Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

8 May 2024*

(Reference for a preliminary ruling – Own resources of the European Union – National programme co-financed by the European Agricultural Fund for Rural Development (EAFRD) – Aid granted by contract pursuant to that programme – Protection of the European Union's financial interests – Regulation (EC) No 2988/95 – Scope – Proceedings concerning irregularities – Article 3 – Limitation period for proceedings – Concept of 'act interrupting the limitation period' – Principle of proportionality – Claims for repayment of aid wrongly paid, based on the private law of a Member State)

In Case C-734/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 17 October 2022, received at the Court on 29 November 2022, in the proceedings

Republik Österreich

v

GM,

THE COURT (Eighth Chamber),

composed of N. Piçarra (Rapporteur), President of the Chamber, N. Jääskinen and M. Gavalec, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– GM, by L. Peissl and J. Reich-Rohrwig, Rechtsanwälte,

– the Austrian Government, by A. Posch, J. Schmoll and E. Samoilova, acting as Agents,

– the European Commission, by F. Blanc, B. Hofstötter and A. Sauka, acting as Agents,

* Language of the case: German.

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 proportionality.

2 The request has been made in the context of proceedings between the Republic of Austria and GM, a natural person, concerning the limitation period applicable to a claim for repayment of aid wrongly paid to GM.

Legal context

European Union law

3 The third and fourth recitals of Regulation No 2988/95 read as follows:

'… acts detrimental to the [European] Communities' financial interests must … be countered in all areas;

… 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'.

4 Article 1 of that regulation provides:

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

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.'

5 Article 3 of Regulation No 2988/95 provides:

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

…

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

Austrian law

6 Paragraph 1478 of the Allgemeines bürgerliches Gesetzbuch (General Civil Code), in the version applicable to the dispute in the main proceedings ('the ABGB'), entitled 'Limitation period – General remarks', provides for a 30-year limitation period for the 'mere non-use of a right which, per se, could have been exercised'.

7 Under Paragraph 1489 of the ABGB:

'Any action for compensation shall be time-barred after three years from the date on which the injured party has knowledge of the damage and of the identity of the injuring party, whether the damage was caused by breach of a contractual obligation or was unrelated to a contract. Where the injured party has had no knowledge of the damage or of the identity of the injuring party or where the damage is the result of one or several criminal offences that can only be committed intentionally and are punishable by a custodial sentence of at least one year, the right to bring an action shall lapse only after 30 years.'

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

8 In application of the Österreichischer Programm für umweltgerechte Landwirtschaft (Austrian programme for an environmentally sound agriculture), co-financed by the European Agricultural Fund for Rural Development (EAFRD), under Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1), and managed by Agrarmarkt Austria (Austrian Office for Supervision of the Agricultural Markets; 'AMA'), the Republic of Austria offered financial aid for the period between 2007 and 2013. That aid was paid under private law contracts concluded between that Member State and the aid applicants, on the basis of multiannual commitments from the latter.

9 During a check carried out in 2013 with GM, who had received such aid, AMA found that there was a discrepancy between the areas in respect of which aid had been applied for and the areas actually eligible. It therefore requested GM to repay the premiums granted in 2008 to 2010 and 2012 to 2013.

10 After sending GM an audit report and two recovery notices dated 26 March and 26 June 2014 respectively as well as payment reminders dated 11 May and 12 November 2015 respectively, AMA sent GM a letter of formal notice on 16 December 2015, on pain of 'legal proceedings'.

11 On 26 April 2019, in the absence of payment by GM, the Republic of Austria brought an action before the civil court of first instance seeking an order requiring GM to repay the aid wrongly paid, together with interest, to which GM objected that that action was time-barred.

12 That court limited the subject matter of the civil proceedings before it to the question whether the action at issue was time-barred. Pursuant to Article 3 of Regulation No 2988/95, it found that, in the present case, the four-year limitation period for proceedings, laid down by that regulation, had begun to run on 1 January 2014, but had been interrupted, inter alia, by the payment reminders and the formal notice, dated 11 May, 12 November and 16 December 2015, and that, therefore, that action was not time-barred.

13 The court before which GM brought an appeal held that Regulation No 2988/95 was not applicable and that, under Paragraph 1489 of the ABGB, the action was time-barred.

14 The Republic of Austria then brought an appeal on a point of law against that latter judgment before the Oberster Gerichtshof (Supreme Court, Austria), which is the referring court, claiming that the four-year limitation period laid down in the first subparagraph of Article 3(1) of Regulation No 2988/95 must be applied to the claims for repayment at issue and that the payment reminders referred to in paragraph 10 above must be classified as 'acts of the competent authority relating to investigation or legal proceedings concerning the irregularity', with the effect of interrupting that limitation period in accordance with the third subparagraph of Article 3(1) of that regulation. Accordingly, the action for repayment would not be time-barred. Should that regulation not apply, then the 30-year limitation period laid down in Paragraph 1478 of the ABGB would.

15 GM submits that Regulation No 2988/95 is not applicable in so far as it covers only rights which must be guaranteed 'by public law'. He argues that the aid in question was paid under a private law contract governed by national law. According to him, since the three-year period laid down in Paragraph 1489 of the ABGB had already expired when the action was brought at first instance, the action is time-barred. Even if that regulation were applicable, the action would still be time-barred. Payment requests and reminders cannot be regarded as acts relating to investigation or legal proceedings concerning the irregularity found, within the meaning of the third subparagraph of Article 3(1) of that regulation.

16 According to the referring court, the outcome of the dispute before it depends on whether the four-year limitation period laid down in Article 3 of Regulation No 2988/95 applies where aid co-financed by the European Union has not been granted by an 'administrative act of a public authority', and that the procedure for the recovery of that aid is therefore governed by private law. It is of the opinion that, should that provision be applicable, GM would not be able to rely on the three-year limitation period laid down in Paragraph 1489 of the ABGB, just as the Republic of Austria would not be able to rely on the 30-year limitation period laid down in Paragraph 1478 of the ABGB, given that the latter period does not comply with the principle of proportionality.

17 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 3 of [Regulation No 2988/95] directly applicable to claims by which the Republic of Austria seeks to recover aid it granted under a contract to funding applicants within the framework of an agri-environmental aid programme under [Regulation No 1698/2005] by means of private-law remedies because the recipient infringed contractual obligations?

(2) If the answer to the first question is in the affirmative, must the third subparagraph of Article 3(1) of [Regulation No 2988/95] be interpreted as meaning that there is an interruption of the limitation period by the investigation or legal proceedings also when the party who issued the aid, after making its first extrajudicial claim for repayment, asks the recipient of the aid again, if need be several times, to make the repayment, and issues an extrajudicial demand for payment instead of asserting its repayment claim in court?

(3) If the answer to the first question is in the negative, is the application of a limitation period of 30 years provided for by national civil law in respect of the recovery claims referred to in Question 1 compatible with EU law, in particular with the principle of proportionality?’

Consideration of the questions referred

The first question referred

18 By its first question, the referring court asks, in essence, whether the first subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the four-year limitation period which it lays down is directly applicable to a claim for repayment of aid, co-financed by the European Union, which is governed by the provisions of private law of a Member State.

19 It is important to bear in mind that, by virtue of the very nature of regulations and of their function in the system of sources of EU law, the provisions of regulations generally have immediate effect in the national legal systems without it being necessary for the national authorities to adopt measures of application (judgments of 24 June 2004, *Handlbauer*, C-278/02, EU:C:2004:388, paragraph 25, and of 7 April 2022, *IFAP*, C-447/20 and C-448/20, EU:C:2022:265, paragraph 88).

20 The first subparagraph of Article 3(1) of Regulation No 2988/95 establishes a general limitation period of four years for proceedings concerning irregularities, which starts to run from the date on which the irregularity was committed. Under Article 1(2) of that regulation, ‘irregularity’ means ‘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]’.

21 The first subparagraph of Article 3(1) also states that that four-year limitation period is applicable in the absence of ‘sectoral rules’, namely those adopted at EU level and not at national level, providing for ‘a shorter period which may not be less than three years’ (see, to that effect, judgments of 29 January 2009, *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, C-278/07 to C-280/07, EU:C:2009:38, paragraph 44, and of 22 December 2010, *Corman*, C-131/10, EU:C:2010:825, paragraph 41).

22 There is no indication in the wording of that provision that the application of the four-year limitation period which it lays down depends on the legal nature of the instruments which the national authorities use for the purpose of protecting the European Union's financial interests and rectifying the irregularities detected.

23 Furthermore, an interpretation of that provision which would make the application of Regulation No 2988/95 dependent on the legal nature, whether public or private, of the instruments which the national authorities use for the purpose of protecting the European Union's financial interests would limit the effectiveness of that regulation, the objective of which is, as stated, in essence, in the third and fourth recitals, to counter in all areas acts detrimental to those financial interests by establishing a common set of rules for all areas covered by EU policies.

24 It follows that, in the absence of 'sectoral rules', the first subparagraph of Article 3(1) of that regulation must be interpreted as meaning that the general limitation period of four years which it lays down applies to claims for recovery of aid submitted for failure by the recipient of that aid to fulfil a contractual obligation to which that recipient is subject and which entails the infringement of a provision of EU law which has, or would have, the effect of prejudicing the general budget of the European Union.

25 That interpretation is supported by the structure of Regulation No 2988/95. Article 3 appears in Title I of that regulation, on 'General principles', and not in Title II of that regulation, relating specifically to 'Administrative measures and penalties'.

26 For the foregoing reasons, the answer to the first question is that the first subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the four-year limitation period which it lays down is directly applicable to a claim for repayment of aid, co-financed by the European Union, which is governed by the provisions of private law of a Member State.

The third question referred

27 By its third question, which it is appropriate to examine in the second place, the referring court asks, in essence, whether the principle of proportionality must be interpreted as precluding the application, on the basis of Article 3(3) of Regulation No 2988/95, of a 30-year limitation period established by a provision of private law of a Member State to claims for repayment of aid co-financed by the European Union.

28 Under Article 3(3) of that regulation, Member States retain the option of providing for limitation periods which are longer than the minimum period of four years laid down in paragraph 1 of that article. The EU legislature did not intend to standardise the periods applicable in this area and, consequently, the entry into force of Regulation No 2988/95 cannot have the effect of compelling the Member States to reduce to four years the limitation periods which, in the absence of rules of EU law previously in the area, they applied in the past. While Member States retain wide discretion in fixing longer limitation periods applicable in cases involving an irregularity that is detrimental to the European Union's financial interests (judgment of 17 September 2014, *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraphs 54 and 55), those limitation periods must, however, observe 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-548/15, EU:C:2017:160, paragraph 72).

29 In accordance with that principle, such a limitation period must not go beyond what is necessary to achieve the objective of protecting the European Union's financial interests (see, to that effect, judgments of 17 March 2011, *AJD Tuna*, C-221/09, EU:C:2011:153, paragraph 79; of 5 May 2011, *Ze Fu Fleischhandel and Vion Trading*, C-201/10 and C-202/10, EU:C:2011:282, paragraph 38; and of 7 April 2022, *IFAP*, C-447/20 and C-448/20, EU:C:2022:265, paragraph 116).

30 The Court has held that, in view of attaining the objective of protecting the European Union's financial interests, the application of a 10-year limitation period resulting from a provision of national private law does not run counter to the principle of proportionality. However, in view of that objective, for which Regulation No 2988/95 established a four-year limitation period to enable the national authorities to bring proceedings concerning an irregularity detrimental to those financial interests and capable of leading, inter alia, to recovery of a wrongly obtained advantage, it is apparent that a limitation period of 30 years goes beyond what is necessary for a diligent public service (judgment of 17 September 2014, *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraphs 60 and 61).

31 Member States are bound, under Article 4(3) TEU, by a general obligation of diligence, which entails taking steps to rectify irregularities promptly and requires the national public service to verify the legality of payments which it makes and which are borne by the European Union budget. In those circumstances, providing Member States with the possibility of granting their public service a much longer period within which to act than that laid down in the first subparagraph of Article 3(1) of Regulation No 2988/95 could encourage the national authorities to report proceedings in respect of 'irregularities' within the meaning of Article 1(2) of that regulation, 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 at the end of such a period that the transactions in question were lawful (see, to that effect, judgment of 17 September 2014, *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraph 62).

32 It follows that, where the application of a limitation period under the general law to the repayment of aid wrongly received proves disproportionate in the light of the objective of protecting the European Union's financial interests, that rule must be disregarded and the general limitation period provided for in the first subparagraph of Article 3(1) of Regulation No 2988/95 is applicable (see, to that effect, judgment of 5 May 2011, *Ze Fu Fleischhandel and Vion Trading*, C-201/10 and C-202/10, EU:C:2011:282, paragraph 51).

33 For the foregoing reasons, the answer to the third question is that the principle of proportionality must be interpreted as precluding the application, on the basis of Article 3(3) of Regulation No 2988/95, of a 30-year limitation period established by a provision of private law of a Member State to claims for repayment of aid co-financed by the European Union.

The second question referred

34 By its second question, the referring court asks, in essence, whether the third subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the concept of 'act relating to investigation or legal proceedings concerning the irregularity' from the competent authority and notified to the person in question, the effect of which is to interrupt the 'limitation period for proceedings', covers extrajudicial acts such as an audit report, a recovery notice, a payment reminder or a formal notice.

35 In accordance with that provision, the limitation period may be interrupted by any act of the competent authority, notified to the person in question, relating to investigation or legal proceedings concerning the irregularity.

36 It should be noted that that provision does not make provision for a different legal regime according to whether the acts are adopted by the competent authority in the context of judicial proceedings or in the context of an extrajudicial procedure.

37 In addition, by adopting the first subparagraph of Article 3(1) of Regulation No 2988/95, the EU legislature established a general limitation rule by which it intended, first, to define a minimum period applied in all the Member States and, secondly, to waive the possibility of recovering sums wrongly received from the European Union budget after the expiry of a four-year period after the irregularity affecting the payments at issue was committed (see, to that effect, judgments of 17 September 2014, *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraph 49, and of 3 October 2019, *Westphal*, C-378/18, EU:C:2019:832, paragraph 28).

38 Such a limitation period fulfils the function of ensuring legal certainty. That function would be called into question if that period could be interrupted by any act relating to a general check by the national authorities which bears no relation to any suspicion concerning the existence of irregularities regarding sufficiently precisely circumscribed transactions (see, to that effect, judgments of 24 June 2004, *Handlbauer*, C-278/02, EU:C:2004:388, paragraph 40, and of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 41).

39 It follows that, in order to be classified as an act relating to investigation or legal proceedings capable of interrupting the limitation period for proceedings, for the purposes of the third subparagraph of Article 3(1) of Regulation No 2988/95, such an act must set out with sufficient precision the transactions to which the suspicions of irregularities relate. That requirement for precision does not, however, require the act to state the possibility of imposing on the recipient of the aid a penalty or particular administrative measure (judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 43).

40 Thus, a report sent by the competent authority, which draws attention to an irregularity in which the aid recipient is said to have played a part in connection with a specific operation and asks that person for further information concerning that operation or applies a penalty to the person in connection with that operation, constitutes an act relating to investigation or legal proceedings concerning the irregularity which is sufficiently specific and is therefore capable of interrupting the limitation period for proceedings, for the purposes of the third subparagraph of Article 3(1) of Regulation No 2988/95 (see, to that effect, judgments of 21 December 2011, *Chambre de commerce et d'industrie de l'Indre*, C-465/10, EU:C:2011:867, paragraph 61, and of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 42).

41 Similarly, a letter informing the recipient of aid, co-financed from the EAFRD, of the unlawful nature of that aid is also capable of interrupting the limitation period for proceedings laid down in the first subparagraph of Article 3(1) of that regulation (see, to that effect, judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraphs 24 and 127).

42 It is for the referring court to determine whether the extrajudicial acts at issue in the main proceedings set out with sufficient precision the transactions to which the suspicions of irregularities relate and, therefore, fall within the concept of 'act relating to investigation or legal

proceedings concerning the irregularity' referred to in the third subparagraph of Article 3(1) of that regulation (see, to that effect, judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraphs 46 and 47).

43 In the light of the foregoing, the answer to the second question is that the third subparagraph of Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the concept of an 'act relating to investigation or legal proceedings concerning the irregularity' from the competent authority and notified to the person in question, the effect of which is to interrupt the 'limitation period for proceedings', covers extrajudicial acts such as an audit report, a recovery notice, a payment reminder or a formal notice, provided that those acts enable the addressee to have knowledge, with sufficient precision, of the transactions to which the suspicions of irregularities relate.

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 (Eighth Chamber) hereby rules:

1. **The first subparagraph of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests**

   must be interpreted as meaning that the four-year limitation period which it lays down is directly applicable to a claim for repayment of aid, co-financed by the European Union, which is governed by the provisions of private law of a Member State.

2. **The principle of proportionality**

   must be interpreted as precluding the application, on the basis of Article 3(3) of Regulation No 2988/95, of a 30-year limitation period, established by a provision of private law of a Member State, to claims for repayment of aid co-financed by the European Union.

3. **The third subparagraph of Article 3(1) of Regulation No 2988/95**

   must be interpreted as meaning that the concept of an 'act relating to investigation or legal proceedings concerning the irregularity' from the competent authority and notified to the person in question, the effect of which is to interrupt the 'limitation period for proceedings', covers extrajudicial acts such as an audit report, a recovery notice, a payment reminder or a formal notice, provided that those acts enable the addressee to have knowledge, with sufficient precision, of the transactions to which the suspicions of irregularities relate.

[Signatures]