JUDGMENT OF THE COURT (Fourth Chamber)

5 May 2011 *

In Joined Cases C-201/10 and C-202/10,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg (Germany), made by decisions of 12 February 2010, received at the Court on 26 April 2010, in the proceedings

Ze Fu Fleischhandel GmbH (C-201/10),

Vion Trading GmbH (C-202/10),

v

Hauptzollamt Hamburg-Jonas,

* Language of the case: German.

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, K. Schiemann, L. Bay Larsen, C. Toader (Rapporteur) and A. Prechal, Judges,

Advocate General: E. Sharpston,
Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 16 February 2011,

after considering the observations submitted on behalf of:

— Ze Fu Fleischhandel GmbH, by D. Ehle, Rechtsanwalt,

— Vion Trading GmbH, by K. Landry and G. Schwendinger, Rechtsanwälte,

— the European Commission, by G. von Rintelen and M. Vollkommer, acting as Agents,

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

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Article 3(1) and (3) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1) and of the principles of proportionality and legal certainty.

2 The references have been made in the course of proceedings between Ze Fu Fleischhandel GmbH and Vion Trading GmbH ('the applicants in the main proceedings'), on the one hand, and Hauptzollamt Hamburg-Jonas (Principal Customs Office, Hamburg-Jonas; 'the Hauptzollamt'), on the other, regarding the repayment of export refunds.

Legal context

European Union law

3 According to the third recital in the preamble to Regulation No 2988/95, 'acts detrimental to the Communities' financial interests must... be countered in all areas'.

4 The fifth recital in the preamble to that regulation states:

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

5 Article 1 of the 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.'

6 Article 3(1) and (3) of the regulation 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. …

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.

…

3. Member States shall retain the possibility of applying a period which is longer than that provided for in [paragraph] 1 …'

7 Article 4(1) and (4) of the regulation states:

'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,

…

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

National law

8 According to the information provided by the Finanzgericht Hamburg (Finance Court, Hamburg) (Germany), at the material time there was no specific provision in Germany on limitation periods applicable to administrative proceedings concerning wrongly granted advantages. However, both the German administrative authorities and the German courts applied 'by analogy' the general 30-year limitation period, as laid down in Paragraph 195 of the German Civil Code (Bürgerliches Gesetzbuch; 'the BGB'). Since 2002, that general limitation period has, however, been reduced to three years in principle.

The disputes in the main proceedings and the references for a preliminary ruling in Joined Cases C-278/07 to C-280/07

9 In 1993 the applicants in the main proceedings arranged for a quantity of beef to be cleared for export to Jordan and, on their application, received export refund advances for this. Following inspections carried out at the beginning of 1998, it was discovered that the cargo at issue had in fact been transported to Iraq under transit or re-export procedures.

10 Accordingly, the Hauptzollamt demanded by decisions of 13 October 1999 that the export refunds at issue be repaid.

11 The applicants in the main proceedings and Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb GmbH & Co then challenged those decisions before the Finanzgericht Hamburg. In its judgment of 21 April 2005, that court upheld those actions on the ground that the limitation rule, as set out in the first subparagraph of Article 3(1) of Regulation No 2988/95, precluded the repayment of the sums in question because repayment had been claimed more than four years after the export transactions at issue.

12 The Hauptzollamt appealed to the Bundesfinanzhof (Federal Finance Court) (Germany) on a point of law against the decisions of the Finanzgericht.

13 Noting, inter alia, that the alleged irregularities concerned a period prior to the adoption of Regulation No 2988/95, the Bundesfinanzhof decided to stay the proceedings and to refer to the Court for a preliminary ruling the following questions, which were drafted in identical terms in the three cases C-278/07, C-279/07 and C-280/07:

‘1. Must the limitation period prescribed in the first sentence of the first subparagraph of Article 3(1) of... Regulation... No 2988/95... be applied even if an irregularity was committed or ceased before Regulation No 2988/95 entered into force?

2. Is the limitation period prescribed in that provision applicable in general to administrative measures such as the recovery of export refunds granted as a result of irregularities?

If the answers to those questions are in the affirmative:

3. May a longer period pursuant to Article 3(3) of Regulation... No 2988/95 be applied by a Member State even if such a longer period was already provided for in the law of the Member State before the abovementioned regulation was adopted? May such a longer period be applied even if it was not prescribed in a specific provision for the recovery of export refunds or for administrative measures in general, but resulted from a general rule of the Member State concerned covering all limitation cases not specifically regulated ("catch-all" provision)?'

14 Those orders for reference gave rise to the judgment of 29 January 2009 in Joined Cases C-278/07 to C-280/07 *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others* [2009] ECR I-457, in which the Court ruled:

'1. The limitation period laid down in the first subparagraph of Article 3(1) of … Regulation … No 2988/95 … is applicable to administrative measures such as the recovery of export refunds wrongly received by the exporter as a result of irregularities it committed.

2. In situations such as those at issue in the main proceedings, the limitation period provided for in the first subparagraph of Article 3(1) of Regulation No 2988/95:

— applies to irregularities committed before the entry into force of that regulation;

— starts to run from the date on which the irregularity at issue was committed.

3. The longer limitation periods which Member States retain the possibility of applying under Article 3(3) of Regulation No 2988/95 may result from general provisions of law predating the adoption of that regulation.'

Developments in the main proceedings and the questions referred for a preliminary ruling in the present cases

15 By judgment of 7 July 2009, the Bundesfinanzhof set aside the judgment of the Finanzgericht Hamburg of 21 April 2005 and referred the cases back to it, taking the view that the claims for repayment were not time-barred since Paragraph 195 of the BGB could, and was to, apply 'by analogy' until the end of 2001. The Bundesfinanzhof rejected the line of argument put forward by the applicants in the main proceedings that, if a limitation period had to be applied 'by analogy', that should have been the 10-year period applicable in tax matters, and not the 30-year period provided for by the BGB.

16 The Finanzgericht Hamburg states as follows in relation to the Bundesfinanzhof's judgment:

'The Bundesfinanzhof took the view that Paragraph 195 of the BGB in the version applicable up to the end of 2001 ("the old version of Paragraph 195 of the BGB") was to apply by analogy. It left open the question whether it would be incompatible with the principle of legal certainty to demand repayment of an export refund after a period of almost 30 years since its grant. The Bundesfinanzhof observed that, if that were the case, it could exercise in the manner prescribed by constitutional law or Community law the judicial power available to it in cases of necessity and reduce an unreasonably long period under national law to the appropriate length. The Bundesfinanzhof

considered it unnecessary to consider and decide conclusively whether, in the exercise of such a judicial power of necessity, the limitation period laid down by the old version of Paragraph 195 of the BGB should be reduced or, at least, whether, when applying that provision by analogy, a shorter limitation period should, for the sake of legal certainty and stability, be set for a claim for the repayment of an export refund wrongly granted as a result of an irregularity. Such a limitation period could not in any case be so short that the defendant's claim would have been time-barred when the disputed decision was adopted.'

17 The Finanzgericht Hamburg, concurring in this respect with the view expressed by Advocate General Sharpston in her Opinion in *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, considers, first, that it is incompatible with the principle of legal certainty to apply 'by analogy' a limitation rule that is derived from the BGB to claims for the repayment of export refunds and, secondly, that application of a 30-year limitation period to proceedings of that type is contrary to the principle of proportionality since such periods are not reasonable.

18 In particular, the Finanzgericht Hamburg does not share the Bundesfinanzhof's interpretation of the judgment which, following the latter's reference, the Court delivered in *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*. It states that the Bundesfinanzhof inferred from that judgment that, in maintaining an 'eloquent silence' as to whether application 'by analogy' of a rule of civil law to proceedings concerning repayment of wrongly received refunds falls within the scope of Article 3(3) of Regulation No 2988/95, the Court accepted such application in principle and equally had no objection in light of the principles of legal certainty and proportionality to a 30-year limitation rule being applied in that way. The Finanzgericht, however, is of the view

that the Court had no cause to examine or address those issues in its preliminary ruling since the Bundesfinanzhof had asked it no clearly defined question in that regard.

19 The Finanzgericht Hamburg also states as follows:

'In the judgment of 7 July 2009 …, the Bundesfinanzhof found that it had a power in cases of necessity said to entitle it, like a legislature, as it were, to reduce the 30-year limitation period to an appropriate period by way of judicial development of the law. The exact duration of the limitation period applicable in Germany under the old version of Paragraph 195 of the BGB applied by analogy is not known at present. It is not possible to establish or to foresee whether and, if so, to what extent the Bundesfinanzhof will make use of such a power of necessity in the future. That case-law shows only that the limitation period under the old version of Paragraph 195 of the BGB applied by analogy is at least six and at the very most 30 years. Somewhere within this range of 24 years, according to that case-law, is the limitation period in force in Germany under the old version of Paragraph 195 of the BGB as applied by analogy and, as the case may be, amended by way of judicial development of the law.'

20 It was in those circumstances that the Finanzgericht Hamburg decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is the application by analogy of the limitation rule in Paragraph 195 of the BGB, in the version in force until the end of 2001, to claims for the recovery of wrongly granted export refunds incompatible with the Community-law principle of legal certainty?

2. Is the application of the 30-year limitation period in Paragraph 195 of the BGB in relation to the recovery of wrongly granted export refunds incompatible with the Community-law principle of proportionality?

3. If the reply to the second question is in the affirmative: is the application of a longer national limitation period within the meaning of Article 3(3) of Regulation … No 2988/95, which is laid down in a particular case by way of judicial development of the law pursuant to a power considered to be available to the court in the event of necessity, incompatible with the Community-law principle of legal certainty?'

Consideration of the questions referred

Question 1

21 By its first question, the referring court asks, in essence, whether the principle of legal certainty precludes, in the context of the protection, as defined by Regulation No 2988/95, of the European Union's financial interests, a 'longer' national limitation period, within the meaning of Article 3(3) of that regulation, from arising from application 'by analogy' of a limitation period that results from a general provision of national law to repayment of a wrongly granted export refund.

22 First of all, it must be stated, as the referring court has observed, that in the third question referred for a preliminary ruling in Joined Cases C-278/07 to C-280/07 the Court was asked, in essence, whether a 'longer' national limitation period within the meaning of Article 3(3) of Regulation No 2988/95 could result from a general provision of law predating that regulation. The Court was not, however, expressly asked about the subject of the present question referred to it, which concerns the manner in which such a provision is applied, in this instance the application — determined not by the national legislature but by case-law — of a general provision of law 'by analogy' to the specific area of proceedings relating to the repayment of export refunds.

23 In situations such as those at issue in the main proceedings, in which the irregularities were allegedly committed by the operators in 1993 when a national rule provided for a 30-year limitation period, an action by the national authorities for recovery of the sums wrongly received as a result of such irregularities was liable, in the absence of a suspensory act, to be time-barred in the course of 1997 pursuant to the four-year limitation rule provided for in the first subparagraph of Article 3(1) of Regulation No 2988/95, provided, however, that the Member State in which the irregularities were committed did not make use of the possibility offered to it under Article 3(3) of that regulation (see *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, paragraphs 36 and 38).

24 It is true that, by adopting Regulation No 2988/95, and in particular the first subparagraph of Article 3(1) thereof, the European Union legislature intended to establish a general limitation rule which was applicable in the area and 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 (*Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, paragraph 27).

25 However, since the European Union legislature expressly provided that the Member States may apply limitation periods which are longer than that minimum period of four years, it is clear that it did not intend to standardise the periods applicable in the area and that, consequently, the entry into force of Regulation No 2988/95 cannot have had the effect of compelling the Member States to reduce to four years the limitation periods which, in the absence of rules of European Union law previously in the area, they applied in the past.

26 In the context of the possibility provided for in Article 3(3) of Regulation No 2988/95, Member States retain wide discretion in fixing longer limitation periods which they intend to apply in cases involving an irregularity that is detrimental to the European Union's financial interests (Case C-131/10 *Corman* [2010] ECR I-14199, paragraph 54).

27 Regulation No 2988/95 does not provide for any information or notification process relating to the use made by Member States of their possibility of providing for longer limitation periods, in accordance with Article 3(3) thereof. Thus, no form of monitoring has been provided for at European Union level as regards either the longer limitation periods applied by Member States under that provision or the sectors in which Member States have decided to apply those periods (*Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, paragraph 45, and *Corman*, paragraph 55).

28 In the cases in the main proceedings, as the referring court itself indicates, German courts continued after the entry into force of Regulation No 2988/95 to apply the 30-year limitation period resulting from Paragraph 195 of the BGB to actions for the recovery of refunds wrongly received by operators.

29 In replying to the third question referred for a preliminary ruling by the Bundesfinanzhof in Joined Cases C-278/07 to C-280/07 that the longer limitation periods which Member States retain the possibility of applying under Article 3(3) of Regulation No 2988/95 may result from general provisions of law predating the adoption of that regulation, the Court implicitly but necessarily confirmed to the Bundesfinanzhof that Member States can apply such longer periods by means of application determined by case-law of a provision of general purport laying down a limitation period of more than four years to the recovery of wrongly received advantages, a practice which the German courts refer to as application 'by analogy'.

30 Such a practice is, in principle, permissible in the light of European Union law and, in particular, Article 3(3) of Regulation No 2988/95 (see, to this effect, *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, paragraph 47). However, that practice must still comply with the general principles of European Union law, which include the principle of legal certainty (see, to this effect, Case C-367/09 *SGS Belgium and Others* [2010] ECR I-10761, paragraph 40).

31 On this point, the applicants in the main proceedings submit in particular that, after the entry into force in German law of the general and directly effective limitation rule laid down in the first subparagraph of Article 3(1) of Regulation No 2988/95, which remedied the absence of a specific rule on the matter in German law, the national authorities and courts no longer had any reason and were therefore no longer able, in the absence of a national legislative provision instructing them to do so, to continue to apply 'by analogy' a general limitation rule resulting from the BGB to proceedings in respect of an 'irregularity' within the meaning of that regulation.

32 It is to be observed that, in the context of proceedings in respect of an irregularity that is detrimental to the European Union's financial interests and leads to an administrative measure such as an obligation for the operator to repay refunds which have been wrongly received, the principle of legal certainty requires in particular that the position of that operator, having regard to his rights and obligations vis-à-vis the national authority, not be open to challenge indefinitely (see, by analogy, Case C-472/08 *Alstom Power Hydro* [2010] ECR I-623, paragraph 16); consequently, a limitation period must be applicable to proceedings in respect of such an irregularity and, in order to fulfil its function of ensuring legal certainty, that period must be fixed in advance (see Case 41/69 *ACF Chemiefarma* v *Commission* [1970] ECR 661, paragraph 19, and Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraph 39). Therefore, any application 'by analogy' of a limitation period must be sufficiently foreseeable for a person (see, by analogy, Case C-445/06 *Danske Slagterier* [2009] ECR I-2119, paragraph 34).

33 It is admittedly easier for such an operator to determine the limitation period applicable to proceedings in respect of an irregularity which he has committed when that period and its application to the field within which the irregularity falls are established by the national legislature in a provision specifically applicable to the field concerned. Nevertheless, where, as seems to be the position in the cases in the main proceedings, the national legislature did not adopt a specific provision applicable to a field such as that of repayment of export refunds that have been wrongly received to the detriment of the European Union budget, the principle of legal certainty does not preclude, in principle, the administrative and judicial authorities from continuing, in accordance with their past judicially determined practice known to such an operator, to apply 'by analogy' a limitation period of a general nature that is laid down in a provision of civil law and exceeds the four-year period provided for in the first subparagraph of Article 3(1) of Regulation No 2988/95.

34 However, such application complies with the principle of legal certainty only if it results from a judicially determined practice that was sufficiently foreseeable. In this regard, it need only be noted that it is not for the Court to establish, in the present proceedings for a preliminary ruling, whether such a judicially determined practice existed.

35 It follows from the foregoing that, in circumstances such as those at issue in the cases in the main proceedings, the principle of legal certainty does not preclude in principle, in the context of the protection — as defined by Regulation No 2988/95 — of the European Union's financial interests and pursuant to Article 3(3) of that regulation, the national authorities and courts of a Member State from applying 'by analogy' to proceedings relating to repayment of a wrongly granted export refund a limitation period derived from a general provision of national law, provided, however, that such application resulting from a judicially determined practice was sufficiently foreseeable, a matter which it is for the referring court to establish.

Question 2

36 By its second question, the referring court asks, in essence, whether the principle of proportionality precludes, in the context of exercise by the Member States of the power which they are given by Article 3(3) of Regulation No 2988/95, application of a 30-year limitation period to proceedings relating to repayment of wrongly received refunds.

37 As is apparent from paragraphs 26 and 30 of the present judgment, whilst, in the context of the possibility provided for in Article 3(3) of Regulation No 2988/95, Member

States retain wide discretion in fixing longer limitation periods which they intend to apply in cases involving an irregularity that is detrimental to the European Union's financial interests, they must, however, comply with the general principles of European Union law, in particular the principle of proportionality.

38 Thus, a 'longer' national limitation period within the meaning of Article 3(3) of Regulation No 2988/95 must, inter alia, not go clearly beyond what is necessary to achieve the objective of protecting the European Union's financial interests (see, to this effect, Case C-221/09 *AJD Tuna* [2011] ECR I-1655, paragraph 79 and the case-law cited).

39 It is to be observed that the longer limitation periods which the Member States are thus prompted to apply on the basis of Article 3(3) of Regulation No 2988/95 vary greatly from one Member State to another, this resulting largely from the legal traditions of those States and the perception in their respective legal systems of what length of time is necessary and sufficient for a diligent public service to bring proceedings in respect of irregularities committed to the detriment of the public authorities and national budgets.

40 Furthermore, the fact that, in the context of the possibility provided for by that provision, one Member State imposes shorter limitation periods than another Member State does not mean that the latter's limitation periods are disproportionate (see, by analogy, Case C-141/07 *Commission* v *Germany* [2008] ECR I-6935, paragraph 51, and Case C-562/08 *Müller Fleisch* [2010] ECR I-1391, paragraph 45).

41 It is also to be observed that it is possible that a 30-year limitation rule arising from a provision of civil law may appear necessary and proportionate, in particular in the context of disputes between private persons, in light of the objective pursued by that rule and defined by the national legislature.

42 The assessment of such a limitation rule in light of the principle of proportionality is different, however, when that rule is used by 'analogy' in order to pursue an objective which differs from that which pertained on its adoption by the national legislature, in this instance, in the cases in the main proceedings, in order to pursue an objective defined by the European Union legislature.

43 In this regard, in light of the objective of protecting the European Union's financial interests, an objective for which the European Union legislature considered that a limitation period of four, or indeed even three, years was already in itself sufficient to enable the national authorities to bring proceedings in respect of an irregularity detrimental to those financial interests and capable of leading to the adoption of a measure such as recovery of a wrongly received advantage, it is apparent that to grant those authorities a period of 30 years goes beyond what is necessary for a diligent public service.

44 That service owes a general obligation of diligence when verifying the legality of payments made by it that are borne by the European Union budget, given that the Member States must observe the obligation of general diligence under Article 4(3) EU, an obligation which entails that they must take steps to rectify irregularities promptly (see, by analogy, Case C-277/98 *France* v *Commission* [2001] ECR I-8453, paragraph 40).

45 In those circumstances, acceptance that it is possible for Member States to grant the public service a period within which to act as long as that conferred by a 30-year limitation rule could, in a certain way, encourage inertia on the part of the national authorities in bringing proceedings in respect of 'irregularities' within the meaning of Article 1 of Regulation No 2988/95, 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.

46 In any event, if a four-year limitation period such as that provided for in the first subparagraph of Article 3(1) of Regulation No 2988/95 were to appear, from the national authorities' point of view, too short to enable them to bring proceedings in respect of irregularities displaying a certain complexity, it would always be open to the national legislature, within the framework of the possibility provided for in Article 3(3), to adopt a longer limitation rule suited to irregularities of that type.

47 In light of the foregoing, the answer to the second question is that, in circumstances such as those at issue in the cases in the main proceedings, the principle of proportionality precludes, in the context of exercise by the Member States of the power which they are given by Article 3(3) of Regulation No 2988/95, application of a 30-year limitation period to proceedings relating to repayment of wrongly received refunds.

Question 3

48 By its third question, the referring court asks in essence, should the application of a 30-year limitation rule to proceedings in respect of an 'irregularity' within the meaning

of Article 1 of Regulation No 2988/95 prove disproportionate in light of the objective of protecting the European Union's financial interests, whether the principle of legal certainty precludes a national court from being able to decide to reduce the length of such a 30-year limitation rule, in the present instance to 10 years, rather than apply the four-year limitation rule provided for in Article 3(1) of Regulation No 2988/95.

49 It is possible that, in a situation where no other applicable limitation rule is available to the national courts, they may seek to interpret a 30-year limitation rule so that it is reduced in order to satisfy the requirements of European Union law.

50 Nevertheless, in a situation such as that at issue in the cases in the main proceedings falling within the scope of Regulation No 2988/95, it must be stated that, in any event, in the absence of legally applicable national legislation laying down a longer limitation period, Article 3(1) of Regulation No 2988/95 provides for a four-year limitation period and remains directly applicable in the Member States, including in the field of export refunds on agricultural products (see Case C-278/02 *Handlbauer* [2004] ECR I-6171, paragraph 35).

51 Thus, in circumstances where application of a limitation period under the general law to proceedings relating to repayment of refunds wrongly received before the entry into force of Regulation No 2988/95 proves disproportionate in light of the objective of protecting the European Union's financial interests, that rule must be disregarded and, as is apparent from *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, paragraph 34, the general limitation period provided for in the first subparagraph of Article 3(1) of Regulation No 2988/95 is applicable inasmuch as it also

covers irregularities committed before the entry into force of that regulation and starts to run from the date on which the irregularity at issue was committed.

52 In such a situation, if a national court were to be allowed, in the context of Regulation No 2988/95, to reduce a given limitation period applied hitherto down to a level capable of complying with the principle of proportionality when a limitation rule derived from European Union law and directly applicable in its legal system is in any event available to it, this would run specifically counter to the principles that, first, in order to fulfil its function of ensuring legal certainty, a limitation period must be fixed in advance (see *ACF Chemiefarma* v *Commission*, paragraph 19, and *Marks & Spencer*, paragraph 39) and, secondly, any application 'by analogy' of a limitation period must be sufficiently foreseeable for a person (see, by analogy, *Danske Slagterier*, paragraph 34).

53 Nevertheless, in such a situation, as has been pointed out in paragraph 46 of the present judgment, it is always open to the national legislature, within the framework of the possibility provided for in Article 3(3) of Regulation No 2988/95, to adopt a longer limitation rule.

54 In light of the foregoing, the answer to the third question is that, in circumstances such as those at issue in the cases in the main proceedings, the principle of legal certainty precludes a 'longer' limitation period within the meaning of Article 3(3) of Regulation No 2988/95 from resulting from a limitation period under the general law that is reduced by case-law so that, when applied, it complies with the principle of proportionality, since, in any event, the four-year limitation period provided for in the first subparagraph of Article 3(1) of Regulation No 2988/95 can be applied in such circumstances.

Costs

55 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 (Fourth Chamber) hereby rules:

1. **In circumstances such as those at issue in the cases in the main proceedings, the principle of legal certainty does not preclude in principle, in the context of the protection — as defined by Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests — of the European Union's financial interests and pursuant to Article 3(3) of that regulation, the national authorities and courts of a Member State from applying 'by analogy' to proceedings relating to repayment of a wrongly granted export refund a limitation period derived from a general provision of national law, provided, however, that such application resulting from a judicially determined practice was sufficiently foreseeable, a matter which it is for the referring court to establish.**

2. **In circumstances such as those at issue in the cases in the main proceedings, the principle of proportionality precludes, in the context of exercise by the Member States of the power which they are given by Article 3(3) of Regulation No 2988/95, application of a 30-year limitation period to proceedings relating to repayment of wrongly received refunds.**

3. In circumstances such as those at issue in the cases in the main proceedings, the principle of legal certainty precludes a 'longer' limitation period within the meaning of Article 3(3) of Regulation No 2988/95 from resulting from a limitation period under the general law that is reduced by case-law so that, when applied, it complies with the principle of proportionality, since, in any event, the four-year limitation period provided for in the first subparagraph of Article 3(1) of Regulation No 2988/95 can be applied in such circumstances.

[Signatures]