

**Case C-734/22**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

29 November 2022

**Referring court:**

Oberster Gerichtshof (Supreme Court, Austria)

**Date of the decision to refer:**

17 October 2022

**Appellant on a point of law:**

Republic of Austria, represented by the Finanzprokurator  
(Representative of the Federal Finance Ministry)

**Respondent to the appeal on a point of law:**

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**Subject matter of the main proceedings**

Area-related funding for environmentally friendly forms of management awarded to funding applicants under private law contracts for multiannual commitments – On-the-spot checks – Failure to comply with the conditions of funding – Expiry of the limitation period for recovery claims – Interruption of the limitation periods by means of extrajudicial demands for payment?

**Subject matter and legal basis of the request**

Interpretation of Article 3 of Regulation (EC, Euratom) No 2988/95, Article 267 TFEU

**Questions referred**

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

interests (OJ 1995 L 312, p. 1) directly applicable to claims by which the Republic of Austria seeks to recover aid it granted under a contract to funding applicants within the framework of an agri-environmental aid programme under Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1) by means of private-law remedies because the recipient infringed contractual obligations?

2. If the answer to the first question is in the affirmative, must the third subparagraph of Article 3(1) of the regulation referred to in Question 1 be interpreted as meaning that there is an interruption of the limitation period by the investigation or legal proceedings also when the party who issued the aid, after making its first extrajudicial claim for repayment, asks the recipient of the aid again, if need be several times, to make the repayment, and issues an extrajudicial demand for payment instead of asserting its repayment claim in court?

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

#### **Provisions of European Union law relied on**

Articles 1 and 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests

#### **Provisions of national legislation**

Paragraphs 1336, 1478 and 1489 of the Allgemeines Bürgerliches Gesetzbuch (General Civil Code, ABGB)

Sonderrichtlinie des Bundesministers für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft (BMLFUW) für das Österreichische Programm zur Förderung einer umweltgerechten, extensiven und den natürlichen Lebensraum schützenden Landwirtschaft (Special Directive of the Federal Minister for Agriculture, Forestry, Environment and Water Management for the Austrian programme to promote an environmentally friendly, extensive and habitat protecting agriculture) (SRL-ÖPUL 2007).

#### **Brief summary of the facts and procedure**

- 1 The Österreichische Programm für umweltgerechte Landwirtschaft (Austrian Programme for environmentally friendly agriculture) (the ÖPUL) 2007 was run by the appellant Republic of Austria during the period at issue (from 2007 to 2013) as

an agri-environmental measure under Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and co-financed by the European Union. Agrarmarkt Austria GmbH (AMA) was responsible for its administration in the name and on behalf of the appellant.

- 2 The funding was awarded under contracts with the funding applicants. Under the ÖPUL, area-related funding was granted for environmentally friendly forms of management, applicants for which had to make multiannual commitments.
- 3 The respondent participated in the ÖPUL as a farm manager for the period of seven years from 2007 to 2013. After carrying out on-the-spot checks on 5 and 9 December 2013 and 9 January 2014, the appellant applied for reimbursement of the grants issued for the claim years 2008 to 2010 and 2012 to 2013, amounting to EUR 44 751.58, due to alleged differences between the areas applied for and the areas actually eligible. It alleged that, in so far as the areas applied for, but no longer eligible in 2012 and 2013 (the areas lost) had already been included in the ÖPUL in the previous years, the commitment period of seven years had been infringed. Consequently, the appellant also requested that the funding granted in respect of the areas lost for the claim years 2008 to 2012 also be repaid. An assessment report and recovery notifications of 26 March 2014 and 26 June 2014 were sent by AMA to the respondent. Subsequently, he received payment reminders of 11 May 2015 (served on 12 May 2015) and of 12 November 2015 (served on 16 November 2015) and a demand for payment with the threat of 'legal steps' of 16 December 2015 (served on 22 December 2015). By an action brought on 26 April 2019, the appellant requested payment of the sum of EUR 44 751.58, together with progressive interest of 2.880% per annum above the base rate applicable from 30 April 2014.
- 4 The court of first instance, the Landesgericht für Zivilrechtssachen Wien (Regional Court for Civil Matters, Vienna, Austria), limited the subject matter of the proceedings to the question of limitation and ruled by interlocutory judgment of 21 December 2020 that the appellant's claim was not time-barred. In law, it affirmed that Article 3 of Regulation No 2988/95 was applicable to all the claims made. It held that the four-year limitation period had begun on 1 January 2014 and had been interrupted by the recovery notifications and demands for payment, with the result that the claims were not time-barred.
- 5 The appeal court, the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria), upheld the respondent's appeal on a point of law on 20 September 2021 and dismissed the application on the ground that it was time-barred. In law, it considered that Regulation 2988/95 was not applicable to civil claims. The law of limitation under Austrian national civil law had to be applied. The claims were time-barred under Paragraph 1489 of the ABGB.
- 6 The Oberster Gerichtshof (Supreme Court) has to rule on the appeal on a point of law brought by the appellant by means of which it sought the restoration of the

judgment at first instance; in the alternative, the appellant submits an application seeking the setting aside of the judgment under appeal.

### **The essential arguments of the parties in the main proceedings**

- 7 The appellant submits that the SRL-ÖPUL 2007 is largely determined by EU regulations. The level of reductions or recovery claims when there are differences in area are directly set out in Article 16 of Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005 as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures. That regulation also refers to the requirements of the EU integrated administration and control system (IACS). The fact that, in the event of non-compliance with the multiannual commitment period, the entire aid granted during the commitment period must be repaid corresponds to Article 39(3) in conjunction with Article 88(4) of Regulation (EC) No 1698/2005.
- 8 The appellant submits that the limitation period of four years laid down in Article 3(1) of Regulation (EC, Euratom) No 2988/95 began after the end of the commitment period, that is to say, on 1 January 2014. It was interrupted by the procedural measures adopted by AMA, namely the service of the assessment report and the service of the recovery notification and the payment reminders, which reset the limitation period on each occasion. The claims are therefore not time-barred. Furthermore, under Article 3(3) of Regulation (EC, Euratom) No 2988/95, Member States may provide for a longer limitation period. Certain recovery claims are to be classified, under Austrian civil law, as claims for enrichment. Consequently, the limitation period of 30 years laid down in Paragraph 1478 of the ABGB applies. The obligation to pay interest under item 1.12.2.5. of the SRL-ÖPUL 2007 is based (in principle) on Article 5(1) of Regulation (EU) No 65/2011, with the result that the limitation periods provided for in Article 3 of Regulation (EC, Euratom) No 2988/95 also apply to the right to interest.
- 9 The respondent applies for the action to be dismissed. He argues (inter alia) that the claims are time-barred. Item 1.12. of the SRL-ÖPUL 2007 does not set out its own rules on limitation, so reference must be made to other sources of law. He classifies the recovery claims as contractual penalties within the meaning of Paragraph 1336 of the ABGB. The limitation period of three years from knowledge of the damage and of the perpetrators of damage, laid down in Paragraph 1489 of the ABGB, is applicable to those. The limitation period began to run at the latest on the date of the recovery letters of 26 March 2014 and 26 June 2014, with the result that, on the date on which the action was brought, the limitation period had already expired. Regulation (EC, Euratom) No 2988/95 was not applicable because it concerns only the claims to be pursued through legal remedies governed by public law. Even if Regulation (EC, Euratom) No 2988/95 were to be applicable, service of the assessment report, recovery notifications and

payment reminders could not be classified as acts relating to investigation or legal proceedings; they therefore did not have the effect of interrupting the limitation period.

### **Succinct presentation of the reasoning in the request for a preliminary ruling**

- 10 Question 1: The question as to whether Article 3 of Regulation (EC, Euratom) No 2988/95 is directly applicable is of crucial importance for settling the present dispute. If Article 3 of Regulation No 2988/95 is directly applicable to the assessment of the limitation period for the claims made, the respondent is barred from relying on the shorter limitation period of three years laid down in Paragraph 1489 of the ABGB. For its part, the appellant would not be able to rely on the limitation period of 30 years laid down in Paragraph 1478 of the ABGB, since 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 recovery of wrongly received aid (judgment of 5 May 2011, C-201/10 and C-202/10, *Ze Fu Fleischhandel and Vion Trading*, EU:C:2011:282, paragraph 47).
- 11 Question 2: The second question referred for a preliminary ruling seeks to determine, as regards private-law subsidies, whether the provider of a subsidy that has already completed its investigations and has made an extrajudicial claim to recover the subsidy from the recipient can interrupt, by means of payment reminders, and, therefore, in the context of the absolute time limit laid down in the fourth subparagraph of Article 3(1) of Regulation (EC, Euratom) No 2988/95, extend the limitation period although a judicial claim is not precluded by it requiring a longer period to clarify matters of fact.
- 12 Question 3: The Court of Justice of the European Union has held, specifically with regard to the ÖPUL, that, in so far as Community law does not contain any rules to the contrary, there is nothing to prevent the Republic of Austria from implementing national aid programmes by means of acts of private law such as contracts. However, the application of those rules of national law must not jeopardise the scope and effectiveness of that Community law (judgment of the Court of Justice of the European Union of 19 September 2002, *Martin Huber*, C-336/00, EU:C:2002:509, paragraph 61 et seq.). Question 3 seeks to determine whether, where a national programme constitutes an agri-environmental measure within the meaning of Regulation (EC) No 1698/2005 and is designed such that it falls within the realm of private law, the limitation periods laid down by national civil law must be assessed in the light of the principle of proportionality under EU law.