Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

3 October 2019*

(Reference for a preliminary ruling – Regulation (EC, Euratom) No 2988/95 – Protection of the European Union's financial interests – Article 3(1) – Limitation period – Regulations (EEC) No 3887/92 and (EC) No 2419/2001 – Integrated administration and control system for certain Community aid schemes – Recovery of undue payments – Application of the more lenient limitation rule)

In Case C-378/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decision of 9 May 2018, received at the Court on 8 June 2018, in the proceedings

Landwirtschaftskammer Niedersachsen

v

Reinhard Westphal,

THE COURT (Eighth Chamber),

composed of F. Biltgen (Rapporteur), President of the Chamber, J. Malenovský and C.G. Fernlund, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Landwirtschaftskammer Niedersachsen, by P. Averbeck, acting as Agent,

– the European Commission, by B. Hofstötter and D. Triantafyllou, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2019,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation, first, of Article 49(5) and (6) and Article 52a of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 2001 L 327, p. 11), as amended by Commission Regulation (EC) No 118/2004 of 23 January 2004 (OJ 2004 L 17, p. 7) ('Regulation No 2419/2001'), and, second, of Articles 2(2) and 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1).

2 The request has been made in proceedings between Reinhard Westphal and the Landwirtschaftskammer Niedersachsen (Chamber of Agriculture of Lower Saxony, Germany) ('the Chamber of Agriculture') concerning a request for recovery of area payments obtained under a support scheme for producers of certain arable crops.

Legal context

Regulations (EEC) No 3887/92 and No 2419/2001

3 Article 9(2) of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36) provided for various reductions in the amount of aid awarded where it was found that the area declared exceeded the area actually determined. Accordingly, if the difference was more than 20% of the determined area, no area-linked aid was granted.

4 Article 14 of that regulation laid down the rules applicable if undue payment was made, but contained no limitation rule applicable to the repayment of the amounts in question.

5 Regulation No 3887/92 was repealed, with effect from 12 December 2001, by Regulation No 2419/2001.

6 The measures provided for in Article 9(2) of Regulation No 3887/92 were reproduced, in essence, in Article 32(1) of Regulation No 2419/2001.

7 Article 49 of Regulation No 2419/2001 introduced limitation rules applicable to the repayment of the amounts in question if undue payment has been made, in the following terms:

'1. If undue payment is made, the farmer shall repay the amount in question plus interest calculated in accordance with paragraph 3.

…

5. The repayment obligation referred to in paragraph 1 shall not apply if the period which elapsed between the date of the payment of the aid and that of the first notification to the beneficiary by the competent authority concerning the undue nature of the payment concerned is more than ten years.

However, the period referred to in the first subparagraph shall be limited to four years if the beneficiary acted in good faith.

6. Amounts to be recovered as a consequence of the application of reductions and exclusions pursuant to Article 13 and Title IV shall be subject to a prescription period of four years.

…'

8 Article 52a of that regulation provides:

'By way of derogation from Article 54(2) and without prejudice to more favourable rules on limitation periods laid down by Member States, Article 49(5) shall also apply to aid applications relating to the marketing years and premium periods that started before 1 January 2002, unless the beneficiary has already been notified by the competent authority of the undue nature of the payment concerned before 1 February 2004.'

9 Article 54 of that regulation, headed 'Entry into force', states in paragraph 2:

'[Regulation No 2419/2001] shall apply to aid applications relating to marketing years or premium periods starting as of 1 January 2002.

…'

Regulation No 2988/95

10 As set out in the third recital of Regulation No 2988/95, 'acts detrimental to the [European Union's] financial interests must … be countered in all areas'.

11 Article 1(1) of Regulation No 2988/95 was worded as follows:

'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.'

12 Article 2(2) of Regulation No 2988/95 provided:

'No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in [EU] rules, the less severe provisions shall apply retroactively.'

13 Article 3(1) of Regulation No 2988/95 provided:

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

14 Mr Westphal, a farmer, submitted at the beginning of 2000 and of 2001, for the marketing years relating to those two years, 'area' aid applications under the support scheme for producers of certain arable crops.

15 The Chamber of Agriculture granted that aid and the corresponding payments were made during the course of 2000 and 2001.

16 During an on-site inspection in January 2006, irregularities were found in the data relating to the set-aside land. After hearing Mr Westphal, the Chamber of Agriculture adopted on 23 July 2007 a decision annulling in part the decisions to grant aid that were adopted in respect of the two years in question and ordering repayment of the overpayments. The amount of the repayment was calculated in accordance with the penalty applicable in the event of an over-declaration for the set-aside land, which was that no aid should have been granted.

17 Mr Westphal brought an action against that decision. The appeal court annulled the Chamber of Agriculture's decision of 23 July 2007 in so far as it concerned the amount that had to be repaid by way of a penalty. While acknowledging that that penalty was justified under the second subparagraph of Article 9(2) of Regulation No 3887/92, the appeal court considered that, in accordance with the principle of retroactive application of the more lenient penalising provision, as laid down in the second sentence of Article 2(2) of Regulation No 2988/95, the limitation rules provided for in Article 49(5) and (6) of Regulation No 2419/2001 were applicable.

18 It therefore concluded that the penalty imposed was time-barred because more than four years had elapsed between the date on which the aid concerned was paid and the date on which the applicant was notified that the aid had been granted without legal cause. Applying the limitation rules provided for in Article 49 of Regulation No 2419/2001 thus led to a less severe outcome than that which would have resulted from the rule that was ordinarily applicable, namely the first sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95. Under the latter provision, the limitation period would not have started to run until the day when the irregularity ceased in 2004, so that the penalty would not have been time-barred on the date on which the applicant learned of the irregularities pertaining to his applications.

19 The Chamber of Agriculture brought an appeal on a point of law (*Revision*) against the appeal court's decision.

20 The Bundesverwaltungsgericht (Federal Administrative Court, Germany), the referring court, points out that the appeal court interpreted Article 49(6) of Regulation No 2419/2001 as supplementing Article 49(5) and as meaning that the detailed rules in Article 49(5), in particular as regards the starting point of the limitation period, also apply to Article 49(6).

21 However, since the provisions of Regulation No 2988/95 are cross-sectoral in scope and in view of the fact that Article 49(6) of Regulation No 2419/2001 does not specify the starting point of the limitation period, the referring court is uncertain as to whether Article 3(1) of Regulation No 2988/95 should be applied in this context.

22 If Article 3(1) is not applicable, the referring court raises the question whether the limitation rules applicable in the present case are provisions that impose administrative penalties, within the meaning of the second sentence of Article 2(2) of Regulation No 2988/95, which may be subject

to the principle of retroactive application of the more lenient penalising provision. The referring court considers, first, that the principle of retroactive application of the more lenient penalising provision concerns only amendments to substantive law, and not to limitation rules. Second, since that principle is based on considerations of fairness, it should be acknowledged that, by adopting a more lenient limitation rule, the legislature has necessarily carried out a reassessment and that a temporal differentiation as to the applicability of that rule is therefore not required.

23 If that question is answered in the negative, the referring court wonders whether Article 52a of Regulation No 2419/2001, which provides for the retroactive application of the limitation rule in Article 49(5) of that regulation, can be applied by analogy to Article 49(6). According to the referring court, it follows from the wording of Article 52a of Regulation No 2419/2001 that a specific rule is not required for Article 49(6) of Regulation No 2419/2001 to apply and that the coherence of the system is ensured by the second sentence of Article 2(2) of Regulation No 2988/95. However, if that is not the case, the referring court considers that it should be possible to close the resulting regulatory gap by analogy.

24 In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Does the limitation period referred to in Article 49(6) of Regulation No 2419/2001 begin with the payment of the aid or is the beginning of that period governed by Article 3(1) of Regulation No 2988/95, that is to say, in the present case, by the first sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95?

(2) Are the limitation rules under Article 49(6) of Regulation No 2419/2001 or Article 3(1) of Regulation No 2988/95 provisions which impose administrative penalties within the meaning of the second sentence of Article 2(2) of Regulation No 2988/95?

(3) Can Article 52a of Regulation No 2419/2001 with its provision regarding the retroactive application of the limitation rule of Article 49(5) of Regulation No 2419/2001 also be applied analogously to Article 49(6) of that regulation?

If the first sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95 is applicable (first question), the other questions do not need to be answered; if that provision is not applicable and the second question is answered in the affirmative, the third question does not call for a reply.’

The first question

25 By its first question, the referring court asks, in essence, whether Article 49(6) of Regulation No 2419/2001 must be interpreted as meaning that the starting point of the limitation period which it lays down is the same as that set in Article 49(5) of that regulation, namely the date of payment of the aid, or whether it is to be set at the day on which the irregularity ceases, in accordance with Article 3(1) of Regulation No 2988/95.

26 As a preliminary observation, it should be recalled that 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' (judgments of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 20 and the case-law cited, and of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 23).

27 By adopting that regulation, the EU legislature intended to lay down a series of general principles while requiring that all sectoral rules comply with those principles (see, to that effect, judgments of 11 March 2008, *Jager*, C-420/06, EU:C:2008:152, paragraph 61, and of 28 October 2010, *SGS Belgium and Others*, C-367/09, EU:C:2010:648, paragraph 37).

28 In addition, by adopting the first subparagraph of Article 3(1) of Regulation No 2988/95, the legislature decided to establish a general rule on limitation applied in that area by which it intended, first, to define a minimum period applicable in all the Member States and, second, to waive the possibility of bringing proceedings concerning an irregularity that is detrimental to the EU's financial interests after the expiry of a four-year period after the irregularity was committed (judgments of 29 January 2009, *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, C-278/07 to C-280/07, EU:C:2009:38, paragraph 27, and of 22 December 2010, *Corman*, C-131/10, EU:C:2010:825, paragraph 39).

29 It follows that, as from the date on which Regulation No 2988/95 entered into force, as a rule and apart from in sectors for which the EU legislature has prescribed a shorter period, proceedings concerning any irregularity that is detrimental to the EU's financial interests may be brought by the competent authorities of the Member States within a period of four years (judgments of 29 January 2009, *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, C-278/07 to C-280/07, EU:C:2009:38, paragraph 28, and of 22 December 2010, *Corman*, C-131/10, EU:C:2010:825, paragraph 40).

30 As far as legal proceedings are concerned, the first subparagraph of Article 3(1) of Regulation No 2988/95 fixes a limitation period which runs from the time when the irregularity was committed, such irregularity being defined in Article 1(2) of that regulation as '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] …' (see, to that effect, judgments of 29 January 2009, *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, C-278/07 to C-280/07, EU:C:2009:38, paragraphs 21 and 22, and of 22 December 2010, *Corman*, C-131/10, EU:C:2010:825, paragraph 38).

31 That period is therefore applicable both to irregularities which are penalised by an administrative measure resulting in the withdrawal of the advantage wrongly obtained, in accordance with Article 4 of that regulation, and to irregularities leading to the imposition of an administrative penalty, within the meaning of Article 5 of that regulation (see, to that effect, judgments of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 23 and the case-law cited, and of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 26).

32 Under the first subparagraph of Article 3(1) of Regulation No 2988/95, the four-year limitation period for proceedings runs from the date on which the irregularity was committed. In accordance with the second subparagraph of Article 3(1) of that regulation, in the case of continuous or repeated irregularities, the four-year limitation period runs from the day on which the irregularity ceases.

33 Given that the commission of an irregularity requires two conditions to be satisfied, namely an act or omission that infringed EU law and a prejudice caused to the budget of the European Union, the consequence is that the limitation period begins to run from the time when both the act or omission that infringed EU law and the prejudice caused to the budget have occurred, and the starting point of the limitation period is always, according to the Court's case-law, the date of the event that last occurs (see, to that effect, judgments of 6 October 2015, *Firma Ernst Kollmer Fleischimport und -export*, C-59/14, EU:C:2015:660, paragraphs 24 to 26, and of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 47).

34 The rule prescribing a four-year limitation period in the first sentence of the first subparagraph of Article 3(1) of Regulation No 2988/95, which is directly applicable in the Member States, may be disregarded by sectoral rules within the meaning of the second sentence of the first subparagraph of Article 3(1) of that regulation only if those sectoral rules provide for a shorter period, which may not be less than three years (see, to that effect, judgments of 29 January 2009, *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, C-278/07 to C-280/07, EU:C:2009:38, paragraph 44, and of 22 December 2010, *Corman*, C-131/10, EU:C:2010:825, paragraph 42).

35 It is in the light of those considerations and by reference to the Court's settled case-law, according to which, in determining the scope of provisions of EU law, their wording, context and objectives must all be taken into account (judgment of 6 October 2015, *Firma Ernst Kollmer Fleischimport und -export*, C-59/14, EU:C:2015:660, paragraph 22), that the question raised must be answered.

36 In the present case, while the EU sectoral rules initially applicable in the main proceedings, namely Regulation No 3887/92, did not contain any specific provision on limitation periods, the repeal of that regulation by Regulation No 2419/2001 resulted in the introduction of sectoral rules on limitation.

37 Thus, it is admittedly clear from the wording of Article 49(5) of Regulation No 2419/2001 that, as regards a beneficiary in good faith, the obligation to repay in the event of an undue payment is time-barred by the passing of a four-year period between the date of payment of the aid and that of the first notification by the competent authority to the beneficiary of the undue nature of the payment received.

38 Regardless of whether that provision constitutes derogating sectoral rules within the meaning of the second sentence of the first subparagraph of Article 3(1) of Regulation No 2988/95, it must be noted that it has introduced a simplification compared with the determination of the starting point of the limitation period as provided for in Article 3(1) in that, first, that period is no longer calculated from when the irregularity was committed, but from the date of payment, and, second, there is no longer any need to distinguish between one-off and continuous irregularities.

39 On the other hand, there is nothing in the wording of Article 49(6) of Regulation No 2419/2001 to indicate that the determination of the starting point of the limitation period applicable to amounts to be recovered as a consequence of the application of reductions and exclusions pursuant to Article 13 and Title IV of that regulation has been simplified in the same way.

40 In that regard, it should be recalled that, while Article 49(5) of Regulation No 2419/2001 applies to all repayments of undue amounts, the scope of Article 49(6) is expressly limited to repayments which constitute administrative penalties, such as the total or partial deprivation of a benefit granted and the exclusion from, or withdrawal of, entitlement to a benefit for a subsequent period.

41 In those circumstances, and having regard to the arrangement of Article 49(5) and (6) of Regulation No 2419/2001, Article 49(6) should be considered to be an exception to the new calculation rule contained in Article 49(5).

42 Accordingly, the starting point of the four-year limitation period provided for in Article 49(6) of Regulation No 2419/2001 must be determined in accordance with the basic rule, namely that contained in Article 3(1) of Regulation No 2988/95.

43 That conclusion is consistent not only with the objective of Regulation No 2988/95, which, as noted in paragraph 26 of the present judgment, is to protect the European Union's financial interests, but also with the objective of Regulation No 2419/2001.

44 Regulation No 2419/2001 aims to combat irregularities and fraud in the implementation of the various aid schemes coming within the integrated system in order to protect the European Union's financial interests effectively. In order to attain that objective, that regulation provides for reductions and exclusions according to the gravity of the irregularity committed in the aid application, up to total exclusion from one or more aid schemes for a determined period (judgment of 2 October 2014, *Van Den Broeck*, C-525/13, EU:C:2014:2254, paragraph 31 and the case-law cited).

45 That is in particular so in the present case. In order to attain that objective, Article 9(2) of Regulation No 3887/92 – on the basis of which Mr Westphal was ordered to make the repayments at issue and the content of which has been reproduced, in essence, in Article 32(1) of Regulation No 2419/2001 – lays down, where the area declared in an 'area' aid application is greater than that determined on inspection, penalties consisting of reductions of, or exclusions from, EU aid, which vary according to the gravity of the irregularity committed (judgment of 4 October 2007, *Kruck*, C-192/06, EU:C:2007:579, paragraph 35).

46 Thus, an interpretation of Article 49(6) of Regulation No 2419/2001 which, in respect of aid repayments occasioned by acts which are clearly unlawful and therefore entail penalties, effectively applies the same rules for calculating the limitation period as those applicable to acts which give rise to only a simple repayment obligation does not seem to be in keeping with the purpose of a system of penalties which is intended to be sufficiently dissuasive and effective to combat irregularities and fraud committed in the field of 'area' aid (see, to that effect, judgment of 2 October 2014, *Van Den Broeck*, C-525/13, EU:C:2014:2254, paragraph 32 and the case-law cited).

47 In the light of all the foregoing considerations, the answer to the first question is that Article 49(6) of Regulation No 2419/2001 must be interpreted as meaning that the starting point of the limitation period which it lays down is determined in accordance with Article 3(1) of Regulation No 2988/95 and corresponds, in the case of continuous or repeated irregularities, to the day on which the irregularity ceases.

The second and third questions

48 In the light of the answer to the first question, it is not necessary to answer the second and third questions.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

Article 49(6) of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92, as amended by Commission Regulation (EC) No 118/2004 of 23 January 2004, must be interpreted as meaning that the starting point of the limitation period which it lays down is determined in accordance with Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests and corresponds, in the case of continuous or repeated irregularities, to the day on which the irregularity ceases.

[Signatures]