Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 26 January 2012 [1]

Case C-564/10

Bundesanstalt für Landwirtschaft und Ernährung
v
Pfeifer & Langen Kommanditgesellschaft

(Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany))

(Protection of the financial interests of the European Union — Limitation period for claims of interest due under national law in addition to reimbursement of amounts of aid wrongly received — Interpretation and applicability of Article 3 of Regulation (EC, Euratom) No 2988/95)

1. In the present reference for a preliminary ruling, the Bundesverwaltungsgericht (Federal Administrative Court) (Germany) asks whether claims for interest that arise as the result of an irregularity as defined in Regulation No 2988/95 [2] are governed by that regulation or national law.

Legal framework

Article 325 TFEU

2. Under Article 325 TFEU Member States have a general duty to counter fraud and any other illegal activities affecting the financial interests of the Union.

Protection of the financial interests of the European Union

3. In order to protect the financial interests of the European Union, Regulation No 2988/95 sets out a number of general rules relating to checks, administrative measures and penalties concerning irregularities with regard to EU law where aid is given to recipients under EU [3] policies. Prior to its adoption there were no common rules defining such irregularities. [4]

4. The third recital in the preamble states that '… acts detrimental to the Communities' financial interests must … be countered in all areas'. The fourth recital indicates that a common set of legal rules for all areas covered by Community policies is needed in order to combat fraud committed against the Communities' financial interests.

1 — Original language: English.

2 — Council Regulation (EC, Euratom) of 18 December 1995 on the protection of the Communities' financial interests (OJ 1995 L 312, p. 1).

3 — I have used 'the European Community' (or 'the Communities') when referring to legislative provisions in which those terms are used; otherwise I shall refer to 'the EU' or 'the European Union'.

4 — Article 1(1).

5. Article 1(2) of Regulation No 2988/95 states:

'"Irregularity" shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.'

6. Article 2 provides that administrative checks, measures and penalties shall be introduced in so far as they are necessary to ensure the proper application of Community law. The nature and scope of administrative measures and penalties are determined by Community law in the light of the nature and gravity of the irregularity, the advantage granted or received and the degree of responsibility. Subject to the applicable Community law, the procedures for the application of Community checks, measures and penalties are governed by national laws. [5]

7. Article 3 of Regulation No 2988/95 provides:

'1. The limitation period for proceedings shall be four years as from the time when the irregularity … 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.

…

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.'

8. Article 4 states:

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

— by an obligation to pay or repay the amounts due or wrongly received,

...

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

…

5 — Article 2, paragraphs (1), (3) and (4).

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

9. Article 5 provides for the imposition of administrative penalties in the case of intentional irregularities or those caused by negligence.

Rules applicable to determining periods, dates and time-limits

10. Regulation (EEC, Euratom) No 1182/71[6] lays down uniform general rules that determine periods, dates and time-limits in relation to acts adopted by the Council or the Commission.

Financing of the Common Agricultural Policy

11. Article 1 of Regulation (EEC) No 729/70[7] established the European Agricultural Guidance and Guarantee Fund ('the EAGGF') as part of the Community budget. Article 8(1) of that regulation required Member States to satisfy themselves that transactions financed by the EAGGF were actually carried out and were executed correctly, to prevent irregularities and to recover sums lost due to irregularity or negligence.

12. Council Regulation (EEC) No 595/91[8] introduced rules for the application of Article 8 of Regulation No 729/70. Under Article 3 of Regulation No 595/91, Member States were to notify the Commission of irregularities which had been the subject of primary administrative or judicial findings of fact. Article 7(1) provided that the Member States could retain 20% of any amounts recovered, where the rules laid down had not been 'significantly infringed'.

13. Article 32(1) of Council Regulation (EC) No 1290/2005[9] applies from 16 October 2006 as regards cases notified under Article 3 of Regulation No 595/91 for which full recovery has not taken place by that date.[10] It states: 'Sums recovered following the occurrence of irregularity or negligence and the interest on these shall be made over to the paying agency and booked by it as revenue assigned to the EAGF in the month in which the money is actually received.'[11]

6 — Of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits (OJ, English Special Edition 1971 (II), p. 354).

7 — Of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218), as amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1). Council Regulation (EC) No 1258/1999 of 17 May 1999 (OJ 1999 L 160, p. 103) replaced Regulation No 729/70 in relation to expenditure incurred from 1 January 2000.

8 — Of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Regulation (EEC) No 283/72 (OJ 1991 L 67, p. 11) repealed and replaced by Commission Regulation (EC) No 1848/2006 of 14 December 2006 (OJ 2006 L 355, p. 56).

9 — Of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1). In order to attain the objectives of the common agricultural policy ('the CAP'), Article 2 establishes the European Agricultural Guarantee Fund ('the EAGF') under the general budget of the European Communities.

10 — Second indent of the third paragraph of Article 49 of Regulation No 1290/2005.

11 — Article 7(1) of Regulation No 595/91 was deleted by Article 46 of Regulation No 1290/2005. Under Article 32(2) of the latter Member States may retain 20% of amounts recovered as 'recovery costs' except in cases of irregularity or negligence attributable to their administrative authorities or other official bodies.

The sugar sector

14. The EU is amongst the world's major sugar producers. [12] The common market organisation in the sugar sector provides financial support only for sugar produced within certain quotas (A and B sugar). Sugar produced in excess of the A and B production quotas must either be stored to be used as part of the following year's A quota or sold outside the EU on the world market without any export subsidy. Thus, an undertaking that produces an excess beyond its production quotas needs to store that sugar if it does not wish to export it.

15. Accordingly, a compensation system for the reimbursement of storage costs in respect of sugar for any given marketing year [13] was provided by Article 8(1) of Council Regulation (EEC) No 1785/81. [14] Member States were to impose a levy to finance that scheme and reimburse the storage costs incurred. [15]

16. The third recital in the preamble to Council Regulation (EEC) No 1358/77 [16] explained that total reimbursements made should equal total levies charged.

17. Article 1 of Regulation No 1358/77 stated that storage costs for sugar were to be reimbursed by the Member States. Under Article 4 the reimbursement was based on monthly returns of quantities in store. The effect of Articles 6 and 7 was that the compensation scheme should be self-financing.

18. The 17th recital in the preamble to Commission Regulation (EEC) No 1998/78 [17] states that manufacturers should repay reimbursements to which they are not entitled.

19. Article 13 provides that persons entitled to reimbursement should communicate to the Member State concerned, at the latest on the 15th day of each month, the details of the stock for which reimbursement is claimed. Under Article 14(1), where sugar eligible for reimbursement is stored with sugar that is not, the Member State should place the sugar concerned under customs control or administrative control offering equivalent safeguards.

20. Article 15 provides that by the 20th day of each month Member States must establish, for each person entitled, the total amount of reimbursements and the total amount of the levy. Where there are discrepancies Article 16 provides for adjustment to be made retrospectively.

National legislation

21. Paragraph 14(1) of the Marktorganisationsgesetz (Law on the organisation of the markets) states that, unless otherwise provided by a legal act of the Council or Commission of the European Communities, claims for the repayment of special benefits, such as the offsetting of storage costs, are to bear interest at the rate of 3% above the current German Bundesbank discount rate from the date on which they arise.

12 — 'The common organisation of the market in sugar' published by the Agricultural Directorate of the European Commission (AGRI/63362/2004); see also www.fao.org, 'Food outlook global market analysis sugar November 2008'.

13 — Under the regulations then in force a sugar marketing year began on 1 July and expired on 30 June of the following year.

14 — Of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), repealed and replaced by Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector (OJ 1999 L 252, p. 1). Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a Common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1) now applies.

15 — Article 8(2) of Regulation No 1785/81.

16 — Of 19 June 1977 laying down general rules for offsetting storage costs for sugar and repealing Regulation (EEC) No 750/68 (OJ 1977 L 156, p. 4), repealed and replaced by Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1).

17 — Of 18 August 1978 laying down detailed rules for the offsetting of storage costs for sugar (OJ 1978 L 231, p. 5).

22. Under Paragraphs 197 and 201 of the Bürgerliches Gesetzbuch (German Civil Code, 'BGB'), in the version applicable up to 31 December 2001, a claim for arrears of interest became time-barred four years from the close of the year in which the claim in respect of interest arose. Under Paragraph 195 BGB, in the version applicable from 1 January 2002, that period was shortened to three years. The effect of Paragraph 229(6) of the Einführungsgesetz zum Bürgerlichen Gesetzbuch (Introductory law to the German Civil Code) is that the former four-year limitation period continues to apply to interest due for 1999 and 2000.

23. The national court explains that, under German law, although claims in respect of interest are ancillary to a principal claim, they are otherwise autonomous. This means, as far as limitation periods are concerned, that they cannot be asserted once the principal claim has become time-barred, but that they otherwise arise independently and can also become time-barred independently.

24. The referring court states that problems might arise where national law provides that interest can be claimed only for the period after an irregularity has been punished, in which case it could be time-barred before it has arisen.

25. Pursuant to Paragraph 53(1) of the Verwaltungsverfahrensgesetz (Law on administrative procedure: 'VwVfG'), an administrative act adopted in order to establish or implement a claim on the part of a legal person governed by public law suspends the limitation period [18] in respect of that claim until the administrative act becomes final or until six months after it is otherwise concluded.

Facts, procedure and questions referred

26. In the sugar marketing years 1994/95, 1995/96 and 1996/97, Pfeifer & Langen KG ('Pfeifer') lodged monthly applications for reimbursement of sugar storage costs which were subsequently granted.

27. Following an investigation, the Bundesanstalt für Landwirtschaft und Ernährung (Federal Office for Agriculture and Food, 'the Bundesanstalt') issued decisions claiming that the storage costs reimbursed in respect of those marketing years should be repaid, because Pfeifer had obtained a wrongful advantage on the basis of an irregularity. The company had overstated the quantities of sugar in respect of which storage costs could be reimbursed in its applications.

28. The proceedings before the national courts concern, first, an action relating to the reimbursed storage costs ('the principal sum') and, second, a claim for interest arising on the principal sum ('the interest debt'). [19]

29. Regarding the principal sum, the Bundesanstalt issued three decisions on 30 January 2003 ('the principal decisions'), stating that the sums reclaimed should bear interest from the date of receipt. Determination of the amount of interest was reserved to later decisions.

30. Pfeifer appealed against the principal decisions. On 10 October 2006 the Bundesanstalt rejected Pfeifer's challenge in substance, but decided to reduce the amount of the principal sum. Pfeifer instituted proceedings challenging the Bundesanstalt's decision rejecting its appeal.

31. Pfeifer paid the principal sum of EUR 469 941.12 on 15 November 2006.

18 — The national legislation uses the verb 'hemmen', which is most closely rendered in English by 'suspend'. However, the English text of Article 3(1) of Regulation No 2988/95 refers to 'interrupted' (the French has 'est interrompue' and the German 'wird …unterbrochen'). In the remainder of this Opinion, I shall use'suspend' and 'interrupt' interchangeably.

19 — There are claims for the marketing years 1988 to 1997 before the national courts. However, it is only the marketing years 1994/95, 1995/96 and 1996/97 that are the subject of the present request for a preliminary ruling.

32. The Bundesanstalt then issued a decision of 13 April 2007, claiming interest of EUR 298 650.93 on the principal sum ('the first interest decision').

33. Pfeifer has challenged that decision. It objects in particular, to the claim for interest of EUR 119 984.27 for the years 1999 to 2002, on the ground that such a claim is time-barred.

34. Furthermore, Pfeifer argues that the Bundesanstalt's claim for interest was time-barred even before the first interest decision was issued ('the limitation issue'). It considers that interest was only due in respect of the period after 13 April 2007. [20]

35. On 22 October 2007 the Bundesanstalt issued a revised decision with regard to the interest debt ('the second interest decision'). It accepted that the limitation period of four years that applied to such debts meant that the claim for interest for the years 1997 and 1998 was time-barred at the date that the principal decisions were issued.

36. However, the Bundesanstalt considers that the principal decisions had the effect of interrupting the limitation period relating to the interest claim. Interest arising from 1 January 1999 (EUR 237 644.17) is thus, in its view, not time-barred.

37. On 14 November 2007 Pfeifer introduced proceedings before the Verwaltungsgericht Köln (Administrative Court, Cologne) seeking annulment of the second interest decision in so far as it concerns interest for the period 1 January 1999 to 31 December 2002 (EUR 119 984.27). It has paid the interest debt for the later years.

38. By judgment of 25 November 2009, the Verwaltungsgericht annulled the second interest decision to the extent challenged. It stated that the limitation issue was irrelevant. It considered that the claim in respect of interest was based on Paragraph 14 of the Marktorganisationsgesetz. [21] Under that provision claims for the refunding of special benefits bear interest 'as from the date on which they arise'. However, the repayment claim did not arise until the principal decisions were notified, so that there was no liability to pay interest for earlier periods.

39. The Bundesanstalt has appealed to the Bundesverwaltungsgericht on a point of law. It argues that the principal decisions revoked the grant of reimbursement of storage costs with retrospective effect, so that Pfeifer was liable to pay interest on the overpaid sums from the date of receipt.

40. The Bundesverwaltungsgericht has referred the following questions to the Court for a preliminary ruling:

'1. Does Article 3 of [Regulation No 2988/95] apply also to the limitation period for claims in respect of interest due under national law in addition to the repayment of the advantage wrongly obtained on the basis of an irregularity?

If the answer to question 1 is in the affirmative:

2. Is the length of the limitation period alone to be taken into account in the comparison of limitation periods provided for in Article 3(3) of Regulation No 2988/95, or is it also necessary to take into account national legislation that postpones commencement of the limitation period to the end of the calendar year in which a claim arises (in this case, a claim in respect of interest), without any other circumstances being required?

20 — Point 111 below.

21 — Point 21 above.

3. Does the limitation period for claims in respect of interest begin to run when an irregularity is committed or when a continuous or repeated irregularity ceases even if the claims in respect of interest relate to later periods and therefore do not arise until a later date? In the case of continuous or repeated irregularities, is commencement of the limitation period postponed under the second subparagraph of Article 3(1) of Regulation No 2988/95 until the day on which the irregularity ceases in the case of claims in respect of interest as well?

4. When does the interrupting effect of a decision by a competent authority come to an end under the second sentence of the third subparagraph of Article 3(1) of Regulation No 2988/95 where that decision essentially establishes the claim in question (in this case, a claim in respect of interest)?'

41. Written observations have been submitted by Pfeifer, the Bundesanstalt and the Commission. Pfeifer and the Commission made oral submissions at the hearing on 17 November 2011.

Assessment

Question 1

42. The referring court asks in its first question whether the limitation period laid down in Article 3(1) of Regulation No 2988/95 applies to claims for interest under national law in addition to recovery of the principal sum.

Preliminary remarks

43. The purpose of Regulation No 2988/95 is to make general provision concerning the pursuit of irregularities. Within that context, the rules which govern limitation periods are also of a general nature. The legislature's objective was, by a general limitation rule, to define a minimum period applied in all the Member States and to waive the possibility of recovering sums wrongly received from the EU budget after the expiry of a four-year period after the irregularity was committed. [22]

44. Accordingly, 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 Community law'. [23]

45. Article 2(1) provides that administrative checks, measures and penalties shall be introduced to ensure the proper application of Community law. Article 2(3) states that Community law determines the nature and scope of such measures.

46. Since Regulation No 2988/95 is a general measure, Article 2(4) states that subject to Community law the procedures for the application of checks, measures and penalties shall be governed by the laws of the Member States. Thus, in the absence of specific provision in Regulation No 2988/95 it is necessary to look first to the relevant EU sectoral rules and second to national law.

47. The first subparagraph of Article 3(1) establishes a general rule on limitation which defines a minimum period to be applied in all Member States. [24] It states that sectoral rules may provide for a shorter period which may not be less than three years. The Court has held that the reference to 'sectoral rules' in Article 3(1) is to provisions of EU law rather than national legislation. [25]

22 — Joined Cases C-201/10 and C-202/10 *Ze Fu Fleischhandel and Vion Trading* [2011] ECR I-3545, paragraph 24.

23 — Joined Cases C-278/07 to C-280/07 *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others* [2009] ECR I-457, paragraph 20.

24 — *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, cited in footnote 23 above, paragraph 27.

25 — Case C-131/10 *Corman* [2010] ECR I-14199, paragraph 41.

48. In the present matter, it is the limitation period laid down in Article 3(1) that applies to the principal sum, as there is no sectoral provision setting out a time-limit for recovery of wrongfully reimbursed storage costs for sugar.

49. Article 4(1) provides that administrative measures relating to an irregularity are to involve withdrawal of the wrongly obtained advantage by an obligation to pay or repay the amounts due or wrongly received. Article 4(2) then provides: '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' (emphasis added). This is the sole express reference to interest in Regulation No 2988/95.

50. In the present case, the principal claim — for the repayment of storage costs for sugar produced in excess of production quotas — concerns an administrative measure imposed under Article 4 of Regulation No 2988/95 (rather than an administrative penalty as laid down in Article 5). A claim for interest arising from that principal claim is the subject of the proceedings leading to the present reference.

51. In general, claims for interest only arise as the result of a claim for a principal sum. Thus, an action for the pursuit of interest is normally ancillary to the principal proceedings for recovery of a debt.[26] The facts found by the national court and its exposition of the national rules show that that is indeed the case here.

52. It follows from the wording of Article 4(2) that the levying of a charge to interest is a measure that may be taken in conjunction with the withdrawal of the wrongly obtained advantage. It therefore seems to me that the interest debt is regarded as ancillary to the principal sum for the purposes of Regulation No 2988/95. It is not part of the wrongly obtained advantage itself.

Analysis

53. In the absence of an explicit or implicit reference in the text to proceedings in respect of interest, does an ancillary claim for interest fall within the scope of Article 3(1) of Regulation No 2988/95?

54. Like the referring court, the Bundesanstalt considers that even if the recovery of interest is governed by EU law, Article 3 of Regulation No 2988/95 is concerned solely with any principal sum that becomes due as the result of an irregularity, rather than ancillary claims for interest.

55. Pfeifer submits, first, that there is no clear provision of EU law governing interest debts, second, that the referring court's first question concerns the interpretation of Article 4 of Regulation No 2988/95, from the scheme and wording of paragraph 2 of which it follows that interest is not part of the principal sum which is the subject of a claim for restitution, third, that Article 4 is self-standing in relation to Article 3 and, finally, that interest debts are ancillary to the principal sum and should therefore be the subject of separate provision with regard to the operation of limitation periods.

56. The Commission considers that interest debts fall within the scope of Article 3 of Regulation No 2988/95. Administrative measures are imposed pursuant to Article 4 of Regulation No 2988/95 to withdraw the wrongly obtained advantage. Interest debts are recovered when such measures are applied. Article 3 thus implicitly lays down a limitation period of four years for the recovery of interest which begins when the irregularity is committed. The Commission argues further that

26 — An apparent exception is Joined Cases C-397/98 and C-410/98 *Metallgesellschaft* [2001] ECR I-1727, which involved a claim for damages and/or restitution of the value of the use of money paid by way of advanced corporation tax (ACT) to the Revenue under a tax regime subsequently held by the Court to be discriminatory and hence contrary to EU law. In those very particular circumstances, where the disadvantage suffered was not having to pay the tax due, but having to pay it *in advance*, the claim for interest to compensate for the cash flow disadvantage was indeed 'the very object of the action in the main proceedings' (paragraph 87).

Regulation No 2988/95 applies in order to ensure that interest debts are not treated as independent from the principal sum under national law. Thus, Regulation No 2988/95 provides that the claim for interest is not time-barred before the elapse of the four-year limitation period which applies when the irregularity is committed (subject to any interrupting periods).

57. Unlike the referring court, the Bundesanstalt and the Commission are of the view that the collection of interest debts as such falls under EU law. In that respect both rely on Article 32(1) of Regulation No 1290/2005.

58. According to the Commission, it is necessary to have a general rule at EU level that lays down a minimum limitation period which applies in all Member States for pursuit of interest debts in order to protect the European Union's financial interests. Interest benefits the EU budget and is compensatory in nature, because it represents the detriment to which the budget is subjected as long as any principal sum remains due.

59. The Bundesanstalt considers that Article 3(1) does not make specific provision in respect of claims for interest. Therefore, such claims fall outside the scope of the limitation period there laid down and are governed by national rules.

60. Pfeifer contends that the purpose of charging interest is to avoid distortions of competition rather than to protect the EU's financial interests.

61. Is recovery of interest within the objectives of Regulation No 2988/95?

62. The purpose of Regulation No 2988/95 is expressed in wide terms in the preamble. The third recital states that: '… acts detrimental to the Communities' financial interests must … be countered in all areas'. The fourth confirms that it is an objective of the legislation to combat fraud against the Communities' financial interests. [27]

63. It seems to me that the purpose of collecting interest itself has a bearing on whether levying such a charge falls within the objectives of Regulation No 2988/95.

64. That purpose is two-fold. First, it compensates the party who was unable to make use of the money in question. The interest represents the time-value of the money received by Pfeifer as overpayments. Second, it eliminates any advantage Pfeifer might have enjoyed as the recipient of overpayments of aid received as the result of the irregularity, were such overpayments to be interest-free.

65. In my view, such a two-fold purpose is fully consistent with the objectives of Regulation No 2988/95.

66. Next, in relation to the wording and scheme of Regulation No 2988/95, it seems to me that, despite the absence of express words in Article 3, the limitation period of four years laid down in that provision should also apply to interest.

67. Since claims for interest are (in general) ancillary to the claim for recovery of the wrongful advantage, it would not be the obvious starting point to interpret the text of Regulation No 2988/95 as if interest debts fall entirely outside its scope.

27 — *Corman*, cited in footnote 25 above, paragraph 36.

68. The general term 'proceedings' in the first sentence of Article 3(1), which states: 'The limitation period for proceedings shall be four years as from the time when the irregularity … was committed', is not qualified by language which suggests that it applies only to a particular type of claim, for example that relating to the principal sum. I therefore consider that 'proceedings' should be construed as referring both to actions to recover the principal sum (the wrongful advantage) and an ancillary claim for interest, where such is provided for under national law. The following reasons support such a view. First, in the context of Regulation No 2988/95 'proceedings' refers generically to action taken by the competent authorities to counter the irregularity. Second, an ancillary action for interest is part of that general objective. The purpose of the ancillary action (charging interest) is to recover compensation on behalf of the EU budget for the use over time of the funds that have been wrongfully obtained.

69. Third, the Court has described Member States as acting on behalf of and in the name of the EU budget when they recover sums wrongfully obtained due to an irregularity.[28] By instituting proceedings for an ancillary interest claim in that context Member States are similarly pursuing a claim on behalf of the EU budget.

70. Fourth, the referring court is wrong in thinking that if national law provides for the charging of interest, all the ensuing revenue accrues to the Member State's budget rather than that of the European Union.

71. It is true that the compensation system for the reimbursement of storage costs is designed to be self-financing rather than a source of revenue for the EU budget.[29] Nevertheless, sums wrongly paid that are recovered are credited to the Community budget (subject to the Member States' right to retain 20% of any such sums); and, to the extent that ancillary claims for interest are provided for under national law, all interest recovered is likewise credited to the Community budget.[30] Accordingly, the recovery of both the principal and interest falls within the ambit of the European Union's financial interests.

72. In my view, a purposive interpretation of Regulation No 2988/95 therefore leads to the conclusion that interest debts, which can only arise if there is a principal sum to which they can attach, are also covered by the regulation and thus fall within the scope of the limitation period laid down in Article 3(1).

73. Thus, where a wrongful advantage is obtained as the result of an irregularity the four-year period in Article 3(1) of Regulation No 2988/95 governs the limitation period in respect of claims for interest made under national law.

Questions 2, 3 and 4

Preliminary observations

74. Such an interpretation gives rise to the immediate and difficult problem: how should Regulation No 2988/95 be applied in the absence of detailed express provisions relating to ancillary claims for interest?

75. Here the remaining questions posed by the referring court are closely linked, since they raise particular issues about the manner in which the limitation period laid down in Regulation No 2988/95 might apply to such interest claims.

28 — *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, cited in footnote 23 above, paragraph 29.

29 — Points 16 and 17 above.

30 — See points 11 to 13 above, which set out the legislative history in detail.

76. Self-evidently, it is crucial to identify the point at which time begins to run when considering the operation of any limitation period. Yet Regulation No 2988/95 makes no specific provision for interest in this respect. Nor is there any provision regarding the rate of interest or the manner in which it should be calculated.

77. The Court has held that, in the absence of EU measures, it is for national law to settle all ancillary questions regarding the reimbursement of charges improperly levied, including the rate of interest and the date from which it must be calculated.[31] Indeed, in the case of proceedings to recover a wrongful advantage that fall within Regulation No 2988/95, any claim for interest must necessarily be brought pursuant to national law, since interest may only be charged where there is provision in national law for doing so.[32]

78. Any national rules must be applied in conformity with Member States' general obligations under Article 325(1) TFEU to counter fraud and any other illegal activities affecting the financial interests of the Union and the general principles of EU law. National rules which affect the operation of the limitation period laid down in Article 3(1) (such as the point from which it begins to run) must therefore meet the requirements of legal certainty.[33] Furthermore, any national rules must not be less favourable than those relating to similar domestic claims (principle of equivalence) and must not be so framed as to make it in practice impossible or excessively difficult to obtain reparation (principle of effectiveness).[34]

79. The European Court of Auditors ('the Court of Auditors') has recently published a special report entitled 'Recovery of undue payments made under the common agricultural policy'.[35] It notes that the application of interest to debts which arise following an irregularity is still not fully harmonised and that the vast majority of measures (such as the rate at which interest is calculated) are matters of national law.[36] Thus, the Court of Auditors recommends that express rules should be introduced at EU level for the pursuit of interest debts in order to protect the European Union's financial interests effectively.

80. The Court acknowledged as long ago as 1970 that rules governing limitation periods in proceedings must be fixed in advance and must fulfil the requirements of legal certainty.[37]

81. As a matter of procedural logic, rules laying down any limitation period should form part of a package of measures which includes the length of the limitation period, criteria for establishing the date on which time starts to run, the events which have the effect of interrupting or suspending the limitation period and the interest rate(s) applicable. In formulating such a package, the interests of the Member States' competent authorities and those of the economic operators, together with the supervisory role of the Commission in protecting the EU's financial interests, should be taken into account.

82. I have formed the view that Article 3(1) of Regulation No 2988/95 can be read as introducing a limitation period of four years in respect of claims for interest.[38] However, it does not follow that the Court should seek to construct a complete 'statute of limitations' in respect of interest by reading words into the text that plainly are not there. To do so would be inconsistent with the principle of legal certainty. The EU legislature may wish to consider whether it needs to adopt detailed harmonised rules for the application of that four-year limitation period for the pursuit of interest claims. As matters stand, there are no such EU rules.

31 — *Metallgesellschaft*, cited in footnote 26 above, paragraph 86.

32 — Article 4(2). It is conceivable that EU legislation governing a particular sector might be framed in a way that made specific provision for the recovery of interest on principal sums wrongly paid. That is not, however, the case here.

33 — Case C-62/00 *Marks and Spencer* [2002] ECR I-6325, paragraph 39 and the case-law cited there; see also point 80 below.

34 — Case C-445/06 *Danske Slagterier* [2009] ECR I-2119, paragraph 31 and the case-law cited there.

35 — Special report No 8/2011 available at www.eca.europa.eu.

36 — See paragraph 33 of special report No 8/2011.

37 — Case 41/69 *ACF Chemiefarma* v *Commission* [1970] ECR 661, paragraphs 19 and 20.

38 — Point 73 above.

Question 2

83. The referring court asks essentially whether, when determining the length of a national limitation period for the purposes of Article 3(3) of Regulation No 2988/95, it is necessary to take account of factors such as postponement of the start of the period.

84. The national court considers that only the years 1999 and 2000 are relevant as regards Question 2. It takes the view that 2001 and 2002 fall under the amended national provisions concerning interest debts to which a shorter limitation period of three years applies.[39] However, 1999 and 2000 would be governed directly by Regulation No 2988/95, which provides for a limitation period of four years.[40]

85. The national court explains that, if Regulation No 2988/95 applies to interest due for 1999, the part of the claim for the period from 1 to 30 January 1999 is time-barred because interest could only be claimed after the principal decisions were issued on 30 January 2003.[41] However, if the position were governed by national law, the limitation period would exclude time before 31 December 1999 since, under the national rule, the start of the limitation period is postponed to the end of the calendar year in which the claim arises.[42]

86. Both parties to the main proceedings take the view that, in any comparison with the period of four years laid down in Article 3(1) of Regulation No 2988/95, it is necessary to take account of factors other than the specified length of the national limitation period.

87. The Commission states that Regulation No 2988/95 makes no specific provision with regard to the calculation of periods of time and time-limits. Article 3(2) of Regulation No 1182/71 should therefore apply by analogy and should be read together with Regulation No 2988/95. Finally, in comparing limitation periods in respect of interest claims for the purposes of Article 3(3), any period longer than four years must meet the requirements of legal certainty.

88. I agree with the Commission's observations to the extent that since Regulation No 2988/95 does not make provision for the manner in which periods of time should be calculated, Regulation No 1182/71 should apply.

89. Do national rules which postpone the beginning of the limitation period to the end of the calendar year in which the claim arises apply in combination with the four-year period laid down in Article 3(1) of Regulation No 2988/95?

90. It follows from my reply to Question 1 that I consider that the limitation period for interest claims is four years as laid down in Article 3(1) of Regulation No 2988/95. Furthermore, since that provision is directly applicable, it necessarily follows that a shorter period of three years is incompatible with the regulation.[43]

91. It is a matter for the national court to determine how the directly applicable four-year limitation period operates in relation to the interest claims for the years 2000 and 2001.

39 — Point 22 above.

40 — Point 7 above.

41 — Point 29 above.

42 — Point 22 above.

43 — *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, cited in footnote 23 above, paragraphs 27 and 28, and *Ze Fu Fleischhandel and Others*, cited in footnote 22 above, paragraph 24.

92. I note that the Court has held that Article 3(3) of Regulation No 2988/95 gives Member States wide discretion to fix *longer* limitation periods in cases of irregularity in order to protect the EU's financial interests. [44]

93. Provisions adopted and applied by Member States in order to counter fraud affecting the European Union's financial interests must nevertheless observe the general principles of EU law in this regard. In particular, rules that govern limitation periods must fulfil the function of ensuring legal certainty. [45]

94. Therefore, for the purposes of Article 3(3) of Regulation No 2988/95, national rules that extend the length of the limitation period should be taken into account in any comparison with the general four-year limitation period laid down in Article 3(1) in order to establish the length of the limitation period in respect of claims for interest.

Question 3

95. There are two parts to the national court's third question.

96. In the first part of its question, the referring court asks whether the limitation period for claims in respect of interest begins when the irregularity is committed (first subparagraph of Article 3(1) of Regulation No 2988/95), or when a continuous or repeated irregularity ceases (second subparagraph of Article 3(1)); and how that is affected if claims for interest under national law arise only at a later date, for example, after proceedings relating to the irregularity have been determined.

97. Pfeifer submits that the limitation period for interest begins at the point when the principal debt is claimed by the competent authorities. The Bundesanstalt considers that the point at which the limitation period for interest claims begins is governed by national law. The Commission contends that the limitation period begins when the irregularity is committed.

98. I understand from the Bundesanstalt's written reply to questions put by the Court that the nature of the irregularity — whether it is continuous or repeated — is still in dispute in the main proceedings. The referring court has not yet, therefore, determined whether the irregularity falls within the first or the second subparagraph of Article 3(1).

99. It seems to me that determination of that issue is nevertheless the necessary first step in order to ascertain when the limitation period in respect of the interest claim begins.

100. The Court held in *Vonk Dairy Products* [46] that a continuous or repeated irregularity is committed by a Community operator who derives economic advantages from a body of similar transactions which infringe the same provision of Community law. It is a matter for the national court to determine, applying that test, whether action constituting a continued or repeated irregularity has taken place on the facts giving rise to the main proceedings before it. [47]

44 — *Corman*, cited in footnote 25 above, paragraph 54.

45 — *Ze Fu Fleischhandel and Others*, cited in footnote 22 above, paragraphs 30 and 32 and the case-law cited.

46 — Case C-279/05 [2007] ECR I-239, paragraph 41.

47 — Paragraph 43 of the judgment.

101. So far as the beginning of the limitation period is concerned, the wording of Article 3(1) (which refers to when the irregularity in Article 1(1) was committed) focuses upon the irregularity itself rather than any ancillary claim for interest. There is nothing to indicate when the limitation period for the interest debt arises. I add that it is not always possible to quantify the principal sum (that is, the wrongful advantage) at the point when an irregularity is committed.[48] In such circumstances, it is likewise impossible to quantify any ancillary claim for interest.

102. In the absence of any express provision of EU law, this issue must be governed by national rules. Should the EU legislature consider that the point when interest claims begin to run should be harmonised, it will presumably act in order to achieve that aim.

103. The national court should therefore first establish whether the first or second subparagraph of Article 3(1) is engaged. It should then apply national rules to determine the point when the limitation period for interest begins. Those rules should be applied in a way that takes account of the ancillary nature of interest claims, in so far as it is not possible to ascertain the claim for interest before the principal sum is established.

104. By the second part of Question 3 the referring court asks when the limitation period for interest claims begins in cases of continuous or repeated irregularities (the second subparagraph of Article 3(1)).

105. The Commission considers that the limitation period for interest debts arises before such irregularities cease and that it is postponed until the continuous or repeated irregularity ceases.

106. My reply to the first part of Question 3 applies *mutatis mutandis* to the pursuit of interest for continuous or repeated irregularities. I consider that Regulation No 2988/95 does not specify when the limitation period begins in respect of claims for interest. Member States therefore retain the possibility of applying national rules to determine when the limitation period for such claims starts to run.

Question 4

107. In its final question the national court wishes to know to what extent the principal decisions and the determination of the liability to pay interest (of 30 January 2003) interrupt the limitation period laid down in Article 3(1) of Regulation No 2988/95.

108. The referring court observes that the principal decisions interrupt the limitation period with regard to both the principal sum and the interest claim. After the principal decisions were issued a new limitation period began, which expired on 31 January 2007. Thus, the claim in respect of interest would have been time-barred before the first interest decision was issued on 13 April 2007.[49]

109. However, the referring court considers that the principal decisions also established the interest liability itself. Thus, it asks whether ongoing judicial proceedings (or an investigation) relating to the principal sum can interrupt the limitation period for the interest claim.

110. The Bundesanstalt submits that as long as proceedings challenging the competent authorities' decisions remain the subject of litigation, the limitation period is suspended.

48 — An irregularity is defined in Article 1(2) of Regulation No 2988/95 as an infringement of Community law by an economic operator. However, not all such infringements immediately give rise to quantifiable claims at the point in time when they are committed. See for example, Case C-465/10 *Chambre de commerce et d'industrie de l'Indre* [2011] ECR I-14081 (irregular conduct of a public procurement procedure).

49 — Point 34 above.

111. Pfeifer distinguishes between the principal sum and the interest debt. It considers that only decisions of the competent authorities concerning the interest debt are capable of constituting interrupting acts with regard to that claim. The decisions of 30 January 2003 covered the principal sum alone. They could not therefore interrupt the limitation period for the interest debt for the purposes of Article 3 of Regulation No 2988/95. It follows that the four-year limitation period for some of the interest due had already expired by the time that the interest decision was issued.

112. The Commission reads Article 3(2) of Regulation No 2988/95 (which provides that the period for implementing the decision establishing an administrative *penalty* is three years) as applying by analogy to administrative *measure*s,[50] once the competent authorities notify a decision concerning the withdrawal of a wrongly obtained advantage. The Commission argues further that the matter of interruption or suspension of the limitation period is governed by national law.

113. It seems to me that the first sentence of the third subparagraph of Article 3(1) can only be read as referring back to the limitation period of four years laid down in the first subparagraph of Article 3(1). Therefore, where that four-year period applies, it is only interrupted by acts that fall within the scope of the third subparagraph of Article 3(1).

114. Do acts of a competent authority notified to a debtor relating to an investigation or legal proceedings concerning a principal action also interrupt proceedings relating to an ancillary claim for interest?

115. I note that the Bundesanstalt rejected Pfeifer's initial appeal against the principal decisions, but nevertheless by decision dated 10 October 2006 reduced the amount of the principal sum due.[51] That decision was an act of a competent authority, notified to the person in question, relating to investigation or legal proceedings concerning the irregularity, within the meaning of Article 3(1), third subparagraph, of Regulation No 2988/95.

116. The limitation period starts again following each interrupting act.[52] The limitation period relating to the principal sums therefore began to run anew following that decision. Since the interest debt is ancillary, the interrupting effect of the decision of 10 October 2006 in respect of the principal sums would in principle also affect the limitation period for the interest claim. However, the national court has still to determine whether the irregularity in the present case was continuous or repeated;[53] and that determination is an essential element in establishing how the decision of 10 October 2006 affects the limitation period in respect of the interest claim. I do not think that the Court can take this point any further.

117. The national court further states that the principal decisions which are the subject of legal proceedings (due to Pfeifer's challenge) are not yet final and enforceable. Against that background, it asks when the interrupting period ceases for the purposes of Regulation No 2988/95.

118. The starting point for answering the national court's question is, once again, the ancillary nature of interest claims.[54]

119. When legal proceedings challenging the principal decisions (which underpin the claim to interest) are instituted, the competent authorities cannot know whether an interest debt exists until those proceedings are resolved. In such circumstances, it is the decision of the competent authorities to defend the action that constitutes 'an act notified to the person in question, relating to legal proceedings concerning the irregularity' within the meaning of the third subparagraph of Article 3(1).

50 — See point 7 above.

51 — Point 30 above.

52 — Case C-367/09 *SGS Belgium* [2010] ECR I-10761, paragraph 67.

53 — See point 99 above.

54 — See point 51 above.

120. Once the legal proceedings are determined, if a debt is still found to exist the competent authorities are able to notify the debtor (either confirming their claim or revising the amount in the light of the final adjudication). It is only at this point that an ancillary claim for interest becomes certain.

121. For the purposes of the third subparagraph of Article 3(1), legal proceedings concerning the principal decision therefore interrupt the limitation period for any ancillary interest claim if it has begun to run.

122. Limitation periods must also ensure legal certainty.[55] It is only after the conclusion of any legal proceedings (or official investigation) that the respective parties — the economic operator and the competent national authorities — know, first, whether liability exists and, second, as a consequence, that time has begun to run for the purposes of pursuing any ancillary claim for interest permitted under national law.[56]

123. I therefore consider that for the purposes of the third subparagraph of Article 3(1) of Regulation No 2988/95 the limitation period is interrupted until final adjudication of any legal proceedings challenging the principal decisions in circumstances where those decisions determine the liability to pay interest itself.

Conclusion

124. Accordingly, I am of the opinion that the Court should answer the questions referred by the Bundesverwaltungsgericht as follows:

(1) Where a wrongful advantage is obtained as the result of an irregularity the four-year period in Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests, governs the limitation period in respect of claims for interest that are made under national law.

(2) For the purposes of Article 3(3) of Regulation No 2988/95 national rules that extend the length of the limitation period should be taken into account in any comparison with the general four-year limitation period laid down in Article 3(1) in order to establish the length of the limitation period in respect of claims for interest.

(3) Since Regulation No 2988/95 does not specify when the limitation period in respect of claims for interest begins in the case of irregularities that fall within either the first subparagraph or the second subparagraph of Article 3(1), Member States therefore retain the possibility of applying national rules to determine when the limitation period for such claims starts to run.

(4) For the purposes of the third subparagraph of Article 3(1) of Regulation No 2988/95 the limitation period is interrupted until final adjudication of any legal proceedings challenging the principal decisions in circumstances where those decisions determine the liability to pay interest itself.

55 — *SGS Belgium*, cited in footnote 52 above, paragraph 68.

56 — Points 80 to 82 above.