penalty within the meaning of Article 5 of that regulation (judgment of 3 September 2015, *Sodiaal International*, C-383/14, EU:C:2015:541, paragraph 23).

68 However, it is clear from the case-law of the Court that that textual analysis is not conclusive and that, in the light of the scheme and purpose of Article 3(1) of Regulation No 2988/95, the limitation period for proceedings for which it provides is applicable both to irregularities leading to the imposition of an administrative penalty, within the meaning of Article 5 of that regulation, and to irregularities, such as those relied on in support of the actions in the main proceedings, which are the subject of an administrative measure consisting in the withdrawal of the wrongly obtained advantage in accordance with Article 4 of that regulation. It follows that, for the purposes of applying Article 3(1) of Regulation No 2988/95, it is not necessary to distinguish between an administrative penalty and an administrative measure (see, to that effect, judgment of 3 September 2015, *Sodiaal International*, C-383/14, EU:C:2015:541, paragraphs 24 to 27 and the case-law cited).

69 That finding also applies in so far as concerns the scope of Article 3(2) of that regulation.

70 It should be noted, first, that Article 3 of Regulation No 2988/95 appears under the first title thereof, governing the 'general principles' for its application. That article is therefore intended to apply to all of the instruments laid down in Title II of that regulation, namely administrative measures and penalties.

71 Second, it should be observed that the purpose of Article 3(1) and (2) of Regulation No 2988/95 is the same, namely to lay down rules on periods applicable to proceedings concerning irregularities and the enforcement of decisions which are adopted, if necessary, at the end of those proceedings, which argues in favour of a consistent interpretation of those decisions.

72 Furthermore, the interpretation of Article 3 of Regulation No 2988/95, according to which, in paragraph 2 thereof, the EU legislature confined itself to laying down the period for implementing decisions establishing an administrative penalty only, whereas, in paragraph 1 of that article, it laid down the limitation rules applicable to proceedings which may lead to the adoption of decisions establishing not only such penalties but also administrative measures, would be inconsistent. The result would be that only the period for implementing administrative measures would not be determined by EU law, which would run contrary to the general logic of the system of limitation established by that article (see, to that effect, judgment of 3 September 2015, *Sodiaal International*, C-383/14, EU:C:2015:541, paragraph 25).

73 Thus, since the limitation periods laid down in Article 3(1) of Regulation No 2988/95 cover both decisions relating to administrative penalties and decisions relating to administrative measures, it must be held, in order to ensure the consistency of the limitation system laid down in Article 3, that the period for implementation referred to in Article 3(2) also covers both types of decision.

74 It should be added that it is clear from Article 5 of that regulation that the penalties referred to therein concern intentional irregularities or irregularities caused by negligence which, in principle, constitute particularly serious irregularities. It would be inconsistent to interpret Article 3(2) of Regulation No 2988/95 as laying down a period for implementation solely for decisions relating to such penalties and not for decisions relating to administrative measures, provided for in Article 4 of that regulation, which are also applicable to cases of less serious irregularities.

75 As regards, in the second place, the objective of Regulation No 2988/95, it should be noted that that objective also requires a uniform interpretation of Article 3(1) and (2) of that regulation.

76 On the one hand, as has been recalled in paragraph 45 of the present judgment, Regulation No 2988/95 introduces, in accordance with Article 1 thereof, general rules relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to EU law in order, as is apparent from the third recital of that regulation, to counter acts detrimental to the European Union's financial interests in all areas.

77 In that connection, that regulation provides, in Article 3 thereof, a coherent framework for the system of limitation (see, to that effect, judgment of 3 September 2015, *Sodiaal International*, C-383/14, EU:C:2015:541, paragraph 25). Such a coherent framework contributes to the effectiveness of the combating of fraud against the European Union's financial interests which, as is apparent from recital 4 of that regulation, calls for a common set of legal rules to be enacted for all areas covered by EU policies.

78 Consequently, the coherence of such a system requires that the scope of Article 3(2) of Regulation No 2988/95 should not be interpreted more restrictively than the scope of Article 3(1).

79 On the other hand, as has been pointed out in paragraph 50 of the present judgment, the period referred to in Article 3(1) is intended to ensure legal certainty for economic operators. Those operators must be in a position to determine which among their transactions are definitive and which may still be the subject of legal proceedings.

80 Article 3(2) pursues the same objective of legal certainty. It thus enables economic operators to determine whether a decision adopted following proceedings brought against an irregularity can still be enforced. In the light of that objective, the interpretation of that provision, whereby decisions imposing administrative measures must be distinguished from those establishing administrative penalties as to the applicability of the period for implementation, is artificial and cannot be justified.

81 It is necessary, moreover, to note that deeming the minimum periods referred to in Article 3(1) and (2) of Regulation No 2988/95 – the duration of which is, in principle, sufficient to enable national authorities to bring proceedings in respect of an irregularity detrimental to 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 61) – applicable both to decisions concerning the adoption of administrative measures and to those concerning administrative penalties, contributes to fulfilling the national authority's general obligation of due diligence in the verification of payments which it makes from the EU budget, which means that it must take steps to rectify irregularities promptly (see, to that effect, judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 67).

82 As to Article 4(4) of Regulation No 2988/95, which provides that administrative measures 'shall not be regarded as penalties', it must be noted that that clarification is intended only to underscore the fact that administrative measures are not punitive, inasmuch they give rise only to the withdrawal of an advantage wrongly obtained (see, to that effect, judgment of 26 May 2016, *Județul Neamț and Județul Bacău*, C-260/14 and C-261/14, EU:C:2016:360, paragraph 50). It is not, however, such as to justify a difference in treatment of the administrative measures and penalties in the light of the periods laid down in Article 3 of that regulation, since those two instruments can adversely affect the assets of the persons concerned.

83 In the light of the foregoing considerations, it must be held that Article 3(2) of Regulation No 2988/95 refers both to administrative penalties within the meaning of Article 5(1) of that regulation, and to administrative measures within the meaning of Article 4(1) of that regulation, which may be imposed in order to protect the European Union's financial interests.

The effects of the expiry of the period laid down in Article 3(2) of Regulation No 2988/95

84 As regards the question referred, it should be noted that the referring court is asking the Court about the nature of the period laid down in Article 3(2) of Regulation No 2988/95. It thus seeks to determine whether the defendants in the main proceedings can oppose the enforcement of the recovery decisions addressed to them. According to the referring court, if the Court were to hold that the expiry of the period laid down in Article 3(2) of Regulation No 2988/95 results in the debt which is the subject of those decisions being time-barred, the defendants in the main proceedings would, under Portuguese law, have a ground for opposition to the enforced recovery of the debt in question. Furthermore, it should be noted that the referring court has not referred to a provision of Portuguese law under which it would be possible to apply a longer period for enforcement than that laid down in Article 3(2) of Regulation No 2988/95, in accordance with the option retained by the Member States pursuant to Article 3(3) of that regulation.

85 That said, it should be recalled, as is apparent from the examination of the scope of the first subparagraph of Article 3(2) of Regulation No 2988/95, that this provides that the period for the enforcement of decisions imposing an administrative measure or penalty is three years. It follows that, without prejudice to the option retained by Member States under Article 3(3) of that regulation, after the expiry of the period laid down in the first subparagraph of Article 3(2), such decisions can no longer be enforced.

86 In so far as specifically concerns a decision entailing an administrative measure requiring its addressee to repay an amount wrongly received, the consequence of the expiry of that period is that the amount concerned can no longer be recovered by means of enforced recovery. Where appropriate, the addressee of that decision may therefore object to the enforcement proceedings.

87 In that connection, the possible absence of grounds for opposition laid down by the law of a Member State in such a situation cannot prevent the addressee of a decision to recover amounts wrongly received from relying on the expiry of the period for implementation laid down in the first subparagraph of Article 3(2) of Regulation No 2988/95.

88 By virtue of the very nature of regulations and of their function in the system of sources of EU law, the provisions of a regulation generally have immediate effect in the national legal systems without it being necessary for the national authorities to adopt measures of application (judgments of 24 June 2004, *Handlbauer*, C-278/02, EU:C:2004:388, paragraph 25, and of 28 October 2010, *SGS Belgium and Others*, C-367/09, EU:C:2010:648, paragraph 32).

89 Some of those provisions may nonetheless necessitate, for their implementation, the adoption of measures of application by the Member States (judgments of 24 June 2004, *Handlbauer*, C-278/02, EU:C:2004:388, paragraph 26, and of 28 October 2010, *SGS Belgium and Others*, C-367/09, EU:C:2010:648, paragraph 33).

90 That cannot be the case, however, with the first subparagraph of Article 3(2) of Regulation No 2988/95. While it is true that the second subparagraph of Article 3(2) provides that it is for the Member States to determine in their national law instances of interruption and suspension of

the period for implementation where such instances of interruption or suspension do not exist, have ceased to exist or have not been invoked in good time, the expiry of that period necessarily makes it impossible to enforce a decision to recover amounts wrongly received.

91 That finding cannot be invalidated by Article 3(3) of Regulation No 2988/95. Even if the Member States avail themselves of the possibility of applying a longer period for implementation than that provided for in Article 3(2), the expiry of the period thus extended also makes it impossible to enforce a decision to recover amounts wrongly received.

92 In those circumstances, in order to provide a useful answer to the referring court as to whether the addressees of the decisions to recover amounts wrongly received may oppose their enforcement after the expiry of the period laid down in the first subparagraph of Article 3(2) of Regulation No 2988/95, it is not necessary to determine whether the expiry of that period also results in the debt which is the subject of those decisions being time-barred.

93 In the light of all the foregoing, the answer to the first part of the third question is that the first subparagraph of Article 3(2) of Regulation No 2988/95 must be interpreted as having immediate effect in the national legal systems, without there being any need for the national authorities to adopt measures of application. It follows that the addressee of a decision to recover amounts wrongly received must, in any event, be able to rely on the expiry of the period for implementation laid down in the first subparagraph of Article 3(2) of that regulation or, as the case may be, of an extended period for implementation pursuant to Article 3(3) of that regulation, in order to oppose the enforced recovery of those amounts.

The second part of the third question and the first part of the fourth question

94 By the second part of its third question and the first part of its fourth question, the referring court is asking, in essence, whether the first subparagraph of Article 3(2) of Regulation No 2988/95 must be interpreted as precluding national legislation which provides that the period for implementation which it establishes starts to run from the adoption of a decision requiring the repayment of amounts wrongly received.

95 In so far as concerns the starting point of the period laid down in Article 3(2) of Regulation No 2988/95, it is clear from an examination of the scope of the first subparagraph of that provision together with the wording thereof that that period begins to run from the day on which the decision establishing an administrative measure or penalty becomes final.

96 Furthermore, it should be borne in mind, as is clear from paragraph 88 of the present judgment, that, by virtue of the very nature of regulations and of their function in the system of sources of EU law, the provisions of a regulation generally have immediate effect in the national legal systems without it being necessary for the national authorities to adopt measures of application.

97 Member States may adopt rules for the application of a regulation if they do not obstruct its direct applicability and do not conceal its Community nature, and if they specify that a discretion granted to them by that regulation is being exercised, provided that they adhere to the parameters laid down in it (judgment of 25 November 2021, *Finanzamt Österreich (Family benefits for development aid worker)*, C-372/20, EU:C:2021:962, paragraph 48 and the case-law cited).

98 However, in so far as it provides that the period which it establishes runs from the day on which 'the decision becomes final', the first subparagraph of Article 3(2) of Regulation No 2988/95 leaves no discretion to the Member States. That provision therefore precludes national legislation which provides that the period for implementation begins to run from the actual adoption of a decision requiring repayment of amounts wrongly received before it has become final.

99 Furthermore, it is apparent from the referring court's reply to the request for clarification referred to in paragraph 43 above that it considers that, under Portuguese law, a decision requiring the recovery of amounts wrongly received becomes 'effective' and 'final' at the time of its notification.

100 It is admittedly true that, under the procedure laid down in Article 267 TFEU, the Court has no jurisdiction to interpret national law, that being exclusively for the national court (judgment of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 25). The fact remains that it has jurisdiction to interpret the first subparagraph of Article 3(2) of Regulation No 2988/95 and, therefore, to define the scope of the concept of 'final decision' within the meaning of that provision.

101 According to the settled case-law of the Court, the need for a uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union (judgment of 25 January 2017, *van Vemde*, C-582/15, EU:C:2017:37, paragraph 25).

102 That is the case with the first subparagraph of Article 3(2) of Regulation No 2988/95, which makes no reference to the law of the Member States and which expressly provides that the period which it establishes runs from the day on which 'the decision becomes final'.

103 In that connection, although the terms of the first subparagraph of Article 3(2) of Regulation No 2988/95 are ambiguous, the reference in that provision to a decision which becomes final militates in favour of an interpretation according to which that provision refers to the final decision taken in the course of an administrative procedure and thus rendering the obligation to repay amounts wrongly received unchallengeable or an order imposing an administrative penalty unchallengeable (see, by analogy, judgment of 25 January 2017, *van Vemde*, C-582/15, EU:C:2017:37, paragraph 27).

104 It must therefore be held that the first subparagraph of Article 3(2) of Regulation No 2988/95 refers to a decision which acquires a definitive character either upon expiry of reasonable periods for bringing proceedings laid down by national law or after all rights of appeal have been exhausted.

105 In the light of all the foregoing considerations, the answer to the second part of the third question and to the first part of the fourth question is that the first subparagraph of Article 3(2) of Regulation No 2988/95 must be interpreted as precluding national legislation which provides that the period for implementation which it establishes starts to run from the adoption of a decision requiring repayment of amounts wrongly received, since that period must begin to run from the day on which that decision becomes final, that is to say, from the day on which the period for bringing an action has expired or all rights of appeal have been exhausted.

The second part of the fourth question

106 The second part of the fourth question concerns the interruption and suspension of the period for implementation referred to in the first subparagraph of Article 3(2) of Regulation No 2988/95.

107 As a preliminary point, it should be recalled that, in response to the request for clarification referred to in paragraph 43 of the present judgment, the referring court confirmed that a summons for enforced recovery of the debt which is the subject of a recovery decision interrupts that period.

108 However, contrary to what is stated in the fourth question, when asked about the cases in which the period for implementation referred to in the first subparagraph of Article 3(2) of Regulation No 2988/95 was suspended, the referring court stated that 'it is also apparent from the civil law applicable in the present case that there are no grounds for suspending that period'. No explanation is given for this apparent contradiction.

109 In those circumstances, the Court cannot determine with certainty what Portuguese law actually provides in so far as concerns cases of suspension of the period for implementation referred to in the first subparagraph of Article 3(2) of Regulation No 2988/95. In particular, it is unclear whether opposition to an enforcement procedure, such as that at issue in the main proceedings, has the effect of suspending that period. Consequently, the Court cannot provide a useful answer to the question referred in so far as it relates to that aspect.

110 It must therefore be held that, by the second part of its fourth question, the referring court seeks, in essence, to ascertain whether the second subparagraph of Article 3(2) of Regulation No 2988/95 must be interpreted as precluding national legislation under which the period for implementation laid down in the first subparagraph thereof is interrupted by the summons for enforced recovery of the debt which is the subject of a recovery decision.

111 In that regard, it should be noted that the second subparagraph of Article 3(2) of Regulation No 2988/95 provides that it is for the Member States to determine, by their national law, the cases of interruption and suspension of the period for implementation laid down in the first subparagraph of Article 3(2).

112 Furthermore, contrary to the fourth subparagraph of Article 3(1) of Regulation No 2988/95, which sets an absolute limit applying to the time-bar of legal proceedings in respect of an irregularity (see, to that effect, judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 63), Article 3(2) does not contain such a limit.

113 The Member States thus retain a broad discretion in determining instances of interruption and suspension of the period for implementation referred to in Article 3(2) of Regulation No 2988/95.

114 In that context, they are required, however, to observe the limits imposed by EU law, on the basis that the rules and procedures laid down by domestic law must not have the effect of making it practically impossible or excessively difficult to recover aid not due and that the national legislation must be applied in a manner which is not discriminatory as compared to procedures for deciding similar national disputes (see, by analogy, judgment of 20 December 2017, *Erzeugerorganisation Tiefkühlgemüse*, C-516/16, EU:C:2017:1011, paragraph 96).

115 Furthermore, the Member States are required to observe the principles of proportionality and legal certainty (see, to that effect, judgment of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 72).

116 As regards the principle of proportionality, the duration of the limitation and implementation periods 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 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 74). As to the principle of legal certainty, this requires, inter alia, that those periods be fixed in advance, and that any application 'by analogy' of a limitation period be sufficiently foreseeable for a person (see, to that effect, judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 112).

117 In the present cases, in the light of the information before the Court and subject to the verifications to be carried out by the referring court, it does not appear that the national legislation governing the interruption of the period for the enforcement of recovery orders is such as to make it practically impossible or excessively difficult to recover the amounts wrongly received.

118 As regards the principle of legal certainty, the description of Portuguese law which is apparent from the information before the Court does not permit the inference that the interruption of that period by the summons for enforced recovery of the debt which is the subject of a recovery decision is not foreseeable for the persons concerned.

119 Furthermore, in so far as concerns the principle of proportionality, it should be observed that national legislation which provides for such an interruption of the period for implementation does not go beyond what is necessary to achieve the objective of protecting the European Union's financial interests, since it is not capable of delaying the expiry of that period indefinitely.

120 In the light of all the foregoing considerations, the answer to the second part of the fourth question is that the second subparagraph of Article 3(2) of Regulation No 2988/95 must be interpreted as not precluding national legislation under which the period for implementation laid down in the first subparagraph thereof is interrupted by the summons for enforced recovery of the debt which is the subject of a recovery decision.

Costs

121 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 (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 financial interests [of the European Union] must be interpreted as not precluding, subject to the principles of equivalence and effectiveness, national legislation under which, for the purposes of challenging a decision to recover amounts wrongly paid, adopted after the expiry of the limitation period for proceedings referred to in that provision, the addressee thereof is required to plead the irregularity of that decision within a certain period before the administrative court having jurisdiction, failing which**

the challenge will be time-barred, and the addressee is no longer able to object to the enforcement of that decision by relying on that irregularity in the context of the judicial proceedings for enforced recovery brought against that addressee.

2. **The first subparagraph of Article 3(2) of Regulation No 2988/95 must be interpreted as having immediate effect in the national legal systems, without there being any need for the national authorities to adopt measures of application. It follows that the addressee of a decision to recover amounts wrongly received must, in any event, be able to rely on the expiry of the period for implementation laid down in the first subparagraph of Article 3(2) of that regulation or, as the case may be, of an extended period for implementation pursuant to Article 3(3) of that regulation, in order to oppose the enforced recovery of those amounts.**

3. **The first subparagraph of Article 3(2) of Regulation No 2988/95 must be interpreted as precluding national legislation which provides that the period for implementation which it establishes starts to run from the adoption of a decision requiring repayment of amounts wrongly received, since that period must begin to run from the day on which that decision becomes final, that is to say, from the day on which the period for bringing an action has expired or all rights of appeal have been exhausted.**

4. **The second subparagraph of Article 3(2) of Regulation No 2988/95 must be interpreted as not precluding national legislation under which the period for implementation laid down in the first subparagraph thereof is interrupted by the summons for enforced recovery of the debt which is the subject of a recovery decision.**

[Signatures]

[i] — The wording of paragraph 85 of this judgment has been amended since it was first put online.