Joined Cases C-89/10 and C-96/10

Q-Beef NV

v

Belgische Staat

and

Frans Bosschaert

v

Belgische Staat and Others

(References for a preliminary ruling from the Rechtbank van Eerste Aanleg te Brussel)

(National charges incompatible with EU law – Charges paid under a financial support scheme and levies declared contrary to EU law – Scheme replaced by another scheme found to be compatible – Recovery of charges improperly levied – Principles of equivalence and effectiveness – Duration of the limitation period – Day on which time starts to run – Claims to be recovered from the State and from individuals – Different time-limits)

Summary of the Judgment

1. *Union law – Direct effect – National charges incompatible with Union law – Repayment – Procedures – Application of national law – Provision, thereby, of limitation periods or time-limits*

2. *Union law – Direct effect – National charges incompatible with Union law – Repayment – Procedures – Application of national law – Provision, thereby, of a longer limitation period for obtaining the repayment of charges from a individual intermediary than that applicable to the State – Whether permissible – Condition*

3. *Preliminary rulings – Interpretation – Temporal effects of judgments by way of interpretation – Retroactive effect – Judgment finding the retroactive nature of a national law incompatible with Union law*

(Art. 267 TFEU)

1. EU law does not preclude, in circumstances such as those in the main proceedings, the application of a five-year limitation period, laid down in the national legal system for claims in respect of debts owed by the State, to claims for the reimbursement of charges paid in breach of that law under a ‘hybrid system of aid and charges’.

In the absence of harmonised rules governing the reimbursement of charges imposed in breach of EU law, the Member States retain the right to apply procedural rules provided for under their national legal system, in particular concerning limitation periods, subject to observance of the principles of equivalence and effectiveness.

There is no breach of the principle of equivalence so long as the five-year limitation period applies

to all debts owed by the Member State at issue and its applicability does not depend on the question whether those debts arise from a breach of national law or Union law, which it is for the referring court to determine. As regards the principle of effectiveness, fixing reasonable time-limits for bringing proceedings, if the latter are not to be out of time, in the interests of legal certainty which protects both the taxpayer and the authorities concerned, is compatible with Union law. Such periods are not by their nature liable to make it impossible in practice or excessively difficult to exercise the rights conferred by Union law, even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought.

(see paras 34-36, 38, operative part 1)

2. Union law does not preclude national legislation which grants an individual a longer limitation period to recover charges from another individual acting as an intermediary, to whom he unwarrantedly paid the charges and who paid them on behalf of that first individual for the benefit of the State, whereas, if that first individual had paid those charges directly to the State, his action would have been restricted by a shorter time-limit, derogating from the ordinary rules governing actions between private individuals for the recovery of sums paid but not due, on condition that the individuals acting as intermediaries may effectively bring actions against the State for sums which may have been paid on behalf of other individuals.

(see para. 45, operative part 2)

3. The Court's finding, in a judgment following a reference for a preliminary ruling, that the retroactive nature of a national law is incompatible with Union law has no bearing on the starting date of the limitation period laid down by national law in respect of claims against the Member State at issue.

First, the question of determining the starting-point of the limitation period in principle comes under national law. Second, a preliminary ruling does not create or alter the law, but is purely declaratory, with the consequence that in principle it takes effect from the date on which the rule interpreted entered into force. Consequently, Union law does not preclude a national authority from relying on the expiry of a reasonable limitation period unless the conduct of the national authorities combined with the existence of a limitation period result in totally depriving a person of the opportunity to enforce his rights before the national courts.

(see paras 47-48, 51, 53, operative part 3)

JUDGMENT OF THE COURT (Fourth Chamber)

8 September 2011 (*)

(National charges incompatible with EU law – Charges paid under a financial support scheme and levies declared contrary to EU law – Scheme replaced by another scheme found to be compatible – Recovery of charges improperly levied – Principles of equivalence and effectiveness – Duration of the limitation period – Day on which time starts to run – Claims to be recovered from the State

and from individuals – Different time-limits)

In Joined Cases C?89/10 and C?96/10,

REFERENCES for a preliminary ruling from the Rechtbank van Eerste Aanleg te Brussel (Belgium), made by decisions, respectively, of 29 and 12 January 2010, received at the Court on 17 and 22 February 2010, in the proceedings

Q-Beef NV (C?89/10)

v

Belgische Staat,

and

Frans Bosschaert (C?96/10)

v

Belgische Staat,

Vleesgroothandel Georges Goossens en Zonen NV,

Slachthuizen Goossens NV,

THE COURT (Fourth Chamber),

composed of J.?C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader (Rapporteur), A. Prechal and E. Jaraši?nas, Judges,

Advocate General: N. Jääskinen,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 3 February 2011,

after considering the observations submitted on behalf of:

– Q-Beef NV and Mr Bosschaert, by J. Arnauts-Smeets, advocaat,

– Vleesgroothandel Georges Goossens en Zonen NV and Slachthuizen Goossens NV, by A. D'Halluin and F. van Remoortel, advocaten,

– the Belgian Government, by J.-C. Halleux, acting as Agent, and Y. Vastersavendts and E. Jacubowitz, advocaten,

– the European Commission, by S. Thomas and H. van Vliet, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 May 2011,

gives the following

Judgment

1 The references for a preliminary ruling concern compliance with the principles of

equivalence and effectiveness derived from EU law of a special five-year limitation period provided for under national law of the Kingdom of Belgium and on determining the starting point of that period.

2 Those references have been made in proceedings between, first, Q-Beef NV ('Q-Beef') and the Belgian State (C?89/10) and, second, Mr Bosschaert and the Belgian State and Vleesgroothandel Georges Goossens en Zonen NV and Slachthuizen Goossens NV ('the Goossens companies') (C?96/10) concerning the possibility of applying a five-year limitation period to an action brought against the Belgian State in order to obtain reimbursement of the contributions paid to finance the animal health and production fund ('the Fund').

Legal context

National legislation relating to the Fund

The 1987 Law

3 The Law on animal health of 24 March 1987 (*Moniteur belge* of 17 April 1987, p. 5788, 'the 1987 Law') established a system to finance services to combat animal diseases and improve animal hygiene and the health and quality of animals and animal products ('the 1987 scheme'). According to Article 2 of the 1987 Law, its purpose was 'to combat animal disease in order to promote public health and the economic welfare of livestock farmers'.

4 Article 32(2) of the 1987 Law provided:

'The [Fund] shall be set up by the Ministry of Agriculture … . The purpose of the Fund shall be to contribute towards the financing of compensation, allowances and other benefits for combating animal disease and improving the hygiene, health and quality of animals and animal products. The Fund shall be financed by:

1. compulsory contributions from natural and legal persons who raise, process, transport, handle, sell or trade in animals or animal products;

...

If the compulsory contribution is collected from persons who process, transport, handle, sell or trade in animals or animal products, it shall, on every transaction, be passed back up to the stage of the producer.'

5 The 1987 Law authorised the King to determine by Decree the amount of the compulsory charges and the rules for collecting them. By Royal Decree of 11 December 1987 on compulsory contributions to the animal health and production fund (*Moniteur belge* of 23 December 1987, p. 19317, 'the 1987 Decree'), a mandatory charge per head of calf, cattle or pig slaughtered or exported alive was levied on slaughterhouses and exporters with effect from 1 January 1988. The compulsory contributions levied on abattoirs and exporters were to be passed back by them to the supplier of the animals, who would then, as appropriate, pass them back to the seller accordingly up to the chain to the producer. The 1987 Law and Decree were subsequently amended on several occasions. None of those documents was notified to the Commission pursuant to Article 93(3) of the EEC Treaty (subsequently Article 93(3) of the EC Treaty, and now Article 88(3) EC).

The 1998 Law

6 Following Commission Decision 91/538/EEC of 7 May 1991 on the animal health and production fund in Belgium (OJ 1991 L 294, p. 43) declaring the 1987 scheme incompatible with

the common market and under the Law on the establishment of a budgetary fund for the health and quality of animals and animal products, of 23 March 1998 (*Moniteur belge* of 30 April 1998, p. 13469, 'the 1998 Law'), that scheme was cancelled and replaced by a new scheme of compulsory charges that apply retroactively with effect from 1 January 1988 and by a new fund, the Budgetary fund for the health and quality of animals and animal products (together with the fund of the 1987 scheme, 'the Fund'). The 1998 scheme essentially differs from the 1987 scheme in that it does not provide for a charge in respect of imported animals and the charges for exported animals are no longer due with effect from 1 January 1997.

7 Article 5 of the 1998 Law provides that the Fund is financed, in particular, by the contributions imposed by the King on natural and legal persons who raise, process, transport, handle, sell or trade in animals or animal products.

8 Article 14 of the 1998 Law imposes contributions on abattoirs and exporters. The amounts of those contributions vary according to the period in respect of which they are due. Under that Article:

'The following compulsory contributions to the fund shall be imposed on abattoirs and exporters:

…

Those compulsory contributions shall be passed on to the producer.

Those compulsory contributions shall be due only for national animals. They are not due for imported animals. They are no longer due for exported animals as from 1 January 1997.

With regard to imported animals, the compulsory contributions that were paid with effect from 1 January 1988 in application of the [1987 Decree], as amended by the Royal Decrees of 8 April 1989, 23 November 1990, 19 April 1993, 15 May 1995, 25 February 1996 and 13 March 1997, shall be repaid to creditors who prove that the compulsory contributions paid by them related to imported animals, that those contributions were not passed on by them to the producer or that such transfer was annulled and that they have paid the compulsory contributions in full for national animals, including exported slaughtered animals and exported breeding and working animals'.

9 Articles 15 and 16 of the 1998 Law impose charges on the persons responsible for holdings in which pigs are kept, as well as on dairies and the holders of licences to sell dairy products.

10 The second paragraph of Article 17 of the 1998 Law provides for automatic equalisation between amounts owed in respect of charges paid under the 1987 scheme and charges due under the 1998 scheme.

National legislation on the recovery of amounts paid but not due and on the limitation period

11 Article 1376 of the Belgian Civil Code is worded as follows:

'A person receiving what is not due to him, whether he receives it through error or knowingly, shall be bound to return it to the person from whom he has wrongly received it.'

12 The first subparagraph of Article 2262a(1) of the Belgian Civil Code, as amended by the Law of 10 June 1998, which entered into force on 27 July 1998, provides:

'The limitation period for all personal actions shall be ten years.'

13 Article 2244 of the Civil Code which defines the principal causes of an interruption of the

limitation period provides in its first and second paragraphs:

‘A summons to appear before a court, a formal notice or an attachment order, served on the person whom one wishes to prevent from invoking the statute of limitations, shall constitute a civil interruption.

A summons to appear before a court shall interrupt the limitation period until such time as a final decision is given.’

14 Article 100(1) of the Consolidated Laws on State Accounting of 17 July 1991 (*Moniteur belge* of 21 August 1991, p. 17960, ‘the Consolidated Laws’), provides:

‘The following claims shall be statute-barred and wholly extinguished in favour of the State, without prejudice to any cancellation arising from other statutory or regulatory provisions or agreements in the matter:

‘1. claims, the submission of which, in a form determined by statute or regulation, did not take place within a period of five years running from the first of January of the financial year during which they arose;

...’.

15 Article 101 of the Consolidated Laws provides:

‘… the institution of proceedings before a court shall suspend the limitation period until such time as a final decision is given’.

16 As regards the limitation period of an action to enforce a guarantee, Article 2257 of the Civil Code provides:

‘The limitation period does not run at all:

…

As regards an action to enforce a guarantee, until the claim has been dismissed;

…’.

The procedure before the Commission

17 In accordance with the procedure provided for in Article 93(2) of the Treaty, the Commission, by Decision 91/538/EEC, found that the 1987 scheme was incompatible with the common market within the meaning of Article 92 of the EEC Treaty (subsequently Article 92 EC Treaty, and now, after amendment, Article 87 EC) and could therefore not be implemented in so far as the compulsory charges were also imposed, at the stage of slaughter, on animals and products from other Member States.

18 By letters of 7 December 1995 and 20 May 1996 the Kingdom of Belgium notified, in accordance with Article 93(3) of the Treaty, draft legislative measures for the abolition of the 1987 scheme and its replacement by a new scheme.

19 That draft, which was to become the 1998 Law, provided in particular for a solution to the problem of the imposition of a charge on imported animals which had led the Commission, in its Decision 91/538, to declare the 1987 scheme incompatible with the common market.

20 The draft legislation was declared compatible with the common market by Commission Decision of 30 July 1996 on authorisation for State aid pursuant to Articles [87] and [88] of the EC Treaty (OJ 1997 C 1, p. 2).

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

Case C-89/10

21 Q?Beef is a Belgian undertaking trading in animals and which, in particular, exports animals. In the context of those exports, it paid various contributions to the Belgian State pursuant to the legislation applicable to the Fund. Accordingly, it confirms that it paid, between the months of January 1993 and April 1998, contributions totalling EUR 137 164 which it seeks to recover from the Belgian State.

22 Following the judgment of 21 October 2003 in *van Calster and Others* (Joined Cases C-261/01 and C?262/01 [2003] ECR I?12249), since it was established that no retroactive effect could be given to the 1998 Law for the period prior to the decision whereby the Commission had declared the draft law leading to the 1998 Law to be compatible with the common market, on 2 April 2007, Q-Beef brought proceedings against the Belgian State before the Rechtbank van Eerste Aanleg te Brussel (Court of First Instance, Brussels) (Belgium) for reimbursement of the relevant contributions.

23 According to the referring court, on the basis of Article 100 of the Consolidated Laws on State Accounting, the five-year limitation period governing Q-Beef's claim against the Belgian State began to run on 1 January of the financial year during which the claim arose, in this case, the year of the entry into force of the 1998 Law, namely, on 1 January 1998, on the basis of the compensation established by that law between creditors owed to under that new scheme and that relating to contributions paid under the 1987 scheme, and it expired at midnight on 31 December 2002. Since the summons instituting the claim against the Belgian State was issued on 2 April 2007, the claim of the applicant, Q-Beef, against the Belgian State was time-barred under Belgian law. According to that court, and contrary to what Q-Beef claims, the judgment in *van Calster and Others* has no more than a declaratory effect with regard to national law and does not trigger the limitation period.

24 In those circumstances the Rechtbank van Eerste Aanleg te Brussel decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does Community law preclude national courts from applying the five-year limitation period which is laid down in the national legal system for claims in respect of debts owed by the State to claims for the reimbursement of charges paid to a Member State under a hybrid system of aid and charges which not only was partially illegal but was also found to be partially incompatible with Community law, and which were paid before the entry into force of a new system of aid and compulsory contributions which replaces the first system, and which, by a final decision of the Commission, was declared compatible with Community law, but not in so far as those charges are imposed retroactively in respect of a period prior to the date of that decision?

2. Does Community law preclude a Member State from successfully invoking national limitation periods which, in comparison with those applicable under ordinary national law, are particularly favourable to that Member State, as a defence against proceedings instituted against it by a private individual with a view to vindicating that private individual's rights under the EC Treaty, in a case such as that before the national court, in which the effect of those particularly favourable national limitation periods is to render impossible the recovery of charges which were paid to the

Member State under a hybrid system of aid and charges which not only was partially illegal but was also found to be partially incompatible with Community law, where the conflict with Community law was established by the Court of Justice of the European Communities only after those particularly favourable national limitation periods had expired, even if the illegality had existed earlier?'

Case C-96/10

25 Mr Bosschaert is a farmer who, during the period from 1989 to 1996, paid to the Goossens companies the contributions earmarked for the Fund in relation to the animals slaughtered on his behalf. He paid the contributions to Vleesgroothandel Georges Goossens en Zonen NV, which, in turn, forwarded them to Slachthuizen Goossens NV, which paid them into the Fund. Mr Bosschaert claims reimbursement of those contributions, namely EUR 38 842.46 in total, on the ground that they had been imposed illegally, the relevant legislation being contrary to EU law.

26 On 31 July 2007, following the judgment in *van Calster*, Mr Bosschaert brought proceedings against, primarily, the Belgian State for reimbursement of the contributions unlawfully paid by him, and, in the alternative, against the Goossens companies in the event of his direct action against the Belgian State not being accepted.

27 By their pleadings lodged on 21 November 2007, in the context of these proceedings, the Goossens companies introduced two ancillary pleas against the Belgian State; first, an action to enforce a guarantee in the event of their being ordered to reimburse the contributions imposed on Mr Bosschaert and, second, an action for reimbursement of the contributions which they themselves had paid to the Fund.

28 As in Case C?89/10, the referring court notes that as regards national Belgian law, the actions for reimbursement of Mr Bosschaert and the Goossens companies against the Belgian State are time-barred. It also takes the view, contrary to what Mr Bosschaert and the Goossens companies claim, that the judgment in *van Calster* is purely declaratory, inasmuch as it does not create or alter the status of the payments concerned as having been paid but not due, since it is confined to establishing that the charges were unlawful in that they were levied retroactively.

29 On the other hand, due to the fact that the actions introduced by Mr Bosschaert against the Goossens companies are treated as personal actions, they are subject to a 10-year limitation period. Since that 10-year period was introduced, for disputes between private individuals, by the Law of 10 June 1998, amending the Belgian Civil Code, it did not start to run until 27 July 1998, the date of entry into force of that Law. Consequently, on 31 July 2007, the date of those actions, prescription had not yet taken place. As regards the actions to enforce a guarantee brought by the Goossens companies against the Belgian State on 21 November 2007, these were *a fortiori* not time-barred because they are a consequence of the actions brought by Mr Bosschaert during July 2007.

30 In those circumstances the Rechtbank van Eerste Aanleg te Brussel decided to stay the proceedings and refer three questions to the Court for a preliminary ruling, the first and third of which are the same as the first and second questions respectively in Case C-89/10, as set out in paragraph 24 of this judgment; the second of those three questions reads as follows:

'Does Community law preclude a situation in which, when a Member State levies charges on a private individual who is in turn obliged to pass the charges on to other private individuals with whom he carries on a commercial activity in a sector on which the Member State has imposed a hybrid system of aid and charges, but that system was subsequently found to be not only partially illegal but also partially incompatible with Community law, those individuals are then, by reason of

national provisions, subject to a shorter limitation period with regard to the Member State in respect of the recovery of contributions levied in breach of Community law, whereas they have a longer limitation period with regard to recovery of those same amounts from a private intermediary, with the result that such an intermediary might find itself in a situation where the claim against it is not time-barred but the claim against the Member State is, and the intermediary may thus have an action brought against it by other parties and consequently have to seek indemnification from the Member State concerned, but cannot recover from that Member State the contributions which it paid directly to that Member State?'

31 By order of the President of the Court of Justice of 6 April 2010, Cases C?89/10 and C?96/10 were joined for the purposes of the written and oral procedure and of the judgment.

Consideration of the questions referred

Preliminary observation

32 It is settled case-law that, in the absence of EU rules in the field, it is for the national legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, provided that such rules are not less favourable than those governing similar national actions (principle of equivalence) and that they do not render practically impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (see, in particular, Case C-452/09 *Iaia and Others* [2011] ECR I-0000, paragraph 16 and case-law cited).

The first question in Cases C?89/10 and C?96/10

33 By this question, the referring court asks, in essence, whether EU law precludes, in circumstances such as those in the main proceedings, the application of a five-year limitation period laid down in the national legal system for claims in respect of debts owed by the State to claims for the reimbursement of charges paid in breach of EU law under a 'hybrid system of aid and charges'.

34 In that regard, it is important to note that, in the absence of harmonised rules governing the reimbursement of charges imposed in breach of EU law, the Member States retain the right to apply procedural rules provided for under their national legal system, in particular concerning limitation periods, subject to observance of the principles of equivalence and effectiveness.

35 In the present case, it appears that the principle of equivalence is not infringed, in so far as the five-year limitation period applies to all debts owed by the Belgian State and whose applicability does not depend on the question whether those debts arise from a breach of national or EU law, which is for the referring court to determine.

36 As regards the principle of effectiveness, the Court has stated that it is compatible with EU law to lay down reasonable time-limits for bringing proceedings in the interests of legal certainty which protects both the taxpayer and the authorities concerned. Such periods are not by their nature liable to make it virtually impossible or excessively difficult to exercise the rights conferred by EU law, even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought (see *Iaia and Others*, paragraph 17 and the case-law cited). In that regard, by way of example, a time-limit of three years under national law was considered reasonable (see, to that effect, Case C?542/08 *Barth* [2010] ECR I-0000, paragraph 29).

37 In the cases in the main proceedings, as follows from the order for reference, it is undisputed that the applicable limitation period is five years, which, in the absence of particular

circumstances brought to the attention of the Court, cannot be regarded as being contrary to the principle of effectiveness.

38 Consequently, the answer to the first question in Cases C?89/10 and C?96/10 is that EU law does not preclude, in circumstances such as those in the main proceedings, the application of a limitation period of five years, which is laid down in the national legal system for claims in respect of debts owed by the State, to claims for the reimbursement of charges paid in breach of that law under a ‘hybrid system of aid and charges’.

The second question in Case C?96/10

39 By this question, the referring court asks, in essence, whether EU law precludes national legislation which, in circumstances such as those in the main proceedings, grants an individual a longer limitation period to recover charges from an individual acting as an intermediary, to whom he paid the charges and who then paid them on behalf of that first individual for the benefit of the State, whereas, if that individual had paid those charges directly to the State, the action of that first individual would have been restricted by a shorter time-limit.

40 In the present case, according to the referring court, the actions for reimbursement of Mr Bosschaert and the Goossens companies against the Belgian State are time-barred by virtue of the specific limitation period of five years in respect of debts owed by the State, whereas the action of Mr Bosschaert against those companies is not time-barred since it was brought within the limitation period of 10 years applicable to the recovery of sums due between private individuals.

41 In this context, it should also be borne in mind that, according to settled case-law of the Court of Justice, EU law does not prohibit a Member State from resisting actions for repayment of charges levied in breach of Community law by relying on a time-limit under national law of three years, by way of derogation from the ordinary rules governing actions between private individuals for the recovery of sums paid but not due, for which the period allowed is more favourable, provided that that time-limit applies in the same way to actions based on EU law for repayment of such charges as to those based on national law (see Case C-231/96 *Edis* [1998] ECR I-4951, paragraph 39, and Case C?260/96 *Spac* [1998] ECR I?4997, paragraph 23, and Joined Cases C?216/99 and C?222/99 *Prisco and CASER* [2002] ECR I?6761, paragraph 70).

42 Furthermore, in general, limitation periods fulfil the function of ensuring legal certainty, which simultaneously protects both the taxpayer and the administration concerned (see, to that effect, *Edis*, paragraph 35 and Case C-367/09 *SGS Belgium and Others* [2010] ECR I-0000, paragraph 68). The Court has also held that the principle of effectiveness is not infringed in the case of a national limitation period allegedly more advantageous for the tax authorities than the limitation period in force for individuals (see, to that effect, Joined Cases C-95/07 and C?96/07 *Ecotrade* [2008] ECR I-3457, paragraphs 49 to 54).

43 On the other hand, the principle of effectiveness would be infringed if the Goossens companies had neither the right to obtain reimbursement of the charge concerned during the five-year period, nor, in pursuance of an action for recovery of undue payment brought after expiry of that period by Mr Bosschaert against those companies, the possibility of bringing proceedings against the State, so that the charges paid but not due to the State were solely paid by those intermediary companies.

44 Nevertheless, in the main proceedings, according to the referring court and contrary to what the Belgian Government claims in its written observations, if the Goossens companies were ordered to repay the contributions paid but not due to Mr Bosschaert, they could recover those sums from the State, not by instituting proceedings for reimbursement from the State, such

proceedings already being time-barred due to the specific five-year limitation period, but by bringing an action to enforce a guarantee relating to a personal obligation. Indeed, according to the referring court, the indemnity claims brought by the Goossens companies on 21 November 2007 against the Belgian State are not time-barred.

45 Consequently, the answer to the second question in Case C?96/10 is that EU law does not preclude national legislation which, in circumstances such as those in the main proceedings, grants an individual a longer limitation period to recover charges from an individual acting as an intermediary, to whom he unwarrantedly paid the charges and who paid them on behalf of that first individual for the benefit of the State, whereas, if that first individual had paid those charges directly to the State, the action of that individual would have been restricted by a shorter time-limit, by way of derogation from the ordinary rules governing actions between private individuals for the recovery of sums paid but not due, on condition that the individuals acting as intermediaries may effectively bring actions against the State for sums which may have been paid on behalf of other individuals.

The second question in Case C?89/10 and the third question in Case C?96/10

46 By this question, the referring court asks, in essence, whether, in circumstances such as those in the main proceedings, the Court's finding, in a judgment following a reference for a preliminary ruling, that the retroactive nature of a national law at issue is incompatible with EU law has any bearing on the starting date of the limitation period laid down by national law in respect of claims against the State.

47 First, it should be pointed out, as the Advocate General has observed in paragraph 55 of his Opinion, that the question of determining the starting point of the limitation period in principle comes under national law. It is settled case-law that the fact that the Court may have ruled that the breach of EU law has occurred generally does not affect the starting point of the limitation period (see *Iaia and Others*, paragraph 22 and the case-law cited).

48 Second, contrary to what the applicants in the main proceedings claim and according to settled case-law, a preliminary ruling does not create or alter the law, but is purely declaratory, with the consequence that in principle it takes effect from the date on which the rule interpreted entered into force (see Case C-2/06 *Kempter* [2008] ECR I?411, paragraph 35 and the case-law cited).

49 With regard to the point at which a limitation period starts to run, it is true that the Court has held that, until such time as a directive has been properly transposed, a defaulting Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred upon that individual by the provisions of the directive and that a period laid down by national law within which proceedings must be initiated cannot begin to run before that time (see Case C?208/90 *Emmott* [1991] ECR I-4269, paragraph 23).

50 According to settled case-law following *Emmott*, however, the Court has acknowledged that a defaulting Member State may rely on the expiry of a limitation period as a defence against legal proceedings, even though by the date on which the actions in question were brought that Member State had not yet correctly transposed the directive in question, ruling that the solution established in *Emmott* had been justified by the circumstances particular to that case, in which a time-bar had had the result of depriving the applicant in the main proceedings of any opportunity whatever to invoke her right to equal treatment under a directive (see *Iaia and Others*, paragraph 19 and the case-law cited).

51 In that regard, the Court has held that EU law does not preclude a national authority from

relying on the expiry of a reasonable limitation period unless the conduct of the national authorities combined with the existence of a limitation period result in totally depriving a person of the opportunity to enforce his rights before the national courts (see, to that effect, *Barth*, paragraph 33 and *Iaia and Others*, paragraph 21).

52 In the cases in the main proceedings, according to the referring court, the five-year limitation period began to run on 1 January 1998, to expire on 31 December 2002, whereas the judgment in *van Calster* was handed down only on 21 October 2003, that is to say well after expiry of the specific five-year limitation period. Fixing the starting point of that limitation period as 1 January 1998 was, however, not such as to totally deprive interested persons of the opportunity to enforce their rights under EU law before the national courts, as was shown by the judicial actions brought before the Belgian courts in the case giving rise to the judgment in *van Calster*.

53 In the light of the above considerations, the answer to the second question in Case C-89/10 and the third question in Case C-96/10 is that, in circumstances such as those in the main proceedings, the Court's finding, in a judgment following a reference for a preliminary ruling, that the retroactive nature of a national law at issue is incompatible with EU law has no bearing on the starting date of the limitation period laid down by national law in respect of claims against the State.

Costs

54 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. **EU law does not preclude, in circumstances such as those in the main proceedings, the application of a five-year limitation period which is laid down in the national legal system for claims in respect of debts owed by the State to claims for the reimbursement of charges paid in breach of that law under a 'hybrid system of aid and charges'.**

2. **EU law does not preclude national legislation which, in circumstances such as those in the main proceedings, grants an individual a longer limitation period to recover charges from an individual acting as an intermediary, to whom he unwarrantedly paid the charges and who paid them on behalf of that first individual for the benefit of the State, whereas, if that first individual had paid those charges directly to the State, the action of that individual would have been restricted by a shorter time-limit, by way of derogation from the ordinary rules governing actions between private individuals for the recovery of sums paid but not due, on condition that the individuals acting as intermediaries may effectively bring actions against the State for sums which may have been paid on behalf of other individuals.**

3. **In circumstances such as those in the main proceedings, the Court's finding, in a judgment following a reference for a preliminary ruling, that the retroactive nature of a national law at issue is incompatible with EU law has no bearing on the starting date of the limitation period laid down by national law in respect of claims against the State.**

[Signatures]

* Language of the case: Dutch.