Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

4 October 2024*

(Appeal – Public service contracts – Irregularities in the procedure for the award of contracts – Regulation (EC) No 2988/95 – Articles 4, 5 and 7 – Decision for the recovery of amounts wrongly paid – Debit notes – Distinction between administrative measures and administrative penalties – Possibility of adopting an administrative measure in the absence of a sectoral rule – Recovery decision based on Regulation No 2988/95 and Regulation (EC, Euratom) No 1605/2002 – Regulation No 1605/2002 – Article 103 – Possibility of recovery from the director of the economic operator benefiting from European Union funds)

In Case C-721/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 24 November 2022,

European Commission, represented initially by B. Araujo Arce, J. Baquero Cruz and J. Estrada de Solà, acting as Agents, and subsequently by J. Baquero Cruz and J. Estrada de Solà, acting as Agents,

appellant,

the other parties to the proceedings being:

PB, represented by L. Levi, avocate,

applicant at first instance,

Council of the European Union,

intervener at first instance,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Third Chamber, N. Piçarra, N. Jääskinen and M. Gavalec (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

* Language of the case: French.

having regard to the written procedure,

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

gives the following

Judgment

1 By its appeal, the European Commission seeks to have set aside the judgment of the General Court of the European Union of 14 September 2022, *PB* v *Commission* (T-775/20, 'the judgment under appeal', EU:T:2022:542), by which the General Court annulled Commission Decision C(2020) 7151 final of 22 October 2020 concerning the application of an administrative measure against the director of the company [Confidential], withdrawing the amounts unduly received under the TACIS/2006/101-510 and CARDS/2008/166-429 contracts ('the decision at issue').

Legal context

Regulation (EC) No 2988/95

2 The third, fourth and fifth recitals 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), state:

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

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

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

3 Under Article 1(2) of that regulation:

'"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.'

4 Article 2 of that regulation provides:

'1. Administrative checks, measures and penalties shall be introduced in so far as they are necessary to ensure the proper application of Community law. They shall be effective, proportionate and dissuasive so that they provide adequate protection for the Communities' financial interests.

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

…'

5 Title II of Regulation No 2988/95, entitled 'Administrative measures and penalties', comprises Articles 4 to 7 of that regulation.

6 Article 4 of that regulation is worded as follows:

'1. As a general rule, any irregularity shall involve withdrawal of the wrongly obtained advantage:

– by an obligation to pay or repay the amounts due or wrongly received,

– 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.

2. Application of the measures referred to in paragraph 1 shall be limited to the withdrawal of the advantage obtained plus, where so provided for, interest which may be determined on a flat-rate basis.

3. Acts which are established to have as their purpose the obtaining of an advantage contrary to the objectives of the Community law applicable in the case by artificially creating the conditions required for obtaining that advantage shall result, as the case shall be, either in failure to obtain the advantage or in its withdrawal.

4. The measures provided for in this Article shall not be regarded as penalties.'

7 Article 5 of the same regulation provides:

'1. Intentional irregularities or those caused by negligence may lead to the following administrative penalties:

…

(c) total or partial removal of an advantage granted by Community rules, even if the operator wrongly benefited from only a part of that advantage;

…

2. Without prejudice to the provisions laid down in the sectoral rules existing at the time of entry into force of this Regulation, other irregularities may give rise only to those penalties not equivalent to a criminal penalty that are provided for in paragraph 1, provided that such penalties are essential to ensure correct application of the rules.'

8 Under Article 7 of Regulation No 2988/95:

'Community administrative measures and penalties may be applied to the economic operators referred to in Article 1, namely the natural or legal persons and the other entities on which national law confers

legal capacity who have committed the irregularity. They may also apply to persons who have taken part in the irregularity and to those who are under a duty to take responsibility for the irregularity or to ensure that it is not committed.'

Regulation No 99/2000

9 Council Regulation (EC, Euratom) No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia (OJ 2000 L 12, p. 1), as amended by Council Regulation (EC) No 2112/2005 of 21 November 2005 (OJ 2005 L 344, p. 23), had established the TACIS programme aimed at promoting the transition to a market economy and strengthening democracy and the rule of law in the partner States of Eastern Europe and Central Asia.

Regulation No 2666/2000

10 Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC (OJ 2000 L 306, p. 1), as amended by Council Regulation (EC) No 2257/2004 of 20 December 2004 (OJ 2004 L 389, p. 1), provided, inter alia, by means of the CARDS programme, for the provision of Community assistance for the reconstruction, development and stabilisation of south-east European countries with a view to their participation in the process of stabilisation and association with the European Union.

The 2002 Financial Regulation

11 Article 103 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1; 'the 2002 Financial Regulation') provided:

'Where the award procedure or performance of the contract is vitiated by substantial errors or irregularities or by fraud, the institutions shall suspend performance of the contract.

Where such errors, irregularities or fraud are attributable to the contractor, the institutions may in addition refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud.'

12 Under Article 103 of Regulation No 1605/2002, as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ 2006 L 390, p. 1):

'Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the institutions shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure.

Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the institutions may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract.

Where such errors, irregularities or fraud are attributable to the contractor, the institutions may in addition refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this contractor, in proportion to the seriousness of the errors, irregularities or fraud.'

Background to the dispute

13 The background to the dispute is set out in paragraphs 2 to 33 of the judgment under appeal. For the purposes of the present appeal, it can be summarised as follows.

14 The European Union awarded two public contracts to a consortium and, subsequently, concluded two contracts with the coordinating company of that consortium ('the coordinating company'), respectively in 2006 and 2008. The first contract, with a maximum value of EUR 4 410 000, concerned the provision of technical assistance to the Ukrainian authorities for the approximation of Ukrainian law to EU law. The second, with a maximum value of EUR 1 999 125, consisted in providing technical assistance services to the High Judicial Council in Serbia.

15 Following anonymous complaints against the coordinating company, the European Anti-Fraud Office (OLAF) investigated and concluded, in two reports, that there were serious irregularities and possible acts of corruption, in each of the two contracts.

16 On the basis of those OLAF reports, the Commission adopted, on 15 October 2019, two decisions in which it alleged that the coordinating company had committed substantial irregularities, within the meaning of Article 103 of the 2002 Financial Regulation, during the procedures for the award of the two contracts at issue. Those irregularities appeared to it to be sufficiently serious for all the payments made to be considered to have been wrongly paid and as having to be recovered.

17 Those two decisions were challenged by the coordinating company before the General Court. By its judgments of 21 December 2021, *HB* v *Commission* (T-795/19, EU:T:2021:917), and of 21 December 2021, *HB* v *Commission* (T-796/19, EU:T:2021:918), the General Court dismissed the two actions brought by that company on the ground that they were inadmissible, in so far as they sought the annulment of those recovery decisions, and unfounded, in so far as they sought the non-contractual liability of the European Union. Those judgments, which were appealed against, were set aside by the judgment delivered today, *Commission* v *HB*, C-160/22 P and C-161/22 P.

18 On 13 December 2019, the Commission informed PB, who is the director of the coordinating company, that it intended to adopt administrative measures against him, as provided for in Articles 4 and 7 of Regulation No 2988/95. In its view, PB's personal liability could be incurred since he had taken part, in his capacity as director, in the commission of irregularities during the award of the two contracts at issue. As director of the coordinating company, PB should have ensured that such irregularities were not committed.

19 On 22 October 2020, the Commission adopted the decision at issue on the basis of Articles 4 and 7 of Regulation No 2988/95 and, in substance, of Article 103 of the 2002 Financial Regulation. That decision declared PB jointly and severally liable with the coordinating company for payment of the amounts of EUR 4 241 507 in relation to the first contract referred to in paragraph 14 above and EUR 797 230.86 in relation to the second contract referred to in the same paragraph.

Procedure before the General Court and the judgment under appeal

20 By application lodged at the Registry of the General Court on 24 December 2020, PB brought an action before the General Court seeking annulment of the decision at issue, and an order requiring the European Union to reimburse any amounts recovered by the Commission on the basis of that decision, together with late-payment interest at the rate applied by the European Central Bank (ECB) plus 7 points, to pay EUR 10 000 by way of damages, subject to increase in the course of the proceedings, and to pay all the costs.

21 In the judgment under appeal, the General Court confined its analysis to PB's third plea in law, relied on in support of the claim for annulment of the decision at issue alleging that there was no legal basis for that decision, as well as breach of the principle that penalties must have a sound legal basis and of the principle of the application of the more lenient criminal law. In essence, in paragraphs 55, 63 and 64 of the judgment under appeal, it inferred from the judgment of 28 October 2010, *SGS Belgium and Others* (C-367/09, EU:C:2010:648, paragraphs 52 to 56) that Articles 5 and 7 of Regulation No 2988/95, which allow administrative measures and penalties to be adopted, do not have direct effect, outside the scope of the common agricultural policy (CAP) or other fields governed by equivalent rules, such as the common commercial policy. The General Court decided accordingly that the adoption of administrative measures and penalties against the persons committing irregularities presupposes the enactment of specific sectoral rules which comply with that regulation on which those measures and penalties must be based. Those measures and penalties cannot therefore be based on Regulation No 2988/95 alone.

22 In addition, in paragraphs 66 and 67 of the judgment under appeal, the General Court found that neither Article 4 of that regulation nor the second paragraph of Article 103 of the 2002 Financial Regulation authorises the Commission to request reimbursement of amounts wrongly received from persons or entities other than the beneficiary thereof. It also noted that Article 7 of Regulation No 2988/95 does not provide any details as regards the category of persons who must be the subject of an administrative measure in such a case.

23 Consequently, the General Court held, in paragraph 70 of the judgment under appeal, that the decision at issue had no legal basis. Having upheld the third plea of the action for annulment of that decision in paragraph 71 of that judgment, the General Court annulled the said decision and accordingly did not consider it necessary to examine the nine other pleas raised by PB.

24 Lastly, the General Court, in paragraph 91 of the judgment under appeal, rejected PB's claim for compensation on the merits, while finding, in paragraph 80 of that judgment, that there was no need to adjudicate beforehand on its admissibility. It held, inter alia, in paragraph 89 of that judgment, that PB had not adduced proof of the existence of a causal link between the Commission's allegedly wrongful conduct and the damage claimed.

Forms of order sought by the parties to the appeal

25 By its appeal, the Commission claims that the Court of Justice should:

– set aside the first and third points of the operative part of the judgment under appeal;

– refer the case back to the General Court for it to rule as to the substance of the action for annulment; and

– order PB to pay the costs.

26 PB contends that the Court should:

– dismiss the appeal; and

– order the Commission to pay the costs of the entire proceedings.

The appeal

27 In support of its appeal, the Commission relies on a single ground of appeal directed against the first point of the operative part of the judgment under appeal.

Arguments of the parties

28 In support of its single ground of appeal, the Commission challenges, in the first place, the reasoning adopted by the General Court in paragraphs 51 to 64 of the judgment under appeal, in so far as it led it to conclude, in paragraph 65 of that judgment, that Regulation No 2988/95 could not, in itself, constitute the relevant legal basis for adopting administrative measures to recover amounts wrongly received. In so ruling, the General Court failed to have regard to Articles 4 and 7 of that regulation, which constitute an autonomous and sufficiently precise basis for adopting such measures which are not punitive in nature.

29 The General Court erred in law, in paragraph 51 of that judgment, which constitutes the starting point for its reasoning, by inferring from the fifth recital of the said regulation that the EU legislature makes the imposition of administrative measures and penalties on persons committing irregularities subject to the enactment of specific sectoral rules. However, that recital does not necessarily require reliance on a sectoral rule, nor does it rule out the possibility of Regulation No 2988/95 having an autonomous effect.

30 The Commission also notes that, in paragraphs 51 to 57 of the judgment under appeal, the General Court inferred from the judgment of 28 October 2010, *SGS Belgium and Others* (C-367/09, EU:C:2010:648), that that regulation was a framework regulation requiring a sectoral regulation for the application of penalties and for the purpose of identifying the categories of persons subject to those penalties. However, that interpretation applies only to the penalties provided for in Article 5 of that regulation, to which the principle that offences and penalties must be defined by law laid down in Article 49 of the Charter of Fundamental Rights of the European Union and in Article 2(2) of that regulation applies. According to the Commission, extending such an interpretation to administrative measures, which are intended to protect the financial interests of the European Union and do not constitute penalties, would deprive Regulation No 2988/95 of its effectiveness and its binding nature.

31 Furthermore, although sectoral rules are intended to apply as *lex specialis*, in their absence, Regulation No 2988/95 produces its own and autonomous legal effect. Moreover, in the judgment of 28 October 2010, *SGS Belgium and Others* (C-367/09, EU:C:2010:648, paragraphs 32 to 34), the Court recalled that, as a general rule, the provisions of a regulation have immediate effect in the national legal systems, so that it is only exceptionally, in relation to ‘certain provisions of a regulation’, such as the provisions on penalties in Regulation No 2988/95, that implementing measures are necessary.

32 From that point of view, the judgments of 21 December 2011, *Chambre de commerce et d'industrie de l'Indre* (C-465/10, EU:C:2011:867), and of 18 December 2014, *Somvao* (C-599/13, EU:C:2014:2462), to which the General Court referred in paragraphs 59 and 60 of the judgment under appeal, merely state that, where there is a sectoral rule governing the recovery of amounts due, that rule must apply as a *lex specialis*, instead of the *lex generalis*, which Regulation No 2988/95 constitutes. In any event, since, in the cases that gave rise to those two judgments, there was a sectoral rule, the Court did not have to consider whether that regulation could constitute an autonomous basis for recovery, in the absence of sectoral legislation.

33 That said, both the General Court and the Court of Justice have expressly recognised, on several occasions, the direct and autonomous application of Article 4 of that regulation for the recovery of such amounts, inter alia, in the judgments of 15 April 2011, *IPK International* v *Commission* (T-297/05, EU:T:2011:185, paragraph 117), of 13 December 2012, *FranceAgriMer* (C-670/11, EU:C:2012:807, paragraph 72), and of 9 July 2015, *Cimmino and Others* (C-607/13, EU:C:2015:448, paragraph 76). That case-law is of general application and cannot therefore, contrary to what the General Court stated in paragraphs 62 to 64 of the judgment under appeal, be confined to the CAP and to the common commercial policy.

34 In the second place, the Commission challenges the reasoning in paragraphs 67 and 69 of the judgment under appeal, in so far as the General Court held therein that Article 103 of the 2002 Financial Regulation, as a sectoral rule, allowed recovery to be made only against the contractor and not against a third party, such as the director of the coordinating company.

35 It is apparent from paragraph 67 of that judgment that Article 7 of Regulation No 2988/95 does not specify the category of persons who must be the subject of an administrative measure. In addition, in paragraph 69 of that judgment, the General Court held that the application of Article 103 of the 2002 Financial Regulation together with Articles 4 and 7 of Regulation No 2988/95 did not make it possible to adopt an administrative measure against PB, since he was not the direct beneficiary of the payments at issue.

36 According to the Commission, it follows from Article 322(1)(a) TFEU that a regulation which, in the same way as the 2002 Financial Regulation, lays down financial rules that fix, inter alia, the procedures for establishing and implementing the budget is a general rule concerning the implementation of the budget and not a sectoral rule. Therefore, the 2002 Financial Regulation and Regulation No 2988/95 should be understood as two complementary general rules and not as a *lex generalis* and a *lex specialis* respectively. On that basis, it is possible, and even often necessary, to apply those two regulations together.

37 In the present case, the relevant sectoral rules are, for the public contract concerning Ukraine, Regulation No 99/2000, as amended by Regulation No 2112/2005, and, for the public contract concerning Serbia, Regulation No 2666/2000, as amended by Regulation No 2257/2004.

38 Furthermore, according to the Commission, by holding, in paragraph 67 of the judgment under appeal, that Article 7 of Regulation No 2988/95 'does not provide any details with regard to the category of persons who must be the subject of an administrative measure', the General Court disregarded the second sentence of that article, according to which, administrative measures 'may also apply to persons who have taken part in the irregularity and to those who are under a duty to take responsibility for the irregularity or to ensure that it is not committed'. In the present case, as director of the coordinating company, PB falls within the scope of that provision.

39 For his part, PB disputes, in the first place, the Commission's line of argument, and emphasises that the General Court did not maintain that the fifth recital of that regulation could prevail over the provisions of that regulation. Furthermore, the Commission's argument contesting the General Court's classification of that regulation as a 'framework regulation' is ineffective, since the 'general rule' classification of that regulation suggested by the Commission, is equivalent.

40 Furthermore, PB submits that the Commission is wrong to challenge both the application by the General Court of the case-law on administrative penalties to administrative measures and the fact that it held that Article 4 of that regulation cannot, in itself, constitute the relevant legal basis for administrative measures for the recovery of amounts wrongly received. None of the three judgments mentioned by the Commission is relevant since the judgment of 14 December 2000, *Emsland-Stärke* (C-110/99, EU:C:2000:695, paragraphs 56 and 57) and the judgments of 13 December 2012, *FranceAgriMer* (C-670/11, EU:C:2012:807, paragraph 72), and of 9 July 2015, *Cimmino and Others* (C-607/13, EU:C:2015:448, paragraph 76), concern the CAP. The General Court correctly established that, in the context of that policy, the system of administrative penalties and measures had been established even before the entry into force of Regulation No 2988/95.

41 Furthermore, the Court has already pointed out, inter alia, in paragraph 37 of the judgment of 18 December 2014, *Somvao* (C-599/13, EU:C:2014:2462), that that regulation merely lays down general rules for supervision and penalties which cannot constitute a sufficient legal basis for recovering misused funds. According to PB, that case-law is relevant to support the assertion, in paragraph 58 of the judgment under appeal, that there are no significant differences in the case-law of the Court of Justice between the implementation of administrative penalties and that of administrative measures provided for by that regulation.

42 PB also questions the effectiveness of the Commission's line of argument, in so far as the latter does not dispute that the decision at issue was based on two legal bases. If the Commission had considered that Regulation No 2988/95 constituted a sufficient legal basis for adopting the decision at issue, it would not have also based that decision on Article 103 of the 2002 Financial Regulation.

43 Finally, PB submits that it is irrelevant whether the 2002 Financial Regulation is classified as a 'sectoral rule' or as a 'general rule'. It follows from the judgment of 18 December 2014, *Somvao* (C-599/13, EU:C:2014:2462) that that financial regulation could form the basis of a measure reducing the amount of a grant awarded under the European Refugee Fund. The General Court merely complied with that judgment, by examining, in paragraphs 65 and 66 of the judgment under appeal, whether that financial regulation authorised the Commission to adopt the decision at issue.

44 In the second place, PB disputes the Commission's line of argument directed against paragraphs 67 and 69 of the judgment under appeal and submits, first, that the second sentence of Article 7 of Regulation No 2988/95 is a provision that merely provides for an option which must, in order for it to be possible for it to be applied, be given specific expression in an EU act. On the other hand, PB argues that an administrative measure can only be applied in so far as it makes it possible to withdraw a wrongly obtained advantage. It follows that such a withdrawal cannot be ordered in respect of a person who, like PB, did not benefit from that advantage.

Findings of the Court

45 By its single ground of appeal, the Commission challenges, in the first place, the reasoning followed by the General Court in paragraphs 51 to 64 of the judgment under appeal, at the end of which it held, in paragraph 65 of that judgment, that Regulation No 2988/95 cannot, in itself, constitute the relevant legal basis for adopting administrative measures to recover amounts wrongly received.

46 As the Court has repeatedly held in the context of the CAP and the common commercial policy, the obligation to repay an advantage wrongly received by means of an irregular practice does not constitute a penalty for which a clear and unambiguous legal basis, distinct from Regulation No 2988/95, is necessary, but is merely the consequence of the finding that the conditions required to obtain the advantage derived from EU law were created artificially, with the result that that advantage becomes an advantage wrongly received and thus justifying the obligation to repay it (see, to that effect, judgments of 14 December 2000, *Emsland-Stärke*, C-110/99, EU:C:2000:695, paragraph 56; of 4 June 2009, *Pometon*, C-158/08, EU:C:2009:349, paragraph 28; of 13 December 2012, *FranceAgriMer*, C-670/11, EU:C:2012:807, paragraph 65; of 17 September 2014, *Cruz & Companhia*, C-341/13, EU:C:2014:2230, paragraph 45; and of 29 February 2024, *Eesti Vabariik (Põllumajanduse Registrite ja Informatsiooni Amet)*, C-437/22, EU:C:2024:176, paragraph 57).

47 Consequently, where the irregularities found result in the contracts under which European financing had to be allocated to an economic operator not being regarded as having been validly concluded for the purpose of obtaining the financing in question, an administrative measure must be applied, within the meaning of the first indent of Article 4(1) of Regulation No 2988/95, which requires reimbursement of the funds wrongly received (see, to that effect, judgment of 13 December 2012, *FranceAgriMer*, C-670/11, EU:C:2012:807, paragraph 67).

48 The Court has thus already accepted that an administrative measure consisting of recovering from an operator the advantage from which it had wrongly benefited may be adopted solely on the basis of Article 4 of Regulation No 2988/95.

49 In providing that 'acts which are established to have as their purpose the obtaining of an advantage contrary to the objectives of the [EU] law applicable in the case by artificially creating the conditions required for obtaining that advantage shall result, as the case shall be, either in failure to obtain the advantage or in its withdrawal', Article 4(3) of that regulation is directly applicable in its entirety, including therefore in the absence of rules giving specific expression to it.

50 Therefore, contrary to what the General Court held in paragraphs 62 to 64 of the judgment under appeal, the case-law referred to in paragraphs 46 and 47 of the present judgment can be applied in a situation in which public contracts are financed from funds granted by the European Union under the CARDS and TACIS programmes. In that regard, it is apparent from the case-law of the Court of Justice that it is the role of the European Union to finance, through its funds, only actions conducted in complete conformity, inter alia, with public procurement principles and rules (see, to that effect, judgments of 14 July 2016, *Wrocław – Miasto na prawach powiatu*, C-406/14, EU:C:2016:562, paragraph 43, and of 8 June 2023, *ANAS*, C-545/21, EU:C:2023:451, paragraph 31).

51 That interpretation contributes to the effective protection of the financial interests of the European Union and to ensuring the effectiveness of Regulation No 2988/95. It follows from its third and the fourth recitals that that regulation seeks to ensure the protection of the financial interests of the European Union 'in all areas' and to establish 'a common set of legal rules … for all areas covered by [EU] policies'. It also follows from Article 2(1) of that regulation that checks, as well as administrative measures and penalties, are to be introduced in so far as they are 'necessary to ensure the correct application of [EU] law', which undeniably includes the public procurement rules.

52 The objective of protecting the financial interests of the European Union, pursued by Regulation No 2988/95, confirms that Article 4(3) of that regulation must be applied, without its being necessary to adopt a sectoral rule, as otherwise the possibilities for action by the European Union in order to protect its financial interests would be paralysed.

53 By contrast, where the EU legislature has chosen to create, in another general rule or in a sectoral rule, an obligation to recover misused or wrongly obtained funds, it is that rule which then constitutes the relevant legal basis for the purposes of recovery of those funds (see, inter alia, judgments of 21 December 2011, *Chambre de commerce et d'industrie de l'Indre*, C-465/10, EU:C:2011:867, paragraph 33, and of 18 December 2014, *Somvao*, C-599/13, EU:C:2014:2462, paragraph 37).

54 In those circumstances, the fifth recital of Regulation No 2988/95 cannot be read as meaning that the European Union is obliged to adopt a sectoral rule in order to apply the administrative measures provided for in Article 4 of that regulation. Such an obligation applies only as regards the administrative penalties referred to in Article 5 of that regulation. However, the European Union retains the power to lay down rules relating to administrative measures in the sectoral rules which it adopts.

55 Moreover, although Article 5 of Regulation No 2988/95 is not apt to apply directly to an economic operator who has committed an irregularity, within the meaning of Article 1(2) of that regulation, that is precisely because the imposition of administrative penalties, authorised by Article 5, is, for its part, subject to the principle that offences and penalties must be defined by law (see, to that effect, judgments of 28 October 2010, *SGS Belgium and Others*, C-367/09, EU:C:2010:648, paragraphs 39, 43 and 61, and of 13 December 2012, *FranceAgriMer*, C-670/11, EU:C:2012:807, paragraphs 61 and 62).

56 The General Court therefore erred in law in holding, in paragraph 65 of the judgment under appeal, that Regulation No 2988/95 cannot, in itself, constitute the relevant legal basis for adopting administrative measures for the recovery of amounts wrongly received.

57 In the second place, the Commission challenges paragraph 67 of the judgment under appeal, in so far as the General Court held therein that Article 7 of that regulation does not specify the category of persons who must be the subject of an administrative measure.

58 In that regard, it follows from the second sentence of Article 7 of Regulation No 2988/95 that the administrative measures and penalties of the European Union 'may … apply to persons who have taken part in the irregularity and to those who are under a duty to take responsibility for the irregularity or to ensure that it is not committed'.

59 The option thus conferred by that provision contributes to achieving the objective of protecting the financial interests of the European Union, inter alia, where the beneficiary is a legal person which no longer exists or does not have sufficient resources to reimburse the sums at issue. That interpretation is justified, more specifically, in the light of the objective of effectively combating fraud, referred to in the fourth recital of Regulation No 2988/95 (judgment of 29 February 2024, *Eesti Vabariik (Põllumajanduse Registrite ja Informatsiooni Amet)*, C-437/22, EU:C:2024:176, paragraph 53).

60 In the present case, the Commission maintains that PB has taken part in irregularities, within the meaning of Article 1(2) of that regulation, inter alia, in the context of coordinating those irregularities and drafting emails or even having lunches with a member of the tender evaluation committee. Assuming that those facts are established, PB, in his capacity as director of the coordinating company, should not only have refrained from taking part in such irregularities, but also ensured that they were not committed. PB's actions were therefore covered by the provisions of the second sentence of Article 7 of that regulation.

61 It follows, still assuming that the facts are established, that the Commission was entitled to declare PB jointly and severally liable with the coordinating company for payment of the amounts wrongly received by that company under the two public contracts at issue, basing the decision at issue solely on Articles 4 and 7 of Regulation No 2988/95.

62 Furthermore, as the Commission has rightly argued, it follows from Article 322(1)(a) TFEU, that the 2002 Financial Regulation constitutes a general rule relating to the implementation of the budget and not a sectoral rule which should prevail over the general rule constituted by Regulation No 2988/95. It is therefore irrelevant that that financial regulation refers only to the contractor of the European Union.

63 That conclusion also applies to the 2002 Financial Regulation, as amended by Regulation No 1995/2006, which was applicable with regard to the part of the decision at issue ordering PB to reimburse the payments which the Commission considered to have been wrongly paid to the coordinating company, by application of the contract concluded in 2008 following the second procurement procedure.

64 Furthermore, in view of the transversal objective of protecting the European Union's financial interests pursued by Regulation No 2988/95, referred to in paragraph 51 above, the second paragraph of Article 103 of the 2002 Financial Regulation and the third paragraph of Article 103 of the 2002 Financial Regulation, as amended by Regulation No 1995/2006, must be interpreted in the light of Article 7 of Regulation No 2988/95.

65 It follows that the second paragraph of Article 103 of the 2002 Financial Regulation, read in conjunction with Article 1(2) and Articles 4 and 7 of Regulation No 2988/95, must be regarded as giving the EU institutions the power to take action, with a view to obtaining the repayment of sums wrongly paid, not only against persons linked to the contractor who took part, during the procedure for the award of a contract or its performance, in the commission of irregularities, but also against persons who are required to answer for those irregularities and against persons who were required to ensure that those irregularities were not committed.

66 In those circumstances, the General Court was wrong to hold, in paragraph 69 of the judgment under appeal, that the application of Articles 4 and 7 of that regulation together with Article 103 of the 2002 Financial Regulation did not make it possible for an administrative measure to be adopted with respect to PB.

67 The single ground of appeal raised by the Commission in support of its appeal must therefore be upheld in its entirety and, accordingly, the judgment under appeal must be set aside.

The action before the General Court

68 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the decision of the General Court is set aside, the Court of Justice may itself give final judgment in the matter, where the state of the proceedings so permits.

69 That is not the case here.

70 The Court of Justice does not have the necessary information to give final judgment in the action in so far as it seeks the annulment of the decision at issue.

71 In those circumstances, the state of the proceedings does not permit the Court of Justice to give final judgment in the matter. Consequently, the case must be referred back to the General Court in so far as it concerns the annulment of the decision at issue.

72 By contrast, point 2 of the operative part of the judgment under appeal, according to which the General Court dismissed PB's action as to the remainder and was not the subject of an appeal, has the force of *res judicata*, notwithstanding the fact that that judgment has been set aside in part (see, to that effect, judgment of 4 March 2021, *Commission* v *Fútbol Club Barcelona*, C-362/19 P, EU:C:2021:169, paragraphs 109 and 110).

Costs

73 Since the case is to be referred back to the General Court, the costs relating to the present appeal proceedings must be reserved.

On those grounds, the Court (Third Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union of 14 September 2022, *PB* v *Commission* (T-775/20, EU:T:2022:542);**

2. **Refers the case back to the General Court of the European Union in so far as it concerns the annulment of Commission Decision C(2020) 7151 final of 22 October 2020 concerning the application of an administrative measure against the director of the company [Confidential], withdrawing the amounts unduly received under the TACIS/2006/101-510 and CARDS/2008/166-429 contracts;**

3. **Reserves the costs.**

[Signatures]