

Judgment of the Court (Fourth Chamber) of 7 April 2022 (request for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Instituto de Financiamento da Agricultura e Pescas IP (IFAP) v LM (C-447/20), BD, Autoridade Tributária e Aduaneira (C-448/20)

(Joined Cases C-447/20 and C-448/20) ⁽¹⁾

(Reference for a preliminary ruling — Regulation (EC, Euratom) No 2988/95 — Own resources of the European Union — Protection of the European Union's financial interests — Proceedings relating to irregularities — Article 4 — Adoption of administrative measures — Article 3(1) — Limitation period for proceedings — Expiry — Whether it may be relied on in the context of the enforced recovery procedure — Article 3(2) — Period for implementation — Applicability — Starting point of the limitation period — Interruption and suspension — Discretion of the Member States)

(2022/C 213/12)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Instituto de Financiamento da Agricultura e Pescas IP (IFAP)

Defendants: LM (C-447/20), BD, Autoridade Tributária e Aduaneira (C-448/20)

Operative part of the judgment

1. Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the financial interests [of the European Union] must be interpreted as not precluding, subject to the principles of equivalence and effectiveness, national legislation under which, for the purposes of challenging a decision to recover amounts wrongly paid, adopted after the expiry of the limitation period for proceedings referred to in that provision, the addressee thereof is required to plead the irregularity of that decision within a certain period before the administrative court having jurisdiction, failing which the challenge will be time-barred, and the addressee is no longer able to object to the enforcement of that decision by relying on that irregularity in the context of the judicial proceedings for enforced recovery brought against that addressee.
2. The first subparagraph of Article 3(2) of Regulation No 2988/95 must be interpreted as having immediate effect in the national legal systems, without there being any need for the national authorities to adopt measures of application. It follows that the addressee of a decision to recover amounts wrongly received must, in any event, be able to rely on the expiry of the period for implementation laid down in the first subparagraph of Article 3(2) of that regulation or, as the case may be, of an extended period for implementation pursuant to Article 3(3) of that regulation, in order to oppose the enforced recovery of those amounts.
3. The first subparagraph of Article 3(2) of Regulation No 2988/95 must be interpreted as precluding national legislation which provides that the period for implementation which it establishes starts to run from the adoption of a decision requiring repayment of amounts wrongly received, since that period must begin to run from the day on which that decision becomes final, that is to say, from the day on which the period for bringing an action has expired or all rights of appeal have been exhausted.
4. The second subparagraph of Article 3(2) of Regulation No 2988/95 must be interpreted as not precluding national legislation under which the period for implementation laid down in the first subparagraph thereof is interrupted by the summons for enforced recovery of the debt which is the subject of a recovery decision.

⁽¹⁾ OJ C 443, 21.12.2020.