Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 8 September 2016 [1]

Case C-584/15

Glencore Céréales France
v
Établissement national des produits de l'agriculture et de la mer (FranceAgriMer)

(Request for a preliminary ruling from the Tribunal administratif de Melun (Administrative Court, Melun, France))

(Recovery of wrongly paid aid — Interest accrued — Limitation period — Start of the period — Interruption of the period — Upper limit)

1. The limitation period is one of the traditional legal concepts which has withstood the passage of time. It is undoubtedly for that reason that Karl Friedrich von Savigny stated in 1841 that it is 'one of the most important and beneficial legal concepts'. [2] In the light of the facts of this case, it might also be described as one of the most difficult to apply.

2. Glencore Céréales France ('Glencore') was obliged to repay to the competent French body export aid which it had wrongly received. When that body later required it to pay interest on the sum refunded, Glencore argued that the claim was time-barred, after contending, inter alia, that the amount of interest was not referred to in the claim for the principal debt.

3. Since the export aid came from EU resources, the dispute concerns the European Union's financial interests, covered by Regulation (EC, Euratom) No 2988/95, [3] which is the horizontal legislation on the combatting of fraud. The reference for a preliminary ruling will enable the already substantial body of case-law on other aspects of that legislation to be modified, this time in relation to interest owed.

1 — Original language: Spanish.

2 — 'Die Klagverjährung gehört unter die wichtigsten und wohlthätigsten Rechtsinstitute', *System des heutigen römischen Rechts*, vol. 5, Berlin, 1841, p. 272.

3 — Council Regulation of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

I – Legislative framework

A – *EU law*

1. Regulation No 2988/95

4. The fourth and fifth recitals read as follows:

'Whereas the effectiveness of the combating of fraud against the Communities' financial interests calls for a common set of legal rules to be enacted for all areas covered by Community policies;

Whereas irregular conduct, and the administrative measures and penalties relating thereto, are provided for in sectoral rules in accordance with this Regulation'.

5. The ninth recital states:

'Whereas Community measures and penalties laid down in pursuance of the objectives of the common agricultural [policy] form an integral part of the aid systems; whereas they pursue their own ends …; whereas their effectiveness must be ensured by the immediate effect of Community rules ...'

6. In accordance with Article 1, headed 'General principles':

'1. For the purposes of protecting the [European Union's] financial interests, general rules are hereby adopted relating … 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 Communities or budgets managed by them, 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.'

7. Under Article 3:

'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. …

In the case of continuous or repeated irregularities, the limitation period shall run from the day on which the irregularity ceases. …

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. …

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. Pursuant to Article 4:

'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.

…'

2. Sectoral legislation

(a) Export refunds on agricultural products

9. Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products,[4] was repealed by Commission Regulation (EC) No 800/1999 of 15 April 1999,[5] but is applicable *ratione temporis*, as amended by Regulation (EC) No 495/97, to the facts of the main proceedings.[6]

10. Article 11(3) of Regulation No 3665/87 provides:

'… where a refund is unduly paid, the beneficiary shall reimburse the amounts unduly received, which includes any sanction applicable pursuant to the first subparagraph of paragraph 1, plus the interest calculated on the basis of the time elapsing between payment and reimbursement. However:

…

(b) where the security has been released, the beneficiary shall pay the amount of the security which would have been forfeit, with interest calculated on the basis of the period from the date of release to the day preceding the date of payment.

…'

4 — OJ 1987 L 351, p. 1.

5 — The title of which is almost identical (OJ 1999 L 102, p. 11).

6 — Commission Regulation of 18 March 1997 amending Regulation (EEC) No 3665/87 and Regulation (EEC) No 3719/88 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (OJ 1997 L 77, p. 12).

(b) Verification of products under an intervention scheme

11. Although Commission Regulation (EEC) No 3002/92 of 16 October 1992 laying down common detailed rules for verifying the use and/or destination of products from intervention [7] was repealed and replaced by Commission Regulation No 1130/2009 of 24 November 2009, [8] which has the same title, it continues to apply *ratione temporis* to the facts of the main proceedings, as amended by Commission Regulation (EC) No 770/96 of 26 April 1996. [9]

12. Under Article 5a(1) of Regulation No 3002/92:

'1. Where, after the release in whole or in part of the security referred to in Article 5, it is established that the products in whole or in part did not reach the prescribed use and/or destination the competent authority of the Member State … shall require … the operator … to pay an amount equal to the amount of the security which would have been forfeited if the failure would have been taken into account before the release of the security. This amount shall be increased by interest calculated from the date of release to the day preceding the date of payment.

The receipt by the competent authority of the amount referred to in the first subparagraph shall constitute the recovery of the economic advantage unduly granted.'

B – *French civil law*

13. Law No 2008-561 of 17 June 2008 [10] laid down new general limitation rules, included in Article 2224 of the Civil Code, according to which:

'The limitation period for bringing personal actions or actions involving moveable property shall be five years from the date on which the owner of a right was aware or should have been aware of the facts entitling him to exercise the right'.

II – The facts giving rise to the dispute

14. On 26 May 1999, Glencore obtained a certificate authorising it to export 3 300 tonnes of barley for malting in bulk, for which it was eligible for Community refunds.

15. As a result of an inspection carried out by the customs authorities which brought to light irregularities in the way in which cereals were loaded onto the ships on which they were to be exported, the Office national interprofessionnel des cereals [11] issued an order for payment against Glencore in the sum of EUR 93933.85, which was notified on 25 February 2004. [12]

16. Between May and September 2000, Glencore submitted export declarations in respect of 43630.130 tonnes of intervention wheat.

7 — OJ 1992 L 301, p. 17.

8 — OJ 2009 L 305, p. 5.

9 — OJ 1996 L 104, p. 13.

10 — Loi portant réforme de la prescription en matière civile (JORF No 141 of 18 June 2008, p. 9856) (Law on the reform of limitation periods in civil law).

11 — The National Cereals Trade Board, now part of FranceAgriMer, was the public organisation responsible for promoting consensus between the agricultural and forestry sectors, ensuring knowledge and organisation of the markets and administering national and EU public assistance.

12 — That sum was made up of EUR 60026.91 by way of repayment of export refunds, EUR 30013.46 by way of penalty equivalent to 50% of the refund and EUR 3893.48 by way of penalty at the rate of 15%.

17. The customs authorities identified irregularities in the way in which cereals were stored prior to export, as a result of which the National Cereals Trade Board issued, on 30 November 2005, three orders for payment in the sums of EUR 113685.40, EUR 22285.60 and EUR 934598.28, respectively. The orders for payment were notified to Glencore by letter of 5 January 2006.

18. After unsuccessfully challenging in court the orders for payment requiring it to reimburse the Community aid wrongly received, Glencore paid the sums claimed on 6 April 2010 (the sums relating to the export of barley for malting) and 27 September 2010 (the sums relating to the export of wheat).

19. On 16 April 2013, FranceAgriMer [13] requested Glencore to pay the sum of EUR 289569.05 by way of interest accrued on the aid wrongly received. [14] That decision was accompanied by a fresh order requiring payment of that sum, dated 12 April 2013, which was notified by letter of 16 April 2013.

20. Glencore sought before the referring court the annulment of the decisions of 16 April 2013 and of the order for payment of 12 April 2013, arguing, as far as EU law is concerned, that the interest was time-barred, pursuant to the first and fourth subparagraphs of Article 3(1) of Regulation No 2988/95.

III – The questions referred

21. In view of the need to interpret Article 3 of Regulation No 2988/95, the Tribunal administratif de Melun (Administrative Court, Melun, France) decided to seek a preliminary ruling from the Court of Justice on the following questions:

‘(1) [Is it] possible to infer from the terms of the judgment of 9 March 2012 in Case C-564/10 … *Pfeifer & Langen* … that Article 3 of Regulation No 2988/95 laying down [EU] law limitation rules is applicable to measures seeking payment of interest due pursuant to Article 52 of Regulation No 800/1999 and Article 5a of Regulation No 770/96?

(2) Is the claim for interest to be regarded as naturally arising from a “continuous or repeated” irregularity which ceases on the date on which the principal is repaid, thus deferring until that date the point at which the limitation period in respect of the claim for interest starts to run?

(3) If Question 2 is answered in the negative, must the point at which the limitation period starts to run be the day on which the irregularity giving rise to the principal claim was committed, or may it not be the day on which the aid is paid or the security released, corresponding to the starting point for the calculation of such interest?

(4) For the purpose of the application of the rules on limitation laid down by Regulation No 2988/95, must any act which interrupts the limitation period insofar as concerns the principal claim be regarded as also interrupting the time running in respect of interest, even if no mention is made of interest in the acts directed at the principal claim that interrupt the limitation period?

(5) Does limitation become effective as a result of the fact that the maximum period provided for in the fourth subparagraph of Article 3(1) of Regulation No 2988/95 has expired if, within that period, the paying agency seeks recovery of the aid unduly paid without demanding at the same time the payment of interest?

13 — Établissement national des produits de l’agriculture et de la mer, the organisation which is the successor in title to the National Cereals Trade Board (see footnote 11 of this Opinion).

14 — Of which EUR 263503.05 was by way of interest on the aid for common wheat and EUR 26 066 was for the aid for barley.

(6) Is it possible for the general five-year limitation period provided for under national law in Article 2224 of the Civil Code by Law No 2008-561 of 17 June 2008 to have replaced, as regards limitation periods that had not yet expired on the date when that law entered into force, the four-year limitation period laid down by Regulation No 2988/95, in the light of the derogation provided for in Article 3(3) of that regulation?'

IV – Procedure before the Court of Justice

22. The order for reference was received at the Registry of the Court of Justice on 11 November 2015.

23. Glencore, the French Government and the European Commission lodged written observations within the period stipulated in the second paragraph of Article 23 of the Statute of the Court and presented oral argument at the hearing held on 9 June 2016.

V – Assessment

A – *Preliminary observations*

24. I think it is useful to make a preliminary observation which will assist in understanding the (rather unhelpful) wording of the key provision in these proceedings, Article 3 of Regulation No 2988/95. The use of the phrase 'limitation period for proceedings'[15] in the first subparagraph of Article 3(1) may be misleading. Contrary to how it may appear, this is not a limitation period for 'proceedings' as such,[16] but rather the time-limit for exercising the right (of the administrative authorities, in this case) to recover sums wrongly paid to a company in receipt of EU funds.

25. A limitation period is — forgive the repetition — a way of extinguishing rights (or, if preferred, actions, which are simply the procedural translation of rights) as a result of the holder's inactivity over a certain period of time. Article 3 of Regulation No 2988/95 imposes on the administrative authorities a maximum period of four years (which may be interrupted), from the time when the irregularity was committed, for recovery of sums wrongly paid to an operator. It is, I repeat, specifically that right to demand reimbursement which is extinguished if four years pass without the right having been exercised.

26. A second observation is equally appropriate. Since the competent administrative authority has that four-year period in which to take action in respect of an irregularity allegedly committed, its intervention may: a) interrupt the period by means of any act relating to investigation of the case which sets out with sufficient precision the transactions to which the suspicions of irregularities relate,[17] subject to an upper limit of eight years in which to adopt a decision;[18] or b) result in a ruling or decision which provides for an administrative measure under Article 4 or a penalty of the kind referred to in Article 5 of Regulation No 2988/95.

15 — Moreover, the latter word is ambiguous in any of the language versions consulted ('poursuites' in the French version; 'proceedings' in the English; 'Verfolgung' in the German; 'azioni giudiziarie' in the Italian; 'vervolging' in the Dutch; 'procedimento' in the Portuguese; and 'vidta åtgärder' in the Swedish) and it might perhaps have been preferable to replace it with another term more suited to the administrative sphere to which the regulation relates.

16 — Footnote appears to be relevant only to the Spanish version.

17 — Judgment in *Pfeifer & Langen*, C-52/14, EU:C:2015:381 ('*Pfeifer & Langen II*'), paragraph 46.

18 — The judgment in *Sodiaal International*, C-383/14, EU:C:2015:541 extended, at paragraph 26, the limitation period of eight years in the fourth subparagraph of Article 3(1) to apply to administrative measures within the meaning of Article 4 of that regulation.

27. My third and final preliminary observation concerns a fact which was debated at the hearing and which, although not apparent from the order for reference, might be relevant to the outcome of these proceedings: the French Government confirmed without hesitation that, until 2010, the practice of the French authorities was not to claim interest in instances of recovery of Community aid in respect of the items concerned. [19]

B – *The first question*

1. The parties' observations

28. The three parties which made submissions all propose that the first question should be answered in the affirmative.

29. Glencore and the French Government submit that in the judgment in *Pfeifer & Langen*, [20] the Court implicitly but necessarily accepted [21] that, where interest accrues pursuant to rules of EU law, [22] the limitation period laid down in Regulation No 2988/95 applies to interest charged on the principal claim.

30. According to the Commission, it is apparent from Article 4(2) of Regulation No 2988/95 that a demand for interest is one of the administrative measures designed to combat irregularities. Payment of interest is expressly provided for in secondary EU law and relates to the EU's financial interests.

31. The Commission further submits that Article 3(1) of Regulation No 2988/95 provides for minimum harmonisation in order to ensure that measures for the protection of the EU's financial interests are not subject to shorter limitation periods than those laid down in that provision.

2. Assessment

32. The referring court asks the Court of Justice whether it is possible to adopt an *a contrario* interpretation of the judgment in *Pfeifer & Langen I*. [23] If that is the case, the referring court seeks a reply to the other questions referred since, in these proceedings, the interest accrued under EU sectoral provisions.

33. In the judgment in *Pfeifer & Langen I*, the Court declared that Regulation No 2988/95 was not applicable because, in that case, interest had not accrued under a provision of EU law but under provisions of national law. It is logical and sensible, therefore, that the referring court should wish to confirm whether it can be inferred *a contrario* from that judgment that the regulation concerned is applicable.

34. I agree with the parties to these proceedings that the inference proposed by the referring court is correct.

19 — On 8 April 2010, FranceAgriMer sent a note to all operators in the sector, informing them of the change in its policy in relation to interest.

20 — Judgment in *Pfeifer & Langen*, C-564/10, EU:C:2012:190 ('judgment in *Pfeifer & Langen I*',).

21 — They refer to paragraphs 42 to 47 and 50 of the judgment in *Pfeifer & Langen I*.

22 — Article 11(3) of Regulation No 3665/87 and Article 5a of Regulation No 3002/92.

23 — In accordance with that judgment, the limitation period laid down in Article 3 of Regulation No 2988/95 for the principal claim, relating to the recovery of an advantage wrongly received from the European Union budget, does not apply to the recovery of interest arising from that claim, where that interest is not due under EU law, but exclusively under an obligation of national law.

35. That conclusion is confirmed, on the one hand, by Article 4(2) of Regulation No 2988/95 (withdrawal of the advantage wrongly obtained may be increased, where so provided for, by interest) and, on the other hand, by the judgment in *Pfeifer & Langen I*, which refers to the possible existence of EU sectoral legislation providing for the recovery of interest.[24] The rules laid down in Article 3(1) of Regulation No 2988/95 are applicable to such interest. Moreover, from a systematic point of view, the same judgment explained[25] that the limitation rules laid down in Article 3 are not intended to apply to the recovery of interest accruing under national law and not EU sectoral legislation.

36. Thus, the judgment in *Pfeifer & Langen I* includes in its *ratio decidendi* matters which reveal the Court's position: where EU sectoral legislation exists which provides for the recovery of interest (in addition to reimbursement of the sums wrongly paid to operators from the EU budget), the limitation rules in Article 3 of Regulation No 2988/95 are, in principle, applicable.

37. Applying that proposition to the main proceedings, and having regard to the fact that Article 11(3) of Regulation No 3665/87 and Article 5a of Regulation No 3002/92 provide for the collection of interest (in relation to the rules on export refunds on agricultural products and in relation to verification of the use or destination of products from intervention, respectively), without either of those provisions laying down specific limitation rules, such collection of interest is subject to the general, or cross-sector, rule in the form of Article 3 of Regulation No 2988/95.

38. Accordingly, I suggest that the reply to the first question should be that Article 3(1) of Regulation No 2988/95 is applicable to the recovery of interest accruing as a result of measures adopted under Article 11(3) of Regulation No 3665/87 and Article 5a of Regulation No 3002/92.

C – *The second to the fifth questions*

1. Interpretation of the questions

39. By its second to fifth questions, which can be answered together, the referring court seeks to ascertain, essentially, how the limitation rules in Article 3 of Regulation No 2988/95 should be applied to the recovery of interest on sums wrongly paid in the context of the rules governing export refunds and agricultural products under intervention.

40. The questions include to a large extent submissions made by the parties to the referring court and focus on the *dies a quo* for the calculation[26] and the effect which the fact that the claims for reimbursement did not include interest may have on the limitation periods (the general period in the first subparagraph of Article 3(1) of Regulation No 2988/95 and the special period in the fourth subparagraph of that regulation).[27]

24 — Paragraph 42.

25 — In paragraph 50.

26 — The second and third questions.

27 — The fourth and fifth questions.

2. The parties' observations

41. As regards the *dies a quo*, Glencore submits that, since the interest owed is incidental to the principal debt, the recovery of interest does not arise as a result of a continuous or repeated irregularity, for the purposes of the [second] subparagraph of Article 3(1) of Regulation No 2988/95, in the light of the case-law on that concept.[28] Glencore further submits that the starting point of the limitation period coincides with the date on which the irregularity was committed or, alternatively, the date on which the interest started to run, but under no circumstances with the date on which the irregularity was identified or the date on which the debt is recovered.[29]

42. As concerns the failure to refer to interest in the claims for reimbursement, Glencore submits that the act requesting reimbursement of the principal debt lacks the precision required by case-law[30] and that it would be contrary to the principle of legal certainty to infer that it included interest because it did not mention interest. At all events, in the main proceedings, the debts relating to the recovery of interest were already time-barred because four years had passed since the claims for reimbursement of the principal debts were made.

43. In connection with the special limitation period of eight years, Glencore asserts that the judgment in *Sodiaal International*[31] resolved that question by confirming that the time-limit stipulated in the fourth subparagraph of Article 3(1) of Regulation No 2988/95 applies also to a measure within the meaning of Article 4 of that regulation, provided that that measure was provided for in the EU sectoral legislation. The failure to mention interest in the claims for the sums unduly received led to the expiry of the special limitation period when FranceAgriMer claimed that interest late.

44. The French Government maintains that, since the interest is incidental to the principal and because the reason for the interest is the non-payment of the principal debt, the limitation period for the interest owed begins when the principal debt is paid. Furthermore, the interest owed constitutes a 'repeated irregularity' for the purposes of Regulation No 2988/95, since it produces effects continuously throughout the period of non-payment of the principal debt.

45. The French Government submits that the start date for the limitation period for the interest owed is not the same as that for the principal debt, for at that point interest will not yet have begun to accrue. In addition, as regards the inseparable nature of the two debts, the French Government rejects the possibility of applying the judgment in *Pfeifer & Langen II*, paragraph 51 of which refers only to the incidental nature of the interest owed in a case, unlike the instant case, where the principal debt had become time-barred.

46. Should the Court decide that the interest owed cannot be separated from the irregularity which gave rise to the principal debt, the French Government proposes that the former should be regarded as a type of administrative punitive decision which keeps in existence the principal debt. In accordance with Article 3(2) of Regulation No 2988/95, which sets a limitation period for enforcement of the decision establishing the penalty of three years from the day on which the decision becomes final, and since Glencore initially brought an appeal before the courts against the two decisions in the instant case and later paid the sums owed, the limitation period for the interest started to run on the date that payment was made.

28 — Glencore cites the judgments in *Vonk Dairy Products*, C-279/05, EU:C:2007:18, paragraph 41, and *Pfeifer & Langen II*, paragraph 52.

29 — Glencore refers in that connection to the judgment in *Pfeifer & Langen II*, paragraph 67, and the judgment in *Firma Ernst Kollmer Fleischimport und –export*, C-59/14, EU:C:2015:660, paragraph 27.

30 — Glencore invokes *Pfeifer & Langen II*, paragraph 40, and *Handlbauer*, C-278/02, EU:C:2004:388, paragraph 40.

31 — Judgment in *Sodiaal International*, C-383/14, EU:C:2015:541.

47. Taking the latter criterion into account, the French Government submits that the failure to refer to the interest owed in the claim for the principal debt is irrelevant, since the limitation period for the interest owed in these proceedings has not expired.

48. According to the Commission, Article 3(1) of Regulation No 2988/95 concerns the limitation period for proceedings brought to rectify the irregularity but, although the interest owed is incidental, it may still be the subject of an action distinct from that concerning the principal debt. The Commission further contends that, since Article 11(3) of Regulation No 3665/87 provides that interest is to be calculated on the basis of the time elapsed between payment of the wrongly obtained advantage and reimbursement thereof, the interest owed can in effect only be claimed from the time when the competent authority receives repayment of the principal sum due from the operator.

49. The Commission agrees with the argument put forward by the French Government regarding the continuous nature of the interest owed. Further, as concerns the maximum limitation period laid down in the fourth subparagraph of Article 3(1) of Regulation No 2988/95, the Commission states that, in the instant case, that period has not expired because it only started to run when the principal debts were paid. [32]

50. In the event that the Court finds that the interest owed does not constitute a continuous irregularity, the Commission refers to the fact that the interest is incidental to the principal debt, which, in its submission, means that the interruption of the limitation period as a result of the proceedings for recovery of the principal also leads to the interruption of the proceedings for recovery of the interest.

3. Assessment

(a) The interest and the limitation period for the interest under Regulation No 2988/95

51. Under Regulation No 2988/95, the recovery of interest is not a penalty [33] and it satisfies a twofold objective: first, it compensates the administrative authority which has been unable to make use of the money owed, the amount of the interest being equivalent to the current value of the amount wrongly paid to the operator; second, it eliminates any advantage that operator might have enjoyed as the recipient of overpayments of aid, were such overpayments to be interest-free. [34]

52. As regards the legal status of the interest owed, the Court declared in *Pfeifer & Langen I* that it is incidental to the recovery of the sums wrongly received (the principal). [35] It is also important to remember a second defining feature: the legal basis for the claim where recovery of interest is provided for in EU sectoral legislation (unlike an action for interest governed by general provisions of law). As I have observed, in the instant case, Article 11(3) of Regulation No 3665/87 and Article 5a of Regulation No 3002/92 expressly provide for interest to be claimed.

32 — In other words, on 6 April 2010, as regards the export aid received for barley for malting, and 27 September 2010, as regards the export aid for common wheat.

33 — See Killmann, B.-R. and Glaser, S., *Verordnung (EG, EURATOM) Nr. 2988/95 über den Schutz der finanziellen Interessen der Europäischen Gemeinschaften — Kommentar*, NWN Neuer Wissenschaftlicher Verlag/Berliner Wissenschafts-Verlag, Vienna — Graz, 2011, p. 95.

34 — I share the view of Advocate General Sharpston in the Opinion in *Pfeifer & Langen I*, C-564/10, EU:C:2012:38, point 64.

35 — Paragraph 48.

53. That obligation, which is incidental and established by law, in turn has a twofold consequence: a) it requires the national authorities to claim interest, although, in order to calculate the exact amount, it is necessary to wait for reimbursement of the amount wrongly obtained (it is sufficient to multiply that amount by the applicable rate and by the time elapsed between payment and reimbursement); and b) it provides legal certainty for the infringing operator, who is aware in advance of his imperative obligation to pay interest.

54. Given the purpose of the recovery of interest and its legal features, the limitation period for the action to claim interest runs parallel to that for the main action, to which it is incidental, that is, the action for reimbursement of the amount wrongly paid to the operator.

55. However, the incidental nature of the claim for interest is restricted by the limitation rule in Regulation No 2988/95, to which it is appropriate to refer now, without prejudice to subsequent discussion of the rule in the context of the reply to the fifth question. Where, as occurred in the instant case, the authorities initially only bring an action for reimbursement of the principal, the interest owed may be separated and, for the purposes of the limitation period applicable to it, acquire a certain autonomy. [36] The decisions or measures adopted in order to obtain reimbursement of the principal debt are subject to the period provided for in Article 3(2) of Regulation No 2988/95 [37] (or the relevant period provided for in national law), whereas, in the absence of a specific claim for interest, proceedings for the recovery of interest continue to be subject to the special limitation period in the fourth subparagraph of Article 3(1) of that regulation.

56. The application of that special time-limit to proceedings for recovery of interest is justified because a time-limit of that nature is absolute: it applies regardless of the proceedings brought, including to proceedings which interrupt the limitation period. If, eight years after the interest due was incurred, those proceedings have not culminated in a measure or a penalty, [38] the provision deems that the action to recover the interest has, in itself, become time-barred. [39]

(b) The dies a quo: continuous or single irregularity?

57. The question from the referring court (does the claim for interest arise from a continuous or repeated irregularity?) appears logical at this stage of the analysis, since, if it is answered in the affirmative, the second subparagraph of Article 3(1) of Regulation No 2988/95, which fixes the *dies a quo* for calculation of the limitation period as the time when the irregularity ceases, will be applicable. If that approach is accepted, the action for recovery of interest will not be time-barred in the instant case.

36 — The claim for interest combines incidental characteristics with autonomous characteristics. It is incidental in so far as it presupposes the existence of a capital debt which incurs interest. However, once the claim for interest has arisen, it takes on its own dynamic which enables it to be the subject of certain actions and legal transactions separate the principal debt (such as being recovered in legal proceedings, assigned to third parties, pledged or attached). Payment of the principal debt has no effect on the interest accruing, which continues to be owed unless the implicit remission of the interest can be clearly inferred from the context.

37 — Paragraph 33 of the judgment in *Sodiaal International*, C-383/14, EU:C:2015:541, extended beyond the wording of the provision (which refers to a 'penalty') the application of the maximum limitation period of eight years in the fourth subparagraph of Article 3(1) of Regulation No 2988/92 to the measures referred to in Article 4 of that regulation.

38 — Unless the proceedings have been suspended as a result of the commencement of criminal proceedings against the operator, in connection with the same facts, in accordance with Article 6(1) of Regulation No 2988/95, to which the rule on the special limitation period refers.

39 — Moreover, that approach does not conflict with the case-law of the Court which, in the context of limitation periods, has merely held — to date, at least — that the claim for interest is incidental to the principal claim where that is itself time-barred. See the judgment in *Pfeifer & Langen I*, paragraph 51.

58. However, I do not believe that the failure to pay interest can be described as a *continuous or repeated irregularity*. According to the case-law of the Court, an irregularity must be deemed to be 'continuous or repeated' for the purposes of the second subparagraph of Article 3(1) of Regulation No 2988/95 where it is committed by an operator who derives economic advantages from a body of similar transactions which infringe the same provision of EU law. [40]

59. On that premiss, there are a number of reasons which militate in favour of a negative reply to the question. First, the claim for interest does not arise directly from the infringement of a provision of EU law. The *irregularities* to which the second subparagraph of Article 3(1) of Regulation No 2988/95 refers are substantive; in other words, they entail other infringements (continuous or repeated over time) of the substantive rules governing aid. After the commission of those *substantive* infringements, by means of which the operator wrongly obtains an economic advantage, the duty to reimburse the principal and interest arises, but failure to pay the interest does not, in itself, constitute a fresh infringement or irregularity.

60. Second, although non-payment of the capital and the interest may be viewed as an infringement of a legal obligation, the economic benefits obtained by the infringer are not derived from a 'body of similar transactions', for the interest owed is not the result of a number of transactions. The daily increase in interest over the period of non-payment is, as I have already pointed out, derived from the fact that it is intended to compensate for the loss of the nominal value of the amount received by the infringer, which must be adjusted on a daily basis. That evolving calculation process does not mean that the operator breaches each day the same provision of EU law by carrying out a transaction similar to that of the previous day.

61. Having rejected the view that the irregularity is continuous or repeated, when does the limitation period for action by the authorities to recover interest start to run? In the case of single irregularities (like those in this case), the Court has held that the commission of such an irregularity triggers the start of the limitation period where there is an act or omission by an economic operator which infringes EU law and a prejudice, or potential prejudice, caused to the budget of the European Union. [41] As a corollary, that same case-law stipulates that the limitation period begins to run from the time when both the infringement of EU law and the prejudice caused to the budget of the European Union have occurred. [42]

62. The Court has held that the *dies a quo* does not have to coincide with the date on which the Commission (or, in this case, the competent national authority) discovers the error, [43] but rather with the date on which the irregularity ceased.

63. It is not clear from the account of the facts of the proceedings whether payment of the export refund for barley and the export aid for wheat occurred before or after the infringements were committed. The *dies a quo* for calculation of the limitation period for the interest owed will be either the date of commission of the infringement (if that was after the date of payment of the refund or the aid) or the date of payment (if that was after the substantive infringement), for those are the only times when the irregularity was committed. [44]

40 — See the judgment in *Vonk Dairy Products*, C-279/05, EU:C:2007:18, paragraph 41.

41 — Judgment in *Firma Ernst Kollmer Fleischimport und –export*, C-59/14, EU:C:2015:660, paragraph 24.

42 — Ibid., paragraph 29 and the operative part of the judgment.

43 — See the judgments in *José Martí Peix* v *Commission*, C-226/03 P; EU:C:2004:768, paragraphs 25 and 26, and *Pfeifer & Langen II*, paragraph 67.

44 — Judgment in *Firma Ernst Kollmer Fleischimport und –export*, C-59/14, EU:C:2015:660, paragraph 26.

64. To my mind, the release of the security (which the referring court mentions in the third question) is not relevant for the purpose of fixing the start of the period for claiming interest. It is apparent from Article 11(3) of Regulation No 3665/87 that 'the beneficiary shall reimburse the amounts unduly received … with interest calculated on the basis of the period between payment and reimbursement.' Admittedly, that same provision provides for a special calculation rule in subparagraph b), but that does not create a new *dies a quo*: it is simply a criterion for specifying the amount of interest in situations where security is provided. [45]

65. In short, when each irregularity is committed, the period for claiming the principal debt and the limitation period for proceedings to claim the interest start to run, without there being an indication in the instant case that the irregularity was continuous or repeated for the purposes of the second subparagraph of Article 3(1) of Regulation No 2988/95.

(c) The failure to claim interest

66. The referring court asks what effect the failure to mention interest in the claim for the principal debt has on the limitation period. In that connection, the fourth and fifth questions refer to the limitation period in the first subparagraph of Article 3(1) ('general period' of four years, or more if national law so provides) of Regulation No 2988/95, and to that in the fourth subparagraph of that provision ('special period' of eight years).

67. The general limitation period seeks to ensure legal certainty for economic operators, [46] such that they are in a position to determine which among their transactions are definitive and which may still be the subject of legal proceedings. [47] I see nothing to preclude the application of that case-law to the special period, for it imposes an absolute maximum which results in greater legal certainty.

68. Proceedings to claim interest on a debt resulting from the undue payment of aid borne by the European Union budget are, in principle, subject to the general limitation period and the body of legal rules which govern that period. Therefore, the limitation period may be interrupted in accordance with the third subparagraph of Article 3(1) of Regulation No 2988/95, the effect of which is that a new four-year period will start to run after each interruption.

69. According to the account of the facts in the order for reference, the French authorities carried out two inspections in this case: in 2001 (relating to barley) and in 2003 (relating to wheat). If those inspections complied with the necessary conditions (they were preceded by the appropriate notifications, they were sufficiently specific for the purposes of investigating the irregularities concerned, and they were not merely general in nature), [48] a matter which it falls to the referring court to determine, they may be classified as 'proceedings' for the purposes of the first subparagraph of Article 3(1) of Regulation No 2988/95. Since both were carried out within the general limitation period, they interrupted that period as regards both the reimbursement of the debt and the payment of interest, because the latter is incidental to the principal.

70. As a result of orders for payment issued in 2004 (in respect of barley) and 2005 (in respect of common wheat), a further interruption of the limitation period took place in accordance with the first subparagraph of Article 3(1) of Regulation No 2988/95. Given the nature of those orders for payment, there could be a debate as to whether only the limitation period for the claim of the principal debts

45 — In Glencore's case, since the security has been released, the interest is calculated from the date of release to the day preceding the date of reimbursement of the amount of the security plus interest (Article 11(3)(b) of Regulation No 3665/87).

46 — Judgments in *Handlbauer*, C-278/02, EU:C:2004:388, paragraph 40, and *SGS Belgium and Others*, C-367/09, EU:C:2010:648, paragraph 68.

47 — Judgments in *Pfeifer & Langen II*, paragraphs 24 and 64, and *Sodiaal International*, C-383/14, EU:C:2015:541, paragraph 30.

48 — Judgments in *Handlbauer*, C-278/02, EU:C:2004:388, paragraph 40, and *SGS Belgium and Others*, C-367/09, EU:C:2009:648, paragraph 69.

was interrupted, since those orders did not refer to interest. However, in any event, that debate would be irrelevant since a decision on the interest was never adopted within the eight-year period (which started to run on the date on which the irregularity was committed), which was the absolute limit imposed by the fourth subparagraph of Article 3(1), as I pointed out above.

71. The proposition that proceedings must be brought, failing which they will be time-barred, is perfectly valid in relation to the public authorities, even though their rights and obligations have a statutory basis. Where, as in the main proceedings, national authorities have neglected for more than eight years their duty to require the payment of interest, they are not entitled subsequently to claim that interest *sine die*, contrary to the absolute nature of the special limitation period laid down in the fourth subparagraph of Article 3(1) of Regulation No 2988/95. Such an outcome would not only have an adverse effect on the legal certainty of operators but would also upset the balance struck by the legislature in that regulation between protection of the European Union's finances and the legal certainty which it seeks to safeguard.

72. In that situation, it is immaterial that the failure to claim interest was, as the French Government acknowledged at the hearing, the result of certain guidelines in national policy which remained in force until 2010. That fact even undermines its procedural position, for those guidelines breached the obligations, imposed by the sectoral regulations, to recover both the principal and the interest accruing in each case.

73. The French authorities could not, therefore, having created that situation, then transfer their responsibility to economic operators by asking them, after the special eight-year limitation period (including the interruptions to which I referred above) had elapsed, to pay interest which they themselves had chosen not to claim at the outset.

74. The need for professional care in the actions of public authorities is, moreover, perfectly consistent with the case-law of the Court, which emphasises the general duty of diligence when verifying the legality of payments made that are borne by the European Union budget. That duty is derived from the broader duty, imposed on Member States by Article 4(3) TEU, in accordance with which they are to take 'any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union'. Those measures encompass measures to rectify irregularities,[49] including those leading to the payment of interest where EU law so provides.

75. Providing Member States with the possibility of enjoying a much longer period within which to act in respect of the collection of interest than that laid down in the fourth subparagraph of Article 3(1) of Regulation No 2988/95 could, ultimately, encourage inertia on the part of the national authorities in claiming interest caused as a result of irregularities, whilst exposing operators to a long and uncertain period of legal uncertainty.[50]

76. In short, it is my view that where, for the purposes of Article 4 of Regulation No 2988/95, enforcement measures have been adopted, pursuant to which reimbursement of the principal debt is claimed, a failure to mention the payment of interest in those measures means that proceedings to recover that interest are subject to the special limitation period laid down in the fourth subparagraph of Article 3(1) of that regulation.

49 — See, in that connection, the judgment in *Cruz & Companhia*, C-341/13, EU:2014:2230, paragraph 62 and the case-law cited.

50 — Ibid.

D – *The sixth question*

1. The parties' observations

77. Glencore submits that it is not possible for the limitation period in the first subparagraph of Article 3(1) of Regulation No 2988/95 to be replaced by that in Article 2224 of the French Civil Code, as amended by Law No 2008-561. Glencore contends that neither of the two conditions accepted by the Court are met, namely that: a) there must be a limitation period laid down in national law for the reimbursement of wrongly received European Union aid (according to Glencore, Article 2224 of the French Civil Code is a general, not a specific, provision);[51] and b) there must be a sufficiently foreseeable judicially determined practice, in relation to the new wording of that article.[52]

78. Glencore further contends that making irregularities occurring in 1999 and 2000 subject to the five-year limitation period laid down in Article 2224 of the French Civil Code, introduced in 2008, would be contrary to legal certainty.

79. The French Government and the Commission both submit that the question warrants an affirmative answer.

80. In the French Government's submission, it must be borne in mind, first, that at the time when the irregularities were committed Article 2277 of the French Civil Code made subject to a five-year limitation period all interest accruing on sums of money loaned and, more generally, all sums payable on an annual basis, like the interest owed in the present proceedings. Second, the French Government contends that the (new) five-year period introduced in 2008 complies with EU law, for Member States are entitled to extend the limitation periods laid down in Article 3(1) and (2) of Regulation No 2988/95, as the Court has confirmed,[53] and it is proportionate in this case.[54]

81. The Commission submits that the Member States may apply longer limitation periods which are included in general provisions of law.[55] The Commission further submits that, according to the Court, the extension of the limitation period and its immediate application do not infringe the rights guaranteed by Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is equivalent to Article 49 of the Charter of Fundamental Rights of the European Union.[56] Finally, the Commission points out, as regards legal certainty, that economic operators cannot entertain a legitimate expectation that an existing situation which is capable of being altered by decisions taken by those institutions within the limits of their discretion will be maintained.[57]

2. Assessment

82. By the sixth and final question, the referring court asks, essentially, whether there is any obstacle in EU law to the application to the main proceedings of the five-year limitation period laid down in Article 2224 of the French Civil Code.

51 — Glencore cites the judgment in *Ze Fu Fleischhandel and Vion Trading*, C-201/10 and C-202/10, EU:2011:282, paragraphs 46 and 53.

52 — Ibid., paragraphs 29 and 33, and the judgment in *Cruz & Companhia*, C-341/13, EU:2014:2230, paragraphs 56 and 57.

53 — Judgments in *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, C-278/07 to C-280/07, EU:2009:38, paragraph 42; *Ze Fu Fleischhandel and Vion Trading*, C-201/10 and C-202/10, EU:2011:282, paragraph 25; and *Cruz & Companhia*, C-341/13, EU:2014:2230, paragraph 54.

54 — Judgment in *Ze Fu Fleischhandel and Vion Trading*, C-201/10 and C-202/10, EU:2011:282, paragraph 37.

55 — Judgment in *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, C-278/07 to C-280/07, EU:2009:38, paragraph 47.

56 — Judgment in *Tarico*, C-105/14, EU:2015:555, paragraph 57.

57 — Judgment in *Lubella*, C-64/95, EU:1996:388, paragraph 31.

83. In the light of the reply I have suggested to the fourth and fifth questions, the following considerations are set out in the alternative only, in the event that the Court does not agree with that reply and considers the claim for interest to be an enforcement measure for the purposes of Article 3(2) of Regulation No 2988/95.

84. Under Article 3(3) of Regulation No 2988/95, the rules governing the duration of the limitation periods laid down in Article 3(1) and (2) are supplementary to the provisions laid down by the Member States in their own legal systems. As the parties in these proceedings have observed, the Court has recognised that Member States retain wide discretion in fixing longer limitation periods in cases involving an irregularity that is detrimental to the European Union's financial interests; moreover, those limitation periods may result from general provisions of law and predate the adoption of Regulation No 2988/95,[58] or be the result of a subsequent legislative development.[59]

85. As regards French law, it is clear from the documents lodged that there is a certain difference of opinion between the Tribunal administratif de Melun (Administrative Court, Melun) and the French Government: the former states that, at the material time, there was no provision of French law capable of replacing the four-year limitation period in Regulation No 2988/95, since the general limitation period in force at that time was 30 years, a duration which the Court expressly rejected as being suitable to replace the four-year period laid down in the regulation;[60] however, the French Government invokes Article 2277 of the Civil Code which, at that time, imposed a five-year limitation period on all claims for interest accruing as a result of sums of money loaned.

86. Since this is an issue of national law, it is not for the Court of Justice but for the referring court to identify the provision of its domestic law appropriate to replace the limitation period laid down in Article 3(1) and (2) of Regulation No 2988/95. The national court should also consider whether the French legal system includes a provision of administrative law governing the limitation period for debts owed by private persons, including economic operators, to the public authorities. If there is no such provision, the national court, provided that it does so within the limits of procedural consistency, must also investigate the claim put forward by the French Government in this matter.

87. At all events, since the two articles of the French Civil Code (the old Article 2277, in force at the material time, and the new Article 2224, which replaced the general 30-year limitation period) provide for a period of five years, I believe that they both satisfy the requirement of proportionality. A mere increase of one year above the period laid down in Article 3(1) and (2) of Regulation No 2988/95 does not go beyond what is necessary to enable the national authorities to bring proceedings in respect of irregularities detrimental to the EU's finances (which is the aim of the recovery of a wrongly obtained advantage and the collection of the interest accruing) and nor does it encourage inertia on the part of those authorities in combating such irregularities.[61]

88. As far as legal certainty is concerned, I do not believe that it is possible to accept the argument that, following the abolition of the 30-year limitation period, application of the new five-year period laid down in Article 2224 of the French Civil Code contravenes that legal principle (Glencore's argument). The measures adopted to combat the irregularities identified in respect of export aid for barley and common wheat date from 2004 and 2005[62] respectively and, in any event, those measures interrupted the 30-year limitation period in force at that time. Once they had been adopted, the measures concerned no longer fell within the scope of Article 3(1) but rather within that of Article 3(2) of Regulation No 2988/95.

58 — Judgment in *Cruz & Companhia*, C-341/13; EU:2014:2230, paragraphs 55 and 56, and the case-law cited.

59 — Ibid., paragraph 63 and the case-law cited.

60 — Judgment in *Chambre de commerce et d'industrie de l'Indre*, C-465/10, EU:C:2011:867, paragraphs 65 and 66, and the case-law cited.

61 — Judgment in *Cruz & Companhia*, C-341/13, EU:2014:2230, paragraphs 61 and 62.

62 — Although in the case of common wheat, the measures were notified in November 2005 and January 2006.

89. That is actually the point when the limitation period for proceedings to recover interest (in so far as these are acts enforcing measures for recovery of the principal) starts to run, taking into account all the factors capable of interrupting that period, such as a challenge brought before the administrative courts or payment of the principal. In that connection, it is apparent from the pleadings [63] that an action was brought against the measures in the French administrative courts, which, in turn, interrupted the limitation period for enforcing the measures until 2010, which is when payment was made. In that year, the new general limitation rule laid down in Article 2224 of the French Civil Code was already applicable.

90. Accordingly, I believe that, in the circumstances of the main proceedings, EU law does not preclude the application of the time-limits laid down in Article 2224 of the French Civil Code to the limitation period which had not yet expired on the date of entry into force of Law No 2008-561.

VI – Conclusion

91. In the light of the foregoing considerations, I propose that the Court should reply as follows to the questions referred for a preliminary ruling by the Tribunal administratif de Melun (Administrative Court, Melun, France):

(1) Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests is applicable to the recovery of interest accruing as a result of measures adopted under Article 11(3) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products and Article 5a of Commission Regulation (EEC) No 3002/92 of 16 October 1992 laying down common detailed rules for verifying the use and/or destination of products from intervention.

(2) In a situation like that in the present case, an action to claim the payment of interest on each of the two principal debts:

— is not derived from a continuous or repeated irregularity for the purposes of the second subparagraph of Article 3(1) of Regulation No 2988/95; and

— becomes time-barred at the end of the eight-year period provided for in the fourth subparagraph of Article 3(1) of Regulation No 2988/95; that period starts to run on the date on which the irregularity giving rise to the obligation to pay the principal debt ceased.

(3) EU law does not preclude the application of the time-limits laid down in Article 2224 of the French Civil Code to the limitation period which had not yet expired on the date of entry into force of Law No 2008-561.

63 — Glencore's observations, a point which was not refuted by any of the other parties.