Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

15 June 2017*

(Reference for a preliminary ruling — Protection of the European Union's financial interests — Regulation (EC, Euratom) No 2988/95 — Article 3(1) — Funding from the Cohesion Fund — Project for the development of a regional waste management system — Irregularities — Concept of 'multiannual programme' — Definitive termination of a multiannual programme — Limitation period)

In Case C-436/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 10 July 2015, received at the Court on 10 August 2015, in the proceedings

Lietuvos Respublikos aplinkos ministerijos Aplinkos projektų valdymo agentūra

v

'Alytaus regiono atliekų tvarkymo centras' UAB

third parties:

Lietuvos Respublikos finansų ministerija,

'Skirnuva' UAB,

'Parama' UAB,

'Alkesta' UAB,

'Dzūkijos statyba' UAB,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras (Rapporteur), J. Malenovský, M. Safjan and D. Šváby, Judges,

Advocate General: E. Sharpston,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 7 September 2016,

* Language of the case: Lithuanian

after considering the observations submitted on behalf of:

— the Lithuanian Government, by D. Stepanienė and D. Kriaučiūnas, acting as Agents,

— the Greek Government, by S. Papaioannou and S. Charitaki, acting as Agents,

— the European Commission, by J. Jokubauskaitė, D. Recchia and J. Baquero Cruz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 January 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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 (OJ 1995 L 312, p. 1).

2 The request has been made in proceedings between the Lietuvos Respublikos aplinkos ministerijos Aplinkos projektų valdymo agentūra (Environmental Projects Management Agency of the Lithuanian Ministry of the Environment) ('the Management Authority') and 'Alytaus regiono atliekų tvarkymo centras' UAB (Alytus Region waste management centre) ('the beneficiary undertaking') concerning the reimbursement by the latter of part of the funds which it received from the Cohesion Fund.

Legal context

Regulation No 2988/95

3 As stated in the third recital of Regulation No 2988/95:

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

4 Article 1 of Regulation No 2988/95 provides:

'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 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(1) of that regulation provides as follows:

'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).'

6 Article 4(1) of the regulation states:

'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,

…'

Legislation relating to the Cohesion Fund

Regulation (EC) No 1164/94

7 Article 1(1) of Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ 1994 L 130, p. 1), as amended by Council Regulation (EC) No 1264/1999 of 21 June 1999 (OJ 1999 L 161, p. 57), Council Regulation (EC) No 1265/1999 of 21 June 1999 (OJ 1999 L 161, p. 62) and the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33) ('Regulation No 1164/94'), created a Cohesion Fund, referred to in that regulation as the 'Fund'.

8 Article 1(3) of Regulation No 1164/94 provides:

'The Fund may contribute to the financing of:

— projects, or

— stages of a project which are technically and financially independent, or

— groups of projects linked to a visible strategy which form a coherent whole.'

9 Article 3(1) of Regulation No 1164/94 lists the 'eligible measures' under the Cohesion Fund as follows:

'The Fund may provide assistance for the following:

— environmental projects contributing to the achievement of the objectives of Article 130r of the Treaty [now Article 191 TFEU] …

…'

10 Under Article 4 of that regulation, the envisaged resources available for commitments for Lithuania were to be allocated for the 2004 to 2006 period.

11 Article 10 of Regulation No 1164/94 lays down rules for the approval of projects, as follows:

‘1. The projects to be financed by the Fund shall be adopted by the Commission in agreement with the beneficiary Member State.

…

3. Applications for assistance for projects under Article 3(1) shall be submitted by the beneficiary Member State. Projects, including groups of related projects, shall be of a sufficient scale to have a significant impact in the field of environmental protection …

4. Applications shall contain the following information: the body responsible for implementation …:

…

6. ... the Commission shall decide on the grant of assistance from the Fund provided that the requirements of this Article are fulfilled, as a general rule within three months of receipt of the application. Commission decisions approving projects, stages of projects or groups of related projects shall determine the amount of financial support and lay down a financing plan together with all the provisions and conditions necessary for the implementation of the projects.

7. The key details of the Commission’s decisions shall be published in the *Official Journal of the European Communities*.’

12 In Article 12 of Regulation No 1164/94, entitled ‘Financial checks’, paragraph 1 provides:

‘Without prejudice to the Commission’s responsibility for implementing the Community budget, Member States shall take responsibility in the first instance for the financial control of projects. To that end, the measures they take shall include:

…

(d) certifying that the declarations of expenditure presented to the Commission are accurate and guaranteeing that they result from accounting systems based on verifiable supporting documents;

(e) preventing and detecting irregularities, notifying these to the Commission, in accordance with the rules, and keeping the Commission informed of the progress of administrative and legal proceedings. In that context, the Member States and the Commission shall take the necessary steps to ensure that the information exchanged remains confidential;

(f) presenting to the Commission, when each project, step of project or group of projects is wound up, a declaration drawn up by a person or department having a function independent of the designated authority. This declaration shall summarise the conclusions of the checks carried out during previous years and shall assess the validity of the application for payment of the final balance and the legality and regularity of the expenditure covered by the final certificate. The Member States may attach their own opinion to this declaration if they consider it necessary;

(g) cooperating with the Commission to ensure that Community funds are used in accordance with the principle of sound financial management;

(h) recovering any amounts lost as a result of an irregularity detected and, where appropriate, charging interest on late payments.'

13 In Article 16a of Regulation No 1164/94, entitled 'Specific provisions following the accession to the European Union of a new Member State which has benefited from pre-accession aid under the Instrument for Structural Policies for Pre-Accession (ISPA)', paragraph 1 provides:

'Measures which, on the date of accession of … Lithuania … have been the subject of Commission decisions on assistance under [Council] Regulation (EC) No 1267/1999 [of 21 June 1999] establishing an Instrument for Structural Policies for Pre-accession [(OJ 1999 L 161, p. 73)] and the implementation of which has not been completed by that date shall be considered to have been approved by the Commission under this Regulation. Unless stated otherwise in paragraphs 2 to 5, the provisions governing the implementation of measures approved pursuant to this Regulation shall apply to these measures.'

14 The provisions for implementing Regulation No 1164/94 are set out in Annex II thereto, to which Article 15 of that regulation refers ('Annex II').

15 Article C of Annex II, which deals with budgetary commitments, provides:

'1. Budgetary commitments shall be made on the basis of the Commission decisions approving the measures concerned (project, stage of project, group of projects, study or technical support measure). Commitments shall be valid for a period determined by the nature of the measure and the specific conditions for its implementation.

…

4. The arrangements for commitments shall be specified in the Commission decisions approving the measures concerned.

…'

16 Article D of Annex II deals with the procedure for payments of financial assistance in the following terms:

'1. Payments of financial assistance shall be made in accordance with the corresponding budget commitments, to the authority or body designated for the purpose in the application submitted by the beneficiary Member State concerned. Payments may take the form of payments on account, interim payments or payments of the final balance. Interim payments and payments of the balance shall relate to expenditure actually paid out, which must be supported by receipted invoices or accounting documents of equivalent probative value.

2. Payments shall be made as follows:

…

(d) the final balance of Community assistance calculated on the basis of expenditure certified and actually paid shall be paid provided that:

— the project, stage of project, or group of projects has been carried out according to its objectives,

— the designated authority or body referred to in paragraph 1 submits an application for payment to the Commission within six months of the deadline for completion of the work and for expenditure laid down in the decision granting assistance to the project, stage of project or group of projects,

— the final report referred to in Article F(4) is submitted to the Commission,

— the Member State certifies to the Commission that the information given in the application for payment and in the report is correct,

— the Member State has sent the Commission the declaration referred to in Article 12(1),

— all the information and publicity measures drawn up by the Commission under Article 14(3) have been implemented.

3. If the final report referred to in paragraph 2 is not sent to the Commission within 18 months of the final date for completion of the works and payments as given in the decision granting assistance, that part of the assistance representing the remaining balance for the project shall be cancelled.

…

5. Payment shall be made to the authority or body designated by the Member State, as a general rule not later than two months after receipt of an admissible application for payment provided budget funds are available.

…

7. The Commission shall lay down common rules on the eligibility of expenditure.'

17 Article F(4) of Annex II provides:

'For each project, the authority or body designated for the purpose by the Member State shall submit progress reports to the Commission within three months of the end of each full year of implementation. A final report shall be submitted to the Commission within six months of completion of the project or stage of project.

…'

Regulation No 1267/1999

18 Article 1(1) of Regulation No 1267/1999 provides:

'The Instrument for Structural Policies for Pre-accession, hereinafter referred to as "ISPA" is hereby established.

ISPA shall provide assistance to contribute to the preparation for accession to the European Union of the following applicant countries: …, Lithuania, … hereinafter referred to as the "beneficiary countries", … concerning environment … in accordance with the provisions of this Regulation.'

19 Pursuant to Article 2(1) and (2) of Regulation No 1267/1999, the eligible measures under ISPA are defined as follows:

‘1. The Community assistance financed under ISPA shall include projects, stages of a project which are technically and financially independent, groups of projects or project schemes in the field of environment …, hereinafter referred to collectively as “measures”. …

2. The Community shall provide assistance under ISPA in the light of the objectives mentioned in Article 1 for the following:

(a) environmental measures enabling the beneficiary countries to comply with the requirements of Community environmental law and with the objectives of the Accession Partnerships;

…’

20 Article 3 of Regulation No 1267/1999 provides:

‘Community assistance under ISPA shall be granted during the period from 2000 to 2006.

…’

21 According to Article 7(1) of Regulation No 1267/1999, the Commission is to adopt decisions concerning the measures to be financed under ISPA.

22 In Article 8 of Regulation No 1267/1999, entitled ‘Commitments and payments’, paragraph 1 states:

‘The Commission shall implement expenditure under ISPA in accordance with the Financial Regulation applicable to the general budget of the European Communities on the basis of the financing memorandum to be drawn up between the Commission and the beneficiary country.

…’

Regulation (EC) No 1386/2002

23 In accordance with Article 1 of Commission Regulation (EC) No 1386/2002 of 29 July 2002 laying down detailed rules for the implementation of Regulation No 1164/94 as regards the management and control systems for assistance granted from the Cohesion Fund and the procedure for making financial corrections (OJ 2002 L 201, p. 5), Regulation No 1386/2002 covers eligible measures that fall within Article 3 of Regulation No 1164/94 and were first approved after 1 January 2000.

24 Article 8(2)(b)(i) of Regulation No 1386/2002 provides:

‘Before certifying any statement of expenditure, the paying authority shall satisfy itself that the following conditions are fulfilled:

…

(b) the statement of expenditure includes only expenditure:
(i) that has been actually effected within the eligibility period laid down in the granting Decision and can be supported by receipted invoices or accounting documents of equivalent probative value.’

Regulation (EC) No 16/2003

25 In accordance with Article 1 of Commission Regulation (EC) No 16/2003 of 6 January 2003 laying down special detailed rules for implementing Regulation No 1164/94 as regards eligibility of expenditure in the context of measures part-financed by the Cohesion Fund (OJ 2003 L 2, p. 7), Regulation No 16/2003 lays down common rules for determining the eligibility of expenditure under the measures provided for in Article 3 of Regulation (EC) No 1164/94 which may be part-financed by the Cohesion Fund.

26 Article 5(1) of Regulation No 16/2003 provides:

‘The expenditure to be taken into account for the payment of Community assistance must have actually been incurred during the period of eligibility as defined in the Commission decision, in accordance with Article 8(2)(b) of [Regulation No 1386/2002], and must be directly related to the project. The expenditure must relate to payments certified by the Member State and actually made by it or on its behalf or, in the case of concessions, by the concession-holder to which the body responsible for implementation has delegated implementation of the project, and supported by receipted invoices or accounting documents of equivalent probative value.

…’

27 Article 8 of Regulation No 16/2003, entitled ‘End of the eligibility period’, provides:

‘The final date for eligibility shall relate to payments made by the body responsible for implementation.

The final date of eligibility shall be fixed in the Commission decision.’

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

28 The Management Authority is, as the body responsible for implementation of projects that is provided for in Article 10(4) of Regulation No 1164/94, the Lithuanian public body designated as being responsible for detecting and eliminating irregularities related to the use of financial assistance from the European Union.

29 On 13 December 2001, the Commission adopted under ISPA, as provided for in Article 7(1) of Regulation No 1267/1999, a decision approving a project for ‘Establishment of a waste management system for the Alytus Region’ in Lithuania (‘the project at issue in the main proceedings’), a decision which was amended by its decision of 23 December 2002 (together ‘the initial decision’). On the same day, the Commission signed a financial memorandum for that project, as provided for in Article 8(1) of that regulation (‘the Financial Memorandum’). The Republic of Lithuania signed the Financial Memorandum on 14 March 2002. Under Article 2 of the Financial Memorandum, the end date for the project at issue in the main proceedings was 31 December 2004, while Article 4(3) of that memorandum set 31 December 2006 as the cut-off date for payments to be made by the body responsible for the implementation of the project. Within six months of the latter date, the Lithuanian authorities were to submit to the Commission the final audit report for the purpose of payment of the final balance of the financial support for the project at issue in the main proceedings.

30 The Management Authority was responsible for the development of the project at issue in the main proceedings and acted as contracting authority for the award of public procurement contracts relating to the project. On 10 November 2004, the Management Authority and the beneficiary undertaking signed the ISPA/Cohesion Programme Implementation Agreement, concerning the allocation of their

respective obligations and responsibilities in respect of the project. Between 22 April 2004 and 6 December 2006, the Management Authority, in its capacity as contracting authority, the beneficiary undertaking and certain other private contractors signed public procurement contracts.

31 On 27 December 2004, the Commission adopted a decision amending in particular the initial decision, in the following way: 'Article 2 [of the initial decision] is supplemented by the following paragraph: "5. Project-related expenditure shall be eligible until 31 December 2008". Article 2 of the [Financial Memorandum] is amended as follows: "End date: 31 December 2008."'.

32 On 17 December 2009, the Lithuanian national audit authority drew up the State audit report for the project at issue in the main proceedings.

33 On 28 March 2013, the Management Authority issued four 'conclusions' declaring some of the project's expenditure ineligible for financing due to a number of irregularities. In particular, it found that the beneficiary undertaking had failed to substantiate the acquisition of long-term and short-term assets. On 29 March 2013, the Management Authority adopted four decisions requiring the repayment of the funds declared ineligible.

34 The beneficiary undertaking brought an action before the first-instance court seeking the annulment of those decisions. That action was upheld by judgment of 14 May 2014, on the ground that the four-year limitation period for proceedings referred to in the first subparagraph of Article 3(1) of Regulation No 2988/95 applied. In particular, that judgment held that the limitation period began to run on 31 December 2008 — the end date of the project at issue in the main proceedings and the last day of eligibility of expenditure, in accordance with the Financial Memorandum — and that it expired on 31 December 2012.

35 On 28 May 2014, the Management Authority brought an appeal against that judgment before the referring court, contesting that the limitation period for proceedings had been exceeded.

36 The referring court issued an order inviting the parties to the main proceedings to provide information and data relating to the completion of the project at issue in the main proceedings and to submit their arguments on the application of Regulation No 2988/95. In particular, that court observed that there were matters to be clarified, including the specific operative event to which the Management Authority linked completion of the project at issue in the main proceedings, the amount of the balance remaining unpaid under that project and the date on which that amount was envisaged to be paid, as well as the meaning of the terms 'programme', 'measure' and 'project', which were used interchangeably in the procedural documents.

37 In response to that order, the Management Authority submitted to the referring court a letter from the Ministry of Finance dated 30 April 2015 which stated that the latter had submitted to the Commission on 31 May 2013 a request for final payment by the Cohesion Fund of the balance for the project at issue in the main proceedings in the amount of EUR 826069.28. In that request for payment the Commission had been informed that, as a result of the ongoing judicial proceedings related to that project, possibly ineligible expenditure in the amount of EUR 40276.31 had not been subtracted from that request. In addition, the Ministry of Finance had submitted to the Commission, by letter of 14 July 2014, a supplement to the audit report for the project at issue in the main proceedings of 17 December 2009 and also the winding-up declaration for that project, both dated 25 June 2014. Following the submission to the Commission of the request for final payment of the balance for the project at issue in the main proceedings, the Management Authority had carried out further investigations into the irregularities committed within the framework of that project and two actions related to that project were still pending before the courts as at 30 April 2015. The Ministry of Finance concluded in its letter that it was not in a position to know on what date the Commission was going to transfer the requested funds still outstanding or on what date it would acknowledge that the project at issue in the main proceedings had been completed.

38 By letter of 26 June 2015, the Commission closed the project at issue in the main proceedings. It calculated an amount of EUR 106225.67 as ineligible expenditure but considered that, given the fact that there was sufficient surplus expenditure, the irregularities had no impact on payment of the final balance. It concluded that, as far as the budget of the European Union was concerned, the examination of the cases of irregularity could be ended and that the balance of the Cohesion Fund commitments would be paid in full.

39 The referring court finds that the resolution of the dispute depends on clarification of the term 'multiannual programme' within the meaning of Article 3(1) of Regulation No 2988/95, having regard to the diversity of terms used in the EU legal instruments applicable to the case in the main proceedings, on the answer to the question whether the constituent elements of that concept are present in that case, and on the method for calculating the limitation period in the circumstances of that case.

40 In those circumstances, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) What constitutes a "multiannual programme" within the meaning of Article 3(1) of [Regulation No 2988/95]?

(2) Do projects such as … "Establishment of a waste management system for the Alytus Region", which was granted support by [the initial decision], correspond to the concept of a "multiannual programme" set out in Article 3(1) of [Regulation No 2988/95]?

(3) If the answer to the second question is "yes": what point in time should be regarded as constituting the start of the limitation period for proceedings under Article 3(1) of [Regulation No 2988/95]?'

The first and second questions

41 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether a project, such as the project at issue in the main proceedings, consisting in the creation of a waste management system in a specific region and the implementation of which was envisaged over several years and financed by EU resources, falls within the concept of a 'multiannual programme' within the meaning of the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95.

42 First of all, it should be borne in mind that Regulation No 2988/95, in accordance with Article 1 thereof, introduces general rules relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to EU law in order, as is clear from the third recital of the regulation, to counter acts detrimental to the financial interests of the European Union in all areas (judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 20 and the case-law cited).

43 In that context, the first and second subparagraphs of Article 3(1) of Regulation No 2988/95 establish — without prejudice to sectoral EU rules or national rules which may make provision for a shorter period — 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 the irregularity ceases (judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 21).

44 As regards multiannual programmes, the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95 states that 'the limitation period shall in any case run until the programme is definitively terminated'.

45 In the absence of a definition of 'multiannual programme' in Regulation No 2988/95, the scope of that concept must be determined by taking account of the meaning of each of its constituent terms, the context in which it is used and the objectives of the legislation which refers to it (see, by analogy, judgments of 6 October 2015, *Firma Ernst Kollmer Fleischimport und -export*, C-59/14, EU:C:2015:660, paragraph 22, and of 21 December 2016, *Interservice*, C-547/15, EU:C:2016:983, paragraph 20).

46 As regards, first, the terms used, it should be noted that the term 'programme' is broad in scope and that the terms 'programme' and 'project' may be used interchangeably for the purposes of Article 3(1) of Regulation No 2988/95.

47 Thus, the concept of a 'multiannual programme', within the meaning of the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95, is a transversal concept which can be found in all the fields covered by the policies of the European Union, in so far as the budgetary resources of the European Union are used.

48 It is therefore unnecessary to establish a close terminological relation between that concept and the concepts used in the various instruments establishing the various funds from which financial assistance is granted.

49 As regards, next, the context in which that concept is used and the objective of the legislation at issue, first, as was found in paragraph 42 above, Regulation No 2988/95 is intended to counter acts detrimental to the European Union's financial interests.

50 Secondly, the second sentence of the second subparagraph of Article 3(1) of that regulation forms part of a series of provisions, set out in Article 3(1), whose objective, as is clear from the first subparagraph of Article 3(1), is to lay down rules on the limitation period for proceedings that are applicable to the irregularities referred to in Article 1(1) of that regulation — which are those relating to a breach of a provision of EU law resulting from an act or omission by an economic operator which has, or would have had, the effect of prejudicing the general budget of the European Union or the budgets managed by it.

51 Having regard to all the foregoing considerations, the answer to the first and second questions is that a project, such as that at issue in the main proceedings, consisting in the creation of a waste management system in a specific region and the implementation of which was envisaged over several years and financed by EU resources, falls within the concept of a 'multiannual programme' within the meaning of the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95.

The third question

52 By its third question, the referring court asks, in essence, at what point the limitation period for proceedings, laid down in Article 3(1) of Regulation No 2988/95, starts to run in respect of irregularities committed in the context of a 'multiannual programme', such as the project at issue in the main proceedings.

53 It is clear from the wording of the first subparagraph of Article 3(1) of Regulation No 2988/95 that the limitation period for proceedings runs from the date on which the irregularity found was committed.

54 In accordance with the second subparagraph of Article 3(1) of Regulation No 2988/95, in the case of a repeated or continuous irregularity, the limitation period is to run from the day on which the irregularity ceases, while the concept of an 'irregularity ceasing', referred to in that provision, must be understood as denoting the day on which the last transaction forming part of a single repeated irregularity ceases (judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 66).

55 An irregularity must be regarded as 'continuous' where the omission occasioning the breach of the provision of EU law persists over time (see, to that effect, judgment of 2 December 2004, *José Martí Peix* v *Commission*, C-226/03 P, EU:C:2004:768, paragraph 17). An irregularity is 'repeated' within the meaning of that provision where it is committed by an operator who derives economic advantages from a body of similar transactions which infringe the same provision of EU law (see, to that effect, judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 49).

56 It is for the referring court to determine, in accordance with the rules of evidence of national law, provided that the effectiveness of EU law is not undermined, whether the features of a continuous or repeated irregularity, recalled in the preceding paragraph, are present.

57 It is clear from the request for a preliminary ruling that the referring court is also uncertain about the impact of the specific limitation rule for 'multiannual programmes', laid down in the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95, on the calculation of the limitation period in the main proceedings.

58 In the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it (judgment of 28 April 2016, *Oniors Bio*, C-233/15, EU:C:2016:305, paragraph 30 and the case-law cited).

59 Accordingly, the referring court should also be provided with guidance that may enable it to determine when 'the programme is definitively terminated', which is the point until which, for the purposes of the second sentence of the second subparagraph of Article 3 of Regulation No 2988/95, the limitation period is to run in the context of a 'multiannual programme'.

60 Regulation No 2988/95 does not lay down a specific time of general application for when 'the programme is definitively terminated' since, as noted, in essence, by the Advocate General in point 105 of her Opinion, that moment will necessarily vary according to the various stages and processes envisaged for the completion of each multiannual programme that is implemented.

61 Determining when 'the programme is definitively terminated' for the purposes of applying the specific limitation rule for 'multiannual programmes' which is laid down in the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95 thus depends on the rules governing each multiannual programme.

62 It should also be pointed out that, for the purpose of determining when 'the programme is definitively terminated', within the meaning of the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95, account should be taken of the objective of the limitation period referred to in that provision. The limitation period provided for in that provision makes it possible, on the one hand, to ensure that, as long as a programme is not definitively terminated, the competent authority is still able to pursue irregularities committed in connection with the implementation of that programme, in order to facilitate protection of the European Union's financial interests (see, to that effect, judgment of 6 October 2015, *Firma Ernst Kollmer Fleischimport und -export*, C-59/14, EU:C:2015:660, paragraph 26.) On the other hand, it seeks to ensure legal certainty for economic

operators. Those operators must be in a position to determine which among their transactions are definitive and which may still be the subject of legal proceedings (judgment of 11 June 2015, *Pfeifer & Langen*, C-52/14, EU:C:2015:381, paragraph 24 and the case-law cited).

63 In view of that dual objective, in order to determine the date when 'the programme is definitively terminated', until which time the limitation period is to run for the purposes of the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95, account should be taken of the end date of the 'multiannual programme' concerned.

64 In the case of a project such as the project at issue in the main proceedings, it follows from Article 10(6) of Regulation No 1164/94 and from the second indent of Article D(2)(d) of Annex II that the Commission decision approving such a project and granting assistance indicates the deadline for completion of the work and for the making of payments in aid of the project.

65 In that regard, it is apparent from Article D(1) and (2)(d) of Annex II, Article 8(2)(b)(i) of Regulation No 1386/2002 and Articles 5(1) and 8 of Regulation No 16/2003 that the same Commission decision fixes the final date for eligibility of expenditure of the project in question, which relates to payments made by the body responsible for its implementation.

66 It follows that, after the deadline set by the Commission for the completion of the work and for the making of the payments of the eligible expenditure related thereto, which are referred to in paragraphs 64 and 65 above, such a project must be regarded as being definitively terminated, within the meaning of the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95, without prejudice to any extension, by a new decision of the Commission to that effect.

67 In the present case, it is apparent from paragraph 31 above that, by its decision of 27 December 2004, the Commission indicated 31 December 2008 as being both the end date of the project at issue in the main proceedings and as the final date for eligibility of the expenditure relating to it. It follows that the project at issue in the main proceedings must be regarded as definitively terminated, within the meaning of the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95, on 31 December 2008.

68 In that regard, it must be made clear that the fact that 'the programme is definitively terminated' within the meaning of the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95 does not necessarily entail the expiry of the limitation period in respect of all possible irregularities committed during the implementation of that programme. That is the case only with regard to irregularities which have ended more than four years before 'the programme is definitively terminated'— irregularities which, in the absence of an interruption of the limitation period on one of the grounds set out in the third subparagraph of Article 3(1) of Regulation No 2988/95, will be immediately time-barred once that termination has taken place.

69 In other words, as the Commission states in its observations, the limitation period applicable to 'multiannual programmes' which is laid down in the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95 enables the limitation period only to be extended and not shortened.

70 In the light of the foregoing, the answer to the third question is that:

— Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the limitation period for an irregularity committed in the context of a 'multiannual programme', such as the project at issue in the main proceedings, runs from the date on which the irregularity in question was committed, in accordance with the first subparagraph of Article 3(1) of Regulation No 2988/95; if the

irregularity is 'continuous or repeated', the limitation period runs from the day on which the irregularity ceases, in accordance with the second subparagraph of Article 3(1) of Regulation No 2988/95.

— In addition, a 'multiannual programme' is regarded as 'definitively terminated', within the meaning of the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95, on the end date provided for in respect of that programme, in accordance with the rules which govern it. In particular, a multiannual programme governed by Regulation No 1164/94 must be regarded as being 'definitively terminated', within the meaning of that provision, on the date indicated in the Commission decision approving that project as the deadline for completion of the work and for the making of the payments of the eligible expenditure related thereto, without prejudice to any extension, by a new decision of the Commission to that effect.

Costs

71 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Third Chamber) hereby rules:

1. **A project, such as that at issue in the main proceedings, consisting in the creation of a waste management system in a specific region and the implementation of which was envisaged over several years and financed by resources of the European Union, falls within the concept of a 'multiannual programme' within the meaning of the second sentence of the second 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.**

2. **Article 3(1) of Regulation No 2988/95 must be interpreted as meaning that the limitation period for an irregularity committed in the context of a 'multiannual programme', such as the project at issue in the main proceedings, runs from the date on which the irregularity in question was committed, in accordance with the first subparagraph of Article 3(1) of Regulation No 2988/95; if the irregularity is 'continuous or repeated', the limitation period runs from the day on which the irregularity ceases, in accordance with the second subparagraph of Article 3(1) of Regulation No 2988/95.**

   In addition, a 'multiannual programme' is regarded as 'definitively terminated', within the meaning of the second sentence of the second subparagraph of Article 3(1) of Regulation No 2988/95, on the end date provided for in respect of that programme, in accordance with the rules which govern it. In particular, a multiannual programme governed by Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund, as amended by Council Regulation (EC) No 1264/1999 of 21 June 1999, Council Regulation (EC) No 1265/1999 of 21 June 1999 and the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, must be regarded as being 'definitively terminated', within the meaning of that provision, on the date indicated in the European Commission decision approving that project as the deadline for completion of the work and for the making of the payments of the eligible expenditure related thereto, without prejudice to any extension, by a new decision of the Commission to that effect.

[Signatures]