Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

6 February 2025*

(Reference for a preliminary ruling – Protection of the European Union's financial interests – Regulation (EC, Euratom) No 2988/95 – Irregularities – Article 3 – Limitation period – Duration and starting point of that period – National legislation providing for a five-year limitation period as from the time the irregularity is discovered)

In Case C-42/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Symvoulio tis Epikrateias (Council of State, Greece), made by decision of 29 December 2023, received at the Court on 22 January 2024, in the proceedings

Emporiki Serron AE – Emporias kai Diathesis Agrotikon Proionton

v

Ypourgos Anaptyxis kai Ependyseon,

Ypourgos Agrotikis Anaptyxis kai Trofimon,

THE COURT (Sixth Chamber),

composed of A. Kumin, President of the Chamber, I. Ziemele and S. Gervasoni (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Ypourgos Anaptyxis kai Ependyseon and Ypourgos Agrotikis Anaptyxis kai Trofimon, by E. Leftheriotou and A. Vasilopoulou, acting as Agents,

– the Greek Government, by E. Leftheriotou and A. Vasilopoulou, acting as Agents,

* Language of the case: Greek.

– the European Commission, by T. Adamopoulos, M. Konstantinidis and C. Valero, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1) and of the principle of legal certainty.

2 The request has been made in proceedings between the company Emporiki Serron AE – Emporias kai Diathesis Agrotikon Proionton ('Emporiki Serron'), on the one hand, and the Ypourgos Anaptyxis kai Ependyseon (Minister for Development and Investment, Greece) and the Ypourgos Agrotikis Anaptyxis kai Trofimon (Minister for Rural Development and Food, Greece), on the other, concerning the recovery of financial support received by that company for the purchase and ginning of unginned cotton.

Legal context

European Union law

3 The third recital of Regulation No 2988/95 states:

'… acts detrimental to the [European Union's] financial interests must … be countered in all areas'.

4 Under Article 1 of that regulation:

'1. For the purposes of protecting the [European Union]'s financial interests, general rules are hereby adopted relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to [EU] law.

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

5 Article 3 of that regulation is worded as follows:

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

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

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

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

2. The period for implementing the decision establishing the administrative penalty shall be three years. That period shall run from the day on which the decision becomes final.

Instances of interruption and suspension shall be governed by the relevant provisions of national law.

3. Member States shall retain the possibility of applying a period which is longer than that provided for in paragraphs 1 and 2 respectively.'

Greek law

6 Article 102 of Nómos 2362/1995 peri Dimosiou Logistikou, eleghou ton dapanon tou kratous kai alles diatakseis (Law No 2362/1995 on State finance, control of State expenditure and other provisions) (FEK A' 247/27.11.1995), entitled 'Recovery of sums unduly paid', provides:

'Financing, support or subsidies to natural or legal persons or bodies, paid within the framework of [EU] policies from national or [EU] funds, must be recovered by the State if it is established by the competent bodies concerned that they have been paid unduly or unlawfully.

Sums paid up to the date of entry into force of this Law are also covered by those provisions.

Sums recovered on that basis are recorded as revenue from the State budget and are recovered, in accordance with the provisions of the Code for the recovery of public revenue, as in force.

The provisions in force on the adoption of administrative, coercive and judicial measures for the recovery of State revenue also apply in this case.'

7 Article 103 of that law, entitled 'Limitation period for public claims', provides:

'The recovery of sums referred to in the preceding article is to be subject to a limitation period of five years from the date on which the undue or unlawful collection was recorded, unless otherwise provided for in [EU] law.

Amounts recovered shall be subject to a limitation period of 20 years, unless otherwise provided for in [EU] law.

The provisions on the suspension, interruption and consequences of the limitation period provided for in this Law which apply to claims of the State must apply *mutatis mutandis* to the claims referred to in this Article, unless otherwise provided for in [EU] law.'

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

8 In 2001, the company Emporiki Serron received financial support from the European Agricultural Guidance and Guarantee Fund (EAGGF) for the purchase and ginning of seed cotton for the period 2000-2001. The company ceased trading and went into liquidation in June 2001.

9 An inspection was carried out at Emporiki Serron's head office on 4 and 5 July 2006 and from 31 October to 2 November 2006. That inspection revealed that no sales had been recorded by the company for 3 618 bales of ginned cotton, corresponding to more than 750 000 kilograms of ginned cotton.

10 On 14 July 2009, the Minister for Rural Development and Food adopted a decision to recover the support paid to Emporiki Serron in the amount of EUR 322 568.90, plus interest, corresponding to the 3 618 bales of ginned cotton referred to above.

11 The company brought an action against that decision before the Trimeles Dioikitiko Protodikeio Athinon (Administrative Court in a formation of three judges, Athens, Greece), which annulled the decision on the ground that the four-year limitation period provided for in the first subparagraph of Article 3(1) of Regulation No 2988/95 had not been complied with. That court held that Article 103 of Law No 2362/1995, by taking the date on which the irregularity was discovered as the starting point of the limitation period and not, as provided for in Article 3 of Regulation No 2988/95, the date on which the irregularity was committed, was contrary to Article 3 of Regulation No 2988/95. It therefore refrained from applying Article 103 of Law No 2362/1995.

12 On appeal by the Greek State, the Trimeles Dioikitiko Efeteio Athinon (Administrative Court of Appeal in a formation of three judges, Athens, Greece) set aside the judgment given at first instance. That court indeed held that Article 3(3) of Regulation No 2988/95 permits the adoption of a provision such as Article 103 of Law No 2362/1995. It considered that, pursuant to Article 103 of Law No 2362/1995, the limitation period had begun to run on 29 November 2006, the date on which the inspector from the Ministry of Rural Development and Food had drawn up his report. It deduced from that that on the date of the decision to recover the support, namely 14 July 2009, the five-year limitation period applicable under national law had not elapsed. Accordingly, it considered that the financial support had been unduly paid.

13 Emporiki Serron brought an appeal before the Symvoulio Tis Epikrateias (Council of State, Greece), which is the referring court, against the judgment of the Dioikitiko Efeteio (Administrative Court of Appeal), claiming that the Elegktiko Synedrio (Court of Auditors, Greece) had chosen a solution contrary to that chosen in that judgment in a case in which the legality of a financial correction measure was disputed.

14 The referring court states that, subsequently, the Elegktiko Synedrio (Court of Auditors) held, in plenary session, that Article 103 of Law No 2362/1995 complied with Article 3 of Regulation No 2988/95 and observed the principles of proportionality and legal certainty, in so far as the total duration which elapses between the date on which an irregularity was committed and the closure of the administrative recovery procedure concerning that irregularity is reasonable and that duration does not exceed the absolute limitation period provided for in the fourth subparagraph of Article 3(1) of that regulation.

15 The referring court states that the irregularity at issue in the dispute before it took place on 20 June or 30 June 2001 at the latest, and therefore, at the time of the first inspection, carried out in July 2006, the four-year limitation period provided for in Article 3(1) of Regulation No 2988/95, if applicable, had already expired.

16 In those circumstances the Symvoulio Tis Epikrateias (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is a national provision, such as Article 103 of [Law No 2362/1995], which not only lays down a limitation period of five years for the recovery of sums unduly paid to economic operators following an act or omission by them which has, or would have, the effect of prejudicing the general budget of the [European Union] or budgets managed by [it], but also sets the starting point of the limitation period as the time when the undue or unlawful payment of aid is discovered, instead of the time when the irregularity was committed, compatible with the provisions of Article 3 of Regulation No 2988/95 and with the general principle of legal certainty?

(2) Where, pursuant to Article 3(3) of Regulation No 2988/95, national legislation lays down a limitation period longer than the four-year limitation period provided for in Article 3(1) of that regulation, are the provisions of the last subparagraph of paragraph 1 to be interpreted as establishing a maximum limitation period of eight years from the date on which the irregularity was committed in respect of a claim for the repayment of aid unduly or unlawfully paid, or as establishing a maximum limitation period [equal to] twice as long as the longer period laid down by the national legislation?

(3) Furthermore, if the answer to the first question is in the affirmative and the answer to the second question is that the provisions of the last subparagraph of Article 3(1) of Regulation No 2988/95 are to be interpreted as establishing a maximum limitation period twice as long as the longer period laid down by the national legislation, then if the national legislation lays down a limitation period longer than that provided for in Article 3(1) of Regulation No 2988/95 and at the same time sets the starting point for the calculation of that period as the time when the irregularity was discovered, does the limitation period begin to run from the time when the irregularity was committed or from the time when it was discovered?’

Consideration of the questions referred

The first question

17 By its first question, the referring court asks, in essence, whether Article 3(1) and (3) of Regulation No 2988/95, read in the light of the principle of legal certainty, must be interpreted as precluding national legislation which sets a five-year limitation period, running from the date on which the national authorities discovered an irregularity, with regard to the provisions of that regulation.

18 As a preliminary point, it should be noted that, as is apparent from the case-law of the Court, the limitation period referred to in Article 3(1) of Regulation No 2988/95 is applicable both to the irregularities leading to the imposition of an administrative penalty, within the meaning of Article 5 of that regulation, and to irregularities, such as those at issue in the main proceedings,

which are penalised by an administrative measure resulting in the withdrawal of the advantage wrongly obtained, in accordance with Article 4 of that regulation (judgment of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 26 and the case-law cited).

19 According to the settled case-law of the Court, in determining the scope of provisions of EU law, in this case Article 3(1) and (3) of Regulation No 2988/95, read in view of the principle of legal certainty, their wording, context and objectives must all be taken into account (judgment of 6 October 2015, *Firma Ernst Kollmer Fleischimport und -export*, C-59/14, EU:C:2015:660, paragraph 22 and the case-law cited).

20 As regards the wording used in Article 3, it should be pointed out that the first and second subparagraphs of paragraph 1 thereof provide for a limitation period for proceedings of four years as from the time when the irregularity was committed or, in the case of a continuous or repeated irregularity, from the day on which that irregularity ceases, while specifying that sectoral rules may make provision for a shorter limitation period, which may not be less than three years.

21 It should also be noted that Article 1(2) of Regulation No 2988//95 defines the concept of 'irregularity' as any infringement of a provision of EU law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it.

22 Article 3(3) of Regulation No 2988/95 provides that 'Member States shall retain the possibility of applying a period which is longer than that provided for in paragraphs 1 and 2 respectively' of that article. It is apparent from the case-law of the Court that such a period may result from the application of national provisions already in force prior to that regulation or of new national provisions after that regulation (see, to that effect, judgment of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 65 and the case-law cited).

23 Under Article 3(3), Member States enjoy wide discretion as regards the duration of longer limitation periods which they intend, as the case may be, to apply, subject to observing the general principles of EU law, which include the principle of proportionality (see, to that effect, judgment of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraphs 64 and 72 and the case-law cited).

24 Observance of that principle means, in concrete terms, that the application of a longer national limitation period, on the basis of Article 3(3) of Regulation No 2988/95, does not go clearly beyond what is necessary to achieve the objective of protecting the European Union's financial interests (see, to that effect, judgment of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 74 and the case-law cited).

25 Thus, the Court has previously accepted, on grounds which are capable of being applied to the present case, that a five-year limitation period, such as that at issue in the main proceedings, does not go clearly beyond what is necessary to enable the national authorities to bring proceedings in respect of irregularities prejudicing the European Union's budget, since that period is only one year longer than the period laid down in Article 3(1) of Regulation No 2988/95, from which it has deduced that such a period is consistent with the principle of proportionality (see, to that effect, judgment of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 74).

26 However, the Court has not yet ruled on the question as to whether Article 3(3) of Regulation No 2988/95 authorises Member States to derogate from the starting point of the limitation period provided for in the first and second subparagraphs of Article 3(1) of that regulation by providing that that period runs from the date on which the national authorities discover that there has been an infringement of the provisions of that regulation.

27 In that regard, it is apparent from the very wording of Article 3(1) and (3) of Regulation No 2988/95, noted in paragraphs 20 and 22 above, that, by enacting that provision, the EU legislature intended only to allow the Member States to extend the duration of the limitation period in relation to that provided for in Article 3(1) of Regulation No 2988/95, to the exclusion of any amendment of the starting point of that period.

28 That interpretation, based on the wording of the provisions at issue, is in line with the context of those provisions and with the objectives pursued by them.

29 In that regard, it is appropriate to recall that, in accordance with Article 1 of Regulation No 2988/95 and as is apparent from the third recital of that regulation, Regulation No 2988/95 introduces 'general rules … relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to [EU] law', in order to '[counter] acts detrimental to the [EU's] financial interests … in all areas' (judgment of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 23 and the case-law cited).

30 In that context, the Court has previously held that the national authorities have a general obligation of due diligence in the verification of payments which they make from the EU budget, which means that they must take steps to rectify any irregularities promptly (see, by analogy, judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 67).

31 To accept that the limitation period laid down in the first and second subparagraphs of Article 3(1) of Regulation No 2988/95 does not begin to run until the administration has discovered those irregularities could encourage inertia on the part of the national authorities in bringing proceedings in respect of those irregularities, whilst exposing operators, first, to a long period of legal uncertainty and, secondly, to the risk of no longer being in a position to prove that the transactions in question were lawful (see, by analogy, judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 68 and the case-law cited).

32 More fundamentally, it should be recalled that the principle of legal certainty precludes, in principle, public authorities from being able to make indefinite use of their powers to rectify an unlawful situation (see, to that effect, judgment of 27 January 2022, *Commission* v *Spain (Obligation to provide tax information)*, C-788/19, EU:C:2022:55, paragraph 39 and the case-law cited). However, to fix the starting point of the limitation period at the date on which the national authorities discover an irregularity would run counter to the objective pursued by the introduction of a limitation mechanism for infringements of Regulation No 2988/95. Such a choice would allow those authorities to act without any time limit in the light of the date on which the irregularity was committed or the date on which it ceases, which would entail the risk, in practice, of evading the limitation period.

33 The fact that EU law, and more specifically the fourth subparagraph of Article 3(1) of Regulation No 2988/95, also confines the action of the national authorities to an absolute limitation period, equal to twice the limitation period provided for in the first subparagraph of Article 3(1) of that regulation, cannot allow Member States to dispense with compliance with the latter limitation period by adopting a starting point which would render it meaningless.

34 It follows that Article 3(3) of Regulation No 2988/95, read in view of the principle of legal certainty, precludes Member States from derogating from the starting point of the limitation period provided for in the first and second subparagraphs of Article 3(1) of that regulation, that starting point remaining, in all cases, pursuant to those provisions, on the date on which the irregularity was committed or, in the case of a repeated or continuous irregularity, on the date on which that irregularity ceases. The date on which the national authorities become aware of or discover an irregularity is therefore irrelevant to the starting point of that limitation period (see, by analogy, judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 67).

35 It will be for the referring court, having regard to the wording of the national provisions at issue in the main proceedings, to determine whether compliance with the requirement referred to in the preceding paragraph can be ensured by interpreting domestic law in compliance with EU law or, in the absence of such a possibility, whether it entails setting aside all or part of those provisions.

36 In that regard, it should be recalled that the requirement to interpret national law in conformity with EU law includes the obligation, on national courts, including those ruling as courts of last instance, to change their established case-law where necessary if that case-law is based on an interpretation of national law that is incompatible with EU law. Consequently, a national court cannot validly claim that it is impossible for it to interpret a provision of national law in a manner that is consistent with EU law merely because that provision has been interpreted by other courts in a manner that is incompatible with EU law or is applied in such a manner by the relevant national authorities (judgment of 7 April 2022, *Avio Lucos*, C-116/20, EU:C:2022:273, paragraph 97 and the case-law cited).

37 It follows from the foregoing that the answer to the first question is that Article 3(1) and (3) of Regulation No 2988/95, read in the light of the principle of legal certainty, must be interpreted as not precluding national legislation which sets a longer limitation period than that provided for in Article 3(1) of Regulation No 2988/95, subject to observing the principle of proportionality. In contrast, those provisions preclude national legislation which provides that that limitation period runs as from the date on which the national authorities discovered an irregularity, with regard to the provisions of that regulation.

The second question

38 By its second question, the referring court asks, in essence, whether the fourth subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that where a Member State has made use of the possibility offered by Article 3(3) of that regulation to provide for a longer limitation period than that provided for in the first subparagraph of Article 3(1) of that regulation, the absolute limitation period set in the fourth subparagraph of Article 3(1) of that regulation must be calculated by reference to that longer limitation period or to the limitation period provided for in the first subparagraph of Article 3(1) of that regulation.

39 The fourth subparagraph of Article 3(1) of Regulation No 2988/95 imposes an absolute limit applying to the time-bar of legal proceedings in respect of an irregularity, that limitation becoming effective at the latest on the day on which a period equal to twice the limitation period laid down in the first subparagraph of Article 3(1) expires without the competent authority having imposed a penalty, except where the procedure has been suspended in accordance with Article 6(1) of that regulation (judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 63).

40 That absolute limitation period helps to reinforce the legal certainty of the economic operators by preventing the limitation period of legal proceedings in respect of an irregularity from being extended indefinitely by repeated interrupting acts (see, to that effect, judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 64).

41 It is apparent from the case-law of the Court that, if a longer national limitation period is applied pursuant to Article 3(3) of Regulation No 2988/95, the absolute limitation period provided for in the fourth subparagraph of Article 3(1) of that regulation expires, in any event, on the day on which a period equal to twice that longer limitation period expires (see, to that effect, judgment of 2 March 2017, *Glencore Céréales France*, C-584/15, EU:C:2017:160, paragraph 71).

42 It follows from the foregoing that the answer to the second question is that the fourth subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that where a Member State has made use of the possibility offered by Article 3(3) of that regulation to provide for a longer limitation period than the four-year limitation period provided for in the first subparagraph of Article 3(1) of that regulation, the absolute limitation period set in the fourth subparagraph of Article 3(1) of that regulation must be calculated by reference to that longer limitation period.

The third question

43 In view of the answers given to the first and second questions, there is no need to answer the third question.

Costs

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

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

1. Article 3(1) and (3) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, read in the light of the principle of legal certainty,

must be interpreted as not precluding national legislation which sets a longer limitation period than that provided for in Article 3(1) of Regulation No 2988/95, subject to observing the principle of proportionality. In contrast, those provisions preclude national legislation which provides that that limitation period runs as from the date on

which the national authorities discovered an irregularity with regard to the provisions of that regulation.

2. The fourth subparagraph of Article 3(1) of Regulation No 2988/95

must be interpreted as meaning that where a Member State has made use of the possibility offered by Article 3(3) of that regulation to provide for a longer limitation period than the four-year limitation period provided for in the first subparagraph of Article 3(1) of that regulation, the absolute limitation period set in the fourth subparagraph of Article 3(1) of that regulation must be calculated by reference to that longer limitation period.

[Signatures]