OPINION OF ADVOCATE GENERAL TIZZANO
delivered on 15 January 2004 [1]

1. By order of 11 July 2002, the Berufungssenat I der Region Linz bei der Finanzlandesdirektion für Oberösterreich (Linz Regional Appeal Board I at the Provincial Finance Directorate for Upper Austria, hereinafter 'Berufungssenat I' or 'Appeal Board I') referred a number of questions to the Court for a preliminary ruling under Article 234 EC on the interpretation of Council Regulation No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (hereinafter 'Regulation No 2988/95'). [2] In brief, Appeal Board I asked whether Article 3(1) of that regulation was directly applicable in the Member States and whether the limitation period of four years laid down in that article could be interrupted by the notice of an inspection decided under Regulation No 4045/89 based on risk factors and, in particular, the frequency of acts prejudicial to the financial interests of the Communities.

2. The questions referred by Berufungssenat I were maintained by the Unabhängiger Finanzsenat, Außenstelle Klagenfurt (hereinafter the 'Unabhängiger Finanzsenat' or 'Independent Finance Board'), which since 1 January 2003 has jurisdiction to rule in the main proceedings.

I — Legal framework

A — *Community law*

Regulation No 3665/87 and its subsequent amendments

3. Common organisations of the market were established under the common agricultural policy: they included inter alia measures to regulate the prices of agricultural products. As prices on the common market were consistently higher than those on the world market, special payments to exporters, known as 'export refunds', were introduced

1 — Original language: Italian.
2 — OJ 1995 L 312, p. 1.

to cover the difference between Community prices and world prices and so enable agricultural products from the Community to be exported to third countries.

4. At the material time, the detailed rules governing the application of the system of export refunds on agricultural products were laid down in Commission Regulation (EEC) No 3665/87 of 27 November 1987 (hereinafter 'Regulation No 3665/87'). [3]

5. In order to combat the numerous irregularities and fraud prejudicial to the Community budget which had been detected in the application of the abovementioned system, Article 11 of that Regulation, as amended by Regulation No 2945/94, [4] imposed an obligation to reimburse refunds unduly received and provided for sanctions to encourage exporters to comply with the Community rules.

6. Regulation No 3665/87 was recently repealed by Commission Regulation No 800/1999 (hereinafter 'Regulation No 800/99'), which was adopted after the events at issue and is not applicable in the present case. [5] For present purposes, it should be noted that that regulation lays down, for the recovery of refunds unduly paid, a limitation period of four years from the day of notification to the beneficiary of the final decision on the granting of the refund (Article 52(4)(b)).

Regulation No 4045/89

7. Again with a view to preventing and detecting irregularities and fraud, Council Regulation (EEC) No 4045/89 of 21 December 1989 (hereinafter 'Regulation No 4045/89'), [6] requires the Member States to draw up and carry out annual programmes for scrutiny of selected entities receiving or making payments relating to the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (hereinafter the 'EAGGF'). The selection must take account of the financial importance of the undertakings in the EAGGF system of financing and other risk factors (Article 2).

3 — 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 (OJ 1987 L 351, p. 1).

4 — Commission Regulation (EC) No 2945/94 of 2 December 1994 amending Regulation (EEC) No 3665/87 laying down common detailed rules for the application of the system of export refunds on agricultural products as regards the recovery of amounts unduly paid and sanctions.

5 — See Art. 54 of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11).

6 — Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC (OJ 1989 L 388, p. 18).

Regulation No 2988/95

8. Although there are already various provisions to protect the Communities' financial interests in the context of certain policies, including the common agricultural policy, in order to counter acts detrimental to such interests in all areas (third and fourth recitals in the preamble) the Council adopted Regulation No 2988/95, which contains 'general rules ... relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Community law' (Article 1(1)).

9. Pursuant to Article 1(2):

'"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.'

10. For present purposes, however, attention is drawn in particular to Article 3 of the regulation, which provides that:

'1. The limitation period for proceedings [7] shall be four years as from the time when the irregularity referred to in Article 1(1) was committed. However, the sectoral rules may make provision for a shorter period which may not be less than three years.

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

The limitation period [8] 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).

7 — [Note applicable to the Italian version of the Opinion only].

8 — [Note applicable to the Italian version of the Opinion only].

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'.

B — National law

11. It appears from the file that the Austrian Law on Export Refunds (the Ausfuhrerstattungsgesetz, hereinafter 'AEG') [9] does not directly lay down a limitation period for the reimbursement of refunds unduly received but refers on that point to the relevant provisions of the customs legislation (Paragraph 1(5)).

9 — BGBl. 1994/660.

12. In this connection, Paragraph 74(2) of the Zollrechtsdurchführungsgesetz (the Austrian Customs Law Implementation Law, hereinafter 'ZollR-DG') [10] lays down a limitation period for the recovery of customs duties payable on imports and exports of three years from the day on which the customs debt arises. [11]

II — Facts and questions

13. The dispute in the main proceedings arose from the decision of the Zollamt Salzburg/Erstattungen (Salzburg Customs Office/Reimbursements, hereinafter the 'Zollamt Salzburg') requiring the firm of Herbert Handlbauer GmbH (hereinafter 'Handlbauer' or 'the appellant in the main proceedings') to reimburse an export refund held to be unjustified and imposing a penalty in that connection.

14. According to the order for reference, Handlbauer exported a consignment of 958 pieces of frozen beef to a total weight of 19 912.36 kg to Hungary on 3 September 1996. It was granted an advance towards the export refund of ATS 202 769 on that transaction on 24 September 1996. The security for the advance was released on 12 December 1996.

10 — BGBl. 1994/659, as amended by BGBl. 1998/13.

11 — In this connection, a period of three years for the recovery of customs debts is also laid down in Article 221(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p.1).

15. Subsequently, on 20 December 1999, Handlbauer was informed that the Außen- und Betriebsprüfung/Zoll (External and Undertakings Inspection/Customs) of the Hauptzollamt (Principal Customs Office) Linz would be carrying out a scrutiny of exports in 1996 in the organisation of the markets for beef and veal and for pigmeat. According to the order for reference, Handlbauer had been included among the undertakings to be inspected in accordance with Regulation No 4045/89 because irregularities had already been found in its 1995 exports.

16. In the course of the scrutiny, carried out in 2000, it was ascertained that in many cases it could not be proved that the meat exported was of Community origin.

17. Consequently, by decision of 20 January 2001, the Zollamt Salzburg required Handlbauer in accordance with Article 5 of the AEG in conjunction with Article 11(3) of Regulation No 3665/87 to repay the export refund granted earlier. It also required it to pay a penalty of ATS 101 384 imposed in accordance with Article 11(1)(a) of that Regulation.

18. Handlbauer lodged an administrative appeal against that decision but the appeal was dismissed. Handlbauer then brought an appeal before Berufungssenat I on 17 August 2001, submitting that the decision requiring it to repay the export refund and pay the relevant penalty had not been taken until 20 January 2001, that is to say after the expiry of the limitation period of three years laid down in Article 74(2) ZollR-DG and Article 221(3) of the Community Customs Code.

19. In reply to that submission, the Zollamt Salzburg maintained that the four-year limitation period laid down in Article 3(1) of Regulation 2988/95 applies to the repayment of export refunds. It also pointed out that under that provision, which is directly applicable, that period could be interrupted by investigative operations such as that carried out at Handlbauer.

20. Berufungssenat I had doubts about the interpretation of Regulation No 2988/95 and therefore referred the following questions to the Court for a preliminary ruling under Article 234 EC:

'1. Is Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests directly applicable in the Member States, in particular in the field of organisations of the market (export refunds) where there are irregularities?

1a. Is Article 3(1) of the said regulation, which lays down a limitation period of four years for proceedings concerning irregularities, directly applicable by the customs authorities of the Member States?

2. Is the notice of a customs inspection made to the relevant responsible persons of an undertaking an act relating to investigation or legal proceedings which interrupts the limitation period of four years under Article 3(1) of the said regulation, if the inspection takes place under Regulation (EEC) No 4045/89 because of the generally known risk or the frequency of acts prejudicial to the financial interests of the Community in implementing the common agricultural policy?'

III — Procedure before the Court

21. In the proceedings thus instituted before the Court, the appellant in the main proceedings, Austria and the Commission submitted written observations. They also intervened at the hearing on 4 November 2003, in which the United Kingdom also participated.

22. In the course of the proceedings, the Court was informed that, as from 1 January 2003, as a result of the entry into force of the Abgaben-Rechtsmittel-Reformgesetz (Fiscal Remedies Reform Law, hereinafter the 'Reform Law') [12] the Unabhängiger Finanzsenat was the competent body to rule in the main proceedings.

23. In examining the case, the Court asked the Unabhängiger Finanzsenat for clarification of its status as a court or tribunal within the meaning of Article 234 EC and for information about the legislative framework introduced by the Reform Law.

IV — Legal analysis

A — *The status of the Unabhängiger Finanzsenat as a court or tribunal*

24. In the course of the proceedings, as already explained, doubts arose as to the status of the Unabhängiger Finanzsenat as a court or tribunal and whether, as a result, the Court could properly reply to questions referred by that body. Before taking a position on the questions, I shall therefore briefly consider that problem.

12 — BGBl. No 97/2002.

25. The doubts arise from the fact that the Unabhängiger Finanzsenat succeeded a body that was similar in many respects to the appeal chambers which the Court, in its judgment in *Schmid*, [13] decided were not courts or tribunals within the meaning of Article 234 EC. [14]

26. It should be noted that in the Austrian legal system, before the Unabhängiger Finanzsenat was established, jurisdiction in fiscal and customs cases was exercised by special organs of the regional directorates of the Austrian finance authorities known as 'appeal chambers'. There were two types of chamber: those provided for in the Bundesabgabenordnung (Federal Code on Taxes, hereinafter 'BAO') which had jurisdiction to rule on decisions taken in fiscal cases, and those governed by the ZollR-DG which had jurisdiction in customs cases.

27. The appeal chambers provided for in the BAO had close links, both organisational and functional, with the authorities which adopted the decisions on which the chambers were required to rule. Two of the five members of the chamber belonged to the finance authority and one of them continued to pursue his activities within that authority and was consequently in that capacity subject to the directions of his hierarchical superiors. Moreover, the President of the regional finance authority had the power to nominate members of the appeal chamber, he was an ex officio member of the appeal chamber and exercised the function of president of the chamber, and there was no legislative provision to prevent him from modifying the composition of an appeal chamber in the course of an inquiry into a complaint. Finally, the President could bring an appeal against a decision of an appeal chamber.

28. In view of that legal background, the Court held in its judgment in *Schmid*, with regard to the appeal chambers provided for in the BAO, that 'where there is an organisational and functional link between an appeal chamber and the regional finance authority which adopts the decisions contested before it, it is impossible to regard the chamber as a third party in relation to that administrative authority'. [15]

29. It therefore held that the chambers in question were not courts or tribunals since, according to the Court, the expression 'court or tribunal' can mean 'only an authority acting as a third party in relation to the authority which adopted the contested decision'. [16]

13 — Judgment in Case C-516/99 *Schmid* [2002] ECR I-4573.

14 — I note that 'in order to determine whether a body making a reference is a court or tribunal for the purposes of Article [234] EC, which is a question governed by Community law alone, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is inter partes, whether it applies rules of law and whether it is independent' (see judgments in Case C-54/96 *Dorsch Consult* [1997] ECR I-4961, paragraph 23, and the case-law there cited, and joined Cases C-110/98 to C-147/98 *Gabalfrisa and Others* [2000] ECR I-1577, paragraph 33).

15 — Judgment in *Schmid*, cited above, paragraph 38.

16 — Judgment in *Schmid*, cited above, paragraph 36. See also, to the same effect, the judgment in Case C-24/92 *Corbiau* [1993] ECR I-1277, paragraph 15, cited in the judgment in *Schmid*.

30. Doubts were raised in the present case as to whether Appeal Board I, which was governed by ZollR-DG and which had originally referred the questions for a preliminary ruling, was acting as a third party in relation to the administrative authority.

31. However, as already explained, following the entry into force of the reform mentioned above (in point 22), the competent body to rule in the main proceedings was no longer Appeal Board I but the Unabhängiger Finanzsenat, which superseded the board and maintained before the Court the questions it had referred for preliminary ruling. It is therefore no longer necessary to resolve the doubts about the nature of the board but to determine, in the light of the modifications introduced by the recent reform, whether the body which replaced it is a court or tribunal.

32. It is clear from the explanations given to the Court that the recent reform was specifically designed to correct those aspects of the previous system of appeal chambers that caused the Court to rule in *Schmid* that they could not be regarded as 'courts or tribunals'.

33. Under the Reform Law, jurisdiction in fiscal and customs cases was conferred on a new body (the Unabhängiger Finanzsenat) which, unlike the appeal chambers, was not part of the finance authority (Paragraph 1 of the Law instituting an independent tax board, hereinafter the 'Instituting Law'). [17]

34. Moreover, unlike the members of the appeal chambers, members of sections of the Unabhängiger Finanzsenat may not participate in the activities of that authority. In particular, under the new Paragraph 85(c)(4) ZollR-DG, the sections of the new body which have jurisdiction in customs cases comprise 'three full-time members' who, under the Instituting Law, may not exercise any activity which might hinder them in the performance of their duties, affect essential interests of the service, or in any way cast doubt on its impartiality and independence (Article 5(1) and (2) of the Instituting Law).

35. Lastly, the full-time members of the Unabhängiger Finanzsenat enjoy substantial safeguards 'against undue intervention or pressure on the part of the executive'. [18] They are appointed to that body for an indefinite period and can be removed from

17 — Bundesgesetz zur Errichtung eines unabhängigen Finanzsenats — Law establishing an independent tax board, contained in the Reform Law.

18 — See judgment in *Schmid*, cited above, paragraph 41. See also the judgment in Case C-103/97 *Köllensperger* [1999] ECR I-551, paragraph 21.

their posts only by decision of the plenary assembly of the Independent Finance Board or a special committee formed by that board (Article 6(3) of the Instituting Law).

36. In the light of those new features, I consider that the reasons which caused the Court to cast doubt on the jurisdiction of the referring body in its judgment in *Schmid* no longer apply in the present case.

37. I therefore consider that the Unabhängiger Finanzsenat is a court or tribunal within the meaning of Article 234 EC and that, as a result, the Court may properly reply to the questions referred by that body, which I shall now proceed to examine.

B — *Substance*

38. In the present case, as we have seen, two questions were referred to the Court seeking essentially to ascertain whether Article 3(1) of the regulation is directly applicable in the Member States and whether the limitation period of four years laid down in that article could be interrupted by the notice of an inspection decided under Regulation No 4045/89 on the basis of risk factors and, in particular, the frequency of acts prejudicial to the financial interests of the Communities.

1. Introduction. The scope of Article 3(1) of Regulation No 2988/95

39. I note first that, according to the order for reference, the questions thus summarised appear to be based on the premiss that, in providing that 'the limitation period for proceedings shall be four years as from the time when the irregularity [with regard to Community law] was committed', Article 3 (1) of Regulation No 2988/95 refers to all administrative acts adopted by the national or Community authorities for the purpose of dealing with such irregularities, be they administrative penalties in the strict sense of the term, as defined in Article 5, or measures to withdraw a wrongly obtained advantage, as defined in Article 4 of the regulation. [19]

19 — I note that under Article 4(1) of Regulation No 2988/95 a 'measure' is defined as 'withdrawal of the wrongly obtained advantage ... by an obligation to pay or repay the amounts due or wrongly received [or] by the total or partial loss of the security provided in support of the request for an advantage granted or at the time of the receipt of an advance'. I also note that Article 5(1) of that regulation lists the administrative penalties to which intentional irregularities or those caused by negligence may lead.

40. That premiss was contested by Handlbauer and the Commission so, before addressing the questions directly, it must first be determined whether the aforesaid provision also covers acts such as the decision of the Zollamt Salzburg, which not only impose penalties but also require payments that are held to be unjustified to be repaid.

41. Handlbauer holds that it does not because, in its view, Article 3(1) of Regulation No 2988/95 relates exclusively to criminal sanctions. To be more precise, Handlbauer considers that the provision lays down the period within which measures of that kind may be taken to sanction irregularities with regard to Community law.

42. The Commission too holds that it does not, albeit for different reasons: in its view, the period in question does apply to administrative acts, though not to all but only to those which impose a penalty within the meaning of Article 5 of Regulation No 2988/95. Thus, in the Commission's view, the provision does not apply to measures such as the recovery of a wrongly obtained financial advantage referred to in Article 4 of that regulation. The reason, according to the Commission, is that provisions laying down limitation periods for such measures take a different form: under those provisions, the periods in question run from the time when the unjustified payment was made not, as in the case of the present provision, from the time when the irregularity was committed; also, unlike the present provision, those provisions do not distinguish between limitations relating to proceedings and limitations relating to the enforcement of penalties.

43. In my opinion, the assumption on which the order for reference appears to be based is correct and the contrary views set out above should be disregarded.

44. That applies in particular to Handlbauer's argument that the provision in question covers a period for imposing criminal sanctions in respect of irregularities with regard to Community law. In that connection, without its being necessary to rule on the question whether the Community has the power to fix limitation periods in criminal cases, I would merely point out that Regulation No 2988/95 lays down 'general rules ... relating to homogenous checks and to *administrative measures and penalties* [20] concerning irregularities with regard to Community law' (Article 1(1). Moreover, the regulation 'will apply without prejudice to the application of the Member States' criminal law' (twelfth recital in the preamble).

20 — Emphasis added.

45. The abovementioned regulation is therefore intended to cover and to lay down limitations relating to measures and penalties of an administrative nature adopted by the competent authorities to deal with acts which are prejudicial to the financial interests of the Communities. Consequently, if such irregularities give rise to offences against national provisions of criminal law, the period within which such offences may be prosecuted must be determined solely by reference to the criminal law of the Member States since, as just explained, the regulation applies without prejudice to that law.

46. However, in my view, the Commission's argument that the limitation period in question applies only to acts which impose an administrative penalty within the meaning of Article 5 and not to the measures to withdraw a wrongly obtained financial advantage referred to in Article 4 of Regulation No 2988/95 must also be rejected.

47. I would point out in that connection that Article 3(1) of the abovementioned regulation establishes a limitation period for proceedings which runs from the time when 'the irregularity ... was committed'. I would also point out that under Article 1(2) 'irregularity' means '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'.

48. However, as the Court of First Instance has already had occasion to explain in its judgment in *Peix*, 'in the absence of any indication to the contrary, the notion of irregularity defined in Article 3(1) of Regulation No 2988/95 by reference to the wider sense given to it under Article 1 of that regulation should be considered to cover both intentional irregularities or those caused by negligence, which could, in accordance with Article 5 of the regulation, result in an administrative penalty, and irregularities which justify merely the adoption of an administrative measure referred to in Article 4 of the regulation'.[21] Consequently, as the Court of First Instance stated, where there is an irregularity, it must in any case be found that Article 3 of that regulation is applicable irrespective of whether the act adopted by the competent authority is considered to be an 'administrative penalty' in the strict sense of the term or a 'measure'.

49. As the Austrian and United Kingdom Governments have rightly observed, that solution is consistent with the objective of Regulation No 2988/95 to establish 'general

21 — Case T-125/01 *Peix* v *Commission* [2003] ECR II-865, paragraph 79

rules' relating to administrative measures and penalties in order to counter 'acts detrimental to the Communities' financial interests in all areas' (Article 1 and third and fourth recitals in the preamble). On that interpretation, a general period of four years is provided for the recovery of unjustified payments in all areas. Conversely, if the Commission's arguments are accepted, the protection of the Community interest in recovering those sums in areas in which no specific limitation period is laid down is to be left to the discretion of individual Member States which might, as in the present case, make provision for shorter periods.

50. The Commission nevertheless also argues that the proposed interpretation is belied by the fact that under the provision in question the limitation period runs from the time when the irregularity was committed and also from the more specific time when the refund was granted to the economic operator.

51. However, in my view, that argument is irrelevant because Article 3(1) of Regulation No 2988/95 clearly allows the *dies a quo* for limitation to be identified also in cases where an unjustified payment is to be recovered. In that case, it follows from the definition of 'irregularity' contained in Article 1(2) of the regulation that the *dies a quo* is in fact the day of the act or omission by the economic operator which renders the payment received unjustified and thus prejudices the financial interests of the Communities.

52. Nor, lastly, does that interpretation appear to be contradicted by the fact that Regulation No 2988/95 lays down a limitation period for proceedings in Article 3(1) and for the enforcement of penalties in Article 3(2). On the contrary, in my view the use of the broader general term 'penalty' in the first of those provisions confirms that it applies to a larger category of acts than that covered by the second. The limitation period referred to in Article 3(1) does not therefore relate solely to 'penalties' in the strict sense of the term but to all proceedings that may be taken on the basis of the regulation to deal with acts that are prejudicial to the financial interests of the Communities.

53. For the reasons explained above, I therefore consider that the limitation period laid down in Article 3(1) of Regulation No 2988/95 applies to a decision such as the decision of the Zollamt Salzburg.

54. I can now proceed to the analysis of the two questions referred to the Court concerning the direct applicability of the provision and the concept of an act interrupting the limitation period which it prescribes.

2. The direct applicability of Article 3(1) of Regulation No 2988/95

Arguments of the parties

55. Handlbauer considers that Regulation No 2988/95 is not directly applicable to economic operators. It claims that the regulation merely sets out 'a common legal framework for all areas covered by Community policies', which the Community institutions and the Member States must consider when adopting new sectoral rules to protect the financial interests of the Communities.

56. Article 3(1) is consequently a programmatic provision without direct effect. As such, it cannot take precedence over national and Community rules which already applied when Regulation No 2988/95 entered into force. In the present case, therefore, the term of three years resulting from the reference in Article 1(5) AEG to Article 74(2) ZollR-DG and Article 221(3) of the Community Customs Code should apply, not the term of four years with possible interruptions laid down in Article 3(1) of Regulation No 2988/95.

57. According to Handlbauer, that conclusion is confirmed by the provision on the time limit for reimbursement of export refunds recently introduced by Regulation No 800/1999. Article 52(4) of that regulation also lays down a time limit of four years. Handlbauer argues that had the similar four-year period laid down in Regulation No 2988/95 had been directly applicable, the new provision would have been superfluous and there would have been no point in introducing it.

58. The Austrian Government and the Commission reached a completely different conclusion. In their view, Regulation No 2988/95 is, as such, 'directly applicable in all Member States' (second paragraph of Article 249 EC and of Article 11 of Regulation No 2988/95). They therefore consider that the provisions on limitation contained in the regulation take precedence over national provisions to the contrary.

59. In that connection, the Austrian Government and the Commission point out that under Article 3(1) of the regulation in question only the Community institutions have the power to lay down limitation periods of less than four years in the sectoral rules. Conversely, Article 3(3) of the regulation provides that Member States may only apply longer periods. The Austrian Govern-

ment therefore contends that the three-year period specified in current customs law and cited by the AEG with regard to export refunds is not applicable in the present case.

Assessment

60. For my own part, I would point out first that, as is well known, the second paragraph of Article 249 EC provides that a regulation shall have 'general application' and shall be 'directly applicable in all Member States'. By virtue of the very nature of regulations and of their function in the system of sources of Community law, the provisions of those regulations 'generally have immediate effect in the national legal systems without its being necessary for the national authorities to adopt measures of application'. [22]

61. It is true that, in exceptional cases, the Court of Justice admits that some provisions of regulations 'may ... necessitate, for their implementation, the adoption of measures of application by the Member States'. [23] However I do not think that that applies to Article 3(1) of Regulation No 2988/95. The application of the four-year limitation period laid down in that provision leaves no scope for the exercise of discretion by the Member States and consequently does not require them to adopt any measure of application.

62. Nor is it relevant that, under the regulation, the sectoral rules of the Community may make provision for a shorter limitation period which may not be less than three years (last sentence of the first paragraph of Article 3(1) and the Member States may apply a period which is longer than four years (Article 3(3)). If that option is exercised, clearly specific provisions, either Community or national, will take precedence; in other cases, the provision in question is sufficiently clear and precise in itself to be applied immediately by the national authorities to determine whether the measures or penalties imposed to combat an irregularity have been adopted in time.

63. Consequently, national provisions such as Article 1(5) AEG (and the rules to which it refers), which lay down a limitation period of *less* than four years and are therefore contrary to the aforesaid regulation, must not be applied even if they pre-date the regulation.

64. None the less, I do not think there can be any doubt that all national authorities, including customs authorities, must abide by the four-year period in all areas of Commu-

22 — See judgment in Case C-403/98 *Azienda Agricola Monte Arcosu* [2001] ECR I-103, paragraph 26. See also the judgment in Case 93/71 *Leonesio* [1972] ECR 287, paragraph 5.

23 — Judgment in *Azienda Agricola Monte Arcosu*, cited above, paragraph 26.

nity law including the area at issue in this case, namely export refunds on agricultural products.

65. According to Article 1(1), Regulation No 2988/95 introduces 'general rules' which were adopted precisely because 'acts detrimental to the Communities' financial interests must ... be countered *in all areas*' [24] (third recital in the preamble). Those rules are consequently applicable in all areas covered by Community policies. They cease to be generally applicable only where, in a given area, there are already special provisions adapting the detailed rules for the protection of the said interests to the specific requirements of the area in question within the limits allowed by the regulation, that is to say sectoral rules of the Community making provision for a shorter period or national rules setting a longer one.

66. However, at the material time, there were no special provisions setting limits for the repayment of unjustified payments in the area of export refunds on agricultural products. A time limit was only introduced later in subparagraph (b) of the first paragraph of Article 52(4) of Regulation No 800/99 but, as we have seen, it does not apply in the present case.

24 — Emphasis added

67. Contrary to what Handlbauer appears to argue, that provision does not implement the provision contained in Article 3 of Regulation No 2988/95 which it claims is not directly applicable. It does indeed contain special rules on limits in the area concerned which, as such take precedence over the general rules, but only in the specific cases in which they apply *ratione temporis*.

68. My conclusion on this point is therefore that Article 3(1) of Regulation No 2988/95 is directly applicable in the Member States. In particular, the four-year limitation period laid down in that provision is directly applicable by the national authorities, including the customs authorities, in all areas covered by Community policies save where sectoral rules of the Community make provision for a shorter period (which may not be less than three years) or national rules set a longer period.

3. The concept of an act interrupting the limitation period

69. By its second question, the referring court asks the Court whether notification of an inspection at issue in the present case is an act relating to investigation or legal

proceedings which interrupts the limitation period under the third paragraph of Article 3 (1) of Regulation No 2988/95.

70. In this connection, it should first be noted in passing that Regulation No 4045/89 requires the Member States to draw up and carry out annual programmes for scrutiny of selected entities receiving or making payments relating to the system of financing by the Guarantee Section of the EAGGF. Under Article 2 of the regulation, the selection must take account of the financial importance of the undertakings in the EAGGF system of financing and other risk factors.

71. Among the criteria employed in drawing up their own plans for scrutiny, the Austrian customs authorities paid particular attention to the frequency of irregularities committed by economic operators. On that criterion, they decided to include Handlbauer among the undertakings to be inspected in respect of its exports in 1996 because irregularities had already been found in its transactions in the previous year. They accordingly informed Handlbauer on 20 December 1999 that they would be carrying out a scrutiny of all its exports in 1996 in the organisation of the market for beef and veal and for pigmeat.

72. That being established, I would recall that Handlbauer's answer to the question at issue here is in the negative. In particular, it contends that an interruption of the limitation period can occur only after an act of the competent authorities relating to a specific irregularity. In its opinion, that effect cannot be produced either by the notice of an inspection decided in accordance with Regulation No 4045/89 or by carrying out such an inspection, as that regulation relates generally to all export transactions completed by an operator within a certain period of time.

73. The Austrian Government, for its part, does not take a position on the question whether the communication sent to Handlbauer was such as to interrupt the limitation period. However, it points out that in the present case the limitation period was in any event interrupted by the inspection of Handlbauer. Thus, according to that government, the fact that that undertaking was selected on the basis of a risk analysis carried out in accordance with Regulation No 4045/89 is irrelevant. In its view, the crucial point is that the inspection was notified to the undertaking concerned and carried out by the competent authorities.

74. The Commission considers, on the contrary, that notification of the inspection decided in accordance with Regulation No 4045/89 is an act which interrupts the limitation period. In particular, it points out

that under the third paragraph of Article 3(1) of Regulation No 2988/95 that effect is produced by any act of the competent authority relating to an investigation which is notified to the person in question. However, in its view that provision does not require that the act in question relate to a specific irregularity. The Commission adds that in any case a connection with a particular irregularity can never be identified a priori when notice is given of an inspection but always emerges a posteriori after it has taken place.

75. I must say at once that I find the interpretation proposed by the Commission unconvincing.

76. In particular, I cannot agree that notice of the kind given to Handlbauer, while not an act relating to legal proceedings, is in any case an 'act relating to investigation' such as to interrupt the limitation period within the meaning of the third paragraph of Article 3 (1) of Regulation No 2988/95.

77. In my view it is doubtful, to say the least, that an act that consists solely of a general notice of a forthcoming inspection of all the transactions carried out in the course of a year in certain market organisations can be regarded as being inherently an act relating to investigation.

78. I consider, first, that this doubt is supported by the third paragraph of Article 3(1) of Regulation No 2988/95 itself, under which the act interrupting the limitation period must be detailed and precise in that it must concern a specific irregularity. Despite the fact that the Commission takes the opposite view, it seems to me that Handlbauer is in fact right in claiming that the wording of that provision suggests that the limitation period can be interrupted only if the act relating to investigation or legal proceedings notified to the person concerned relates to one or more specific irregularities.

79. Moreover, that view is supported by almost all the language versions of the provision in question, from which it is clear that the act which interrupts the limitation period must relate to investigation or legal proceedings concerning 'the irregularity'. Consequently, the act relating to investigation too cannot be concerned with unspecified irregularities but must relate to a specific irregularity. [25]

25 — That interpretation, while it does not necessarily follow from the Italian and German versions of the third paragraph of Article 3(1) of Regulation No 2988/95, is implicit in most language versions of the provision. The French, English and Spanish versions of the provision are particularly clear in this regard, speaking respectively of: 'acte ... visant à l'instruction ou à la poursuite *de l'irrégularité*' (emphasis added); 'act ... relating to investigation or legal proceedings *concerning the irregularity*' (emphasis added); 'acto ... destinado a instruir *la irregularidad* o a ejecutar la acción *contra la misma*' (emphasis added). See also the Dutch, Finnish, Greek and Swedish versions, to the same effect.

80. This interpretation of the provision also appears to be confirmed by the first paragraph read in conjunction with the third paragraph of Article 3(1). The first paragraph provides that the limitation period 'shall be four years as from the time when *the irregularity*[26] referred to in Article 1(1) was committed'. The third paragraph then establishes that that limitation period shall be interrupted by any act relating to investigation or legal proceedings concerning *'the irregularity'*.[26]

81. To my mind, by employing the term 'the irregularity' (in the singular and with the definite article) both to identify the *dies a quo* for the limitation period and to define the concept of an act which interrupts that period, the Community legislature intended to make it clear that an act of the competent authorities designed to detect or take legal proceedings concerning *irregularities* in general is not such as to interrupt the limitation period. It follows that the act in question cannot be a general notice of an inspection which, by definition, refers indiscriminately to a range of possible offences; it must on the contrary be an act that is clearly intended to detect or take legal proceedings concerning that *specific irregularity*. Whether it takes the form of a notice of an inspection or is adopted during or after the inspection, what matters is that it must make it clear that the authority in question has doubts about the legality of that particular action.

82. Any other interpretation might also, in my view, conflict with the 'function of ensuring legal certainty' proper to all limitation periods.[27]

83. In my view, a limitation period that could be interrupted by an administrative act which, like the communication sent to Handlbauer, relates indiscriminately to a large number of transactions completed by a private undertaking in the course of a relatively long period of time, does not fulfil that function. Such an act would call into question for a further four years every single transaction during that time; this would clearly place operators at a serious disadvantage and render it particularly difficult for them to plan activities benefiting from Community contributions, that is to say the very activities that ought to be facilitated by granting those contributions.

26 — Emphasis added.

27 — See judgments in Case 41/69 ACF *Chemiefarma* v *Commission* [1970] ECR 661, paragraph 19, Case T-26/89 *De Compte* v *Parliament* [1991] ECR II-781, paragraph 68, Joined Cases T-126/96 and T-127/96 *BFM and EFIM* v *Commission* [1998] ECR II-3437, paragraph 67, Case T-125/01 *Peix* v *Commission*, cited above, paragraph 74, and Case T-137/01 *Neuss* v *Commission* [2003] ECR II-3103, paragraph 123.

84. On the interpretation I have proposed, private undertakings would on the contrary be in a position to know in advance which of the transactions completed in a given period were to be regarded as definitive and which, having been *specifically identified* as possible irregularities, might be the subject of an order for repayment or an administrative penalty. The uncertainty attaching to the course of a further limitation period would thus be confined to certain specific transactions.

85. Moreover, I do not think such a solution would involve an undue sacrifice on the part of the competent authority. The authorities are not in fact required to detect the irregularity in order to benefit from a further limitation period. It is sufficient that they identify the irregularity clearly in the act notified to the person concerned, that is to say that they inform the operator of their doubts as to the legality of certain actions on his part.

86. In the present case, the communication to Handlbauer announcing the inspection decided under Regulation No 4045/89 related indiscriminately to all Handlbauer's export transactions in 1996 in the market organisations for beef and veal and for pigmeat. In the light of the foregoing considerations, the communication was not in my view such as to interrupt the limitation period for the recovery of the refunds granted on 24 September of that year.

87. Nevertheless, it appears from the order for reference that in the course of the scrutiny announced on 20 December 1999 and 'carried out thereupon in the year 2000 it was eventually ascertained ... that *in the case of numerous exports of meat* [28] the necessary origin of the product in the Community could not be proved'. It appears therefore that the notice was followed by the inspection and that as a result of that inspection Handlbauer was at least accused of numerous specific irregularities, including those at issue in the present case.

88. However, while it is true that the notice in question could not interrupt the limitation period for the recovery of the refund granted on 24 September 1996, that effect can be produced by the allegation of irregularity made in the course of the inspection. At that point, the Austrian authority issued an act relating to investigation concerning *that specific irregularity* which was afterwards the subject of the decision of 20 January 2001. It is therefore for the national court to assess that act by ascertaining whether, either

28 — Emphasis added.

during or after the inspection, the competent authority did in fact express doubts as to the legality of granting the aforesaid export refund.

89. In the light of the foregoing considerations, I therefore propose that the Court reply to the Unabhängiger Finanzsenat that the limitation period for proceedings concerning a specific irregularity under the third paragraph of Article 3(1) of Regulation No 2988/95 is not interrupted by the notice of an inspection decided in accordance with Regulation No 4045/89 because of the risk of irregularity and, in particular, the frequency of acts prejudicial to the financial interests of the Communities where that notice relates indiscriminately to all the transactions completed by an economic operator in the course of a relatively long period of time. To interrupt the limitation, the act notified to the operator concerned must clearly identify one or more specific irregularities.

V — Conclusions

90. In the light of the foregoing considerations, I propose that the Court reply to the Unabhängiger Finanzsenat as follows:

(1) Article 3(1) of Regulation No 2988/95 is applicable to a decision such as that adopted in the present case which orders the reimbursement of a payment held to be unjustified and imposes a penalty.

(2) Article 3(1) of Regulation No 2988/95 is directly applicable in the Member States. In particular, the four-year limitation period laid down in that provision is directly applicable by the national authorities, including the customs authorities, in all areas covered by Community policies save where sectoral rules of the Community make provision for a shorter period (which may not be less than three years) or national rules set a longer period.

(3) The limitation period for proceedings concerning a specific irregularity under the third paragraph of Article 3(1) of Regulation No 2988/95 is not interrupted by notification of an inspection decided in accordance with Regulation No 4045/89 because of the risk of irregularity and, in particular, the frequency of acts prejudicial to the financial interests of the Communities where such notice relates indiscriminately to all the transactions completed by an economic operator in the course of a relatively long period of time. To interrupt the limitation, the act notified to the person concerned must clearly identify one or more specific irregularities.