Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 19 June 2014[1]

Case C-447/13 P

Riccardo Nencini
v

European Parliament

(Appeals — Former Member of the European Parliament — Allowances to cover costs incurred in the exercise of parliamentary duties — Claim resulting from application of the procedure for recovery of amounts paid but not due — Limitation rules — Article 73a of the Financial Regulation — Starting date of the limitation period — Article 85b of the implementing rules — Principle of legal certainty — Reasonable-period principle)

I – **Introduction**

1. By his appeal, the present appellant, Mr Nencini, a former Member of the European Parliament, seeks to have set aside the judgment of the General Court of the European Union in *Nencini* v *Parliament*,[2] by which the General Court dismissed his application for annulment of the decision of the Secretary General of the European Parliament concerning the recovery of certain expenses unduly paid to the appellant while he was a Member of the European Parliament.

2. This appeal raises an unprecedented aspect of EU law concerning the limitation period for claims brought by the European Union against third parties.

3. The appellant's arguments invoking the principle of legal certainty disclose a potential legislative lacuna regarding the limitation of actions by the European Union to recover certain claims. Analysis of the consequences of that lacuna, in the light of the principle of legal certainty, raises a question regarding the role of the Court seeking to ensure compliance with that principle even though the law is silent.

1 — Original language: French.

2 — T-431/10 and T-560/10, EU:T:2013:290 ('the judgment under appeal').

II – **Legal background**

4. At the material time, the Financial Regulation governing the European Union was embodied in Regulation (EC, Euratom) No 1605/2002 [3] and the implementing rules were contained in Regulation (EC, Euratom) No 2342/2002. [4]

5. Article 73a of the Financial Regulation provides as follows:

'Without prejudice to the provisions of specific regulations and the application of the Council Decision relating to the Communities' own resources system, entitlements of the Communities in respect of third parties and entitlements of third parties in respect of the Communities shall be subject to a limitation period of five years.

The date for calculating the limitation period and the conditions for interrupting this period shall be laid down in the implementing rules.'

6. The first subparagraph of paragraph 1 of Article 85b of the implementing rules, entitled 'Rules for limitation periods', provides as follows:

'The limitation period for entitlements of the Communities in respect of third parties shall begin to run on the expiry of the deadline communicated to the debtor in the debit note as specified in Article 78(3)(b) [of the implementing rules].'

III – **Background to the dispute**

7. The appellant was a Member of the European Parliament during the 1994-1999 legislative period.

8. As is apparent from the judgment under appeal, following an inquiry by the European Anti-Fraud Office (OLAF), in December 2006 the Parliament initiated a verification procedure and subsequently a procedure for recovery of certain expenses in respect of travel and parliamentary assistance which had been paid to the appellant in breach of the rules governing the payment of expenses and allowances for Members of the Parliament ('the PEAM rules').

9. On 16 July 2010, the Secretary General of the Parliament adopted a decision concerning recovery of the sum of EUR 455 903.04, drafted in English and notified to the appellant on 28 July 2010. On 16 August 2010, the appellant received the debit note from the Parliament's Director General for Finance, dated 4 August 2010, relating to the amount in question.

10. On 7 October 2010, the Secretary General of the Parliament adopted a new decision, drawn up in Italian, replacing the decision of 16 July 2010. That decision was notified to the appellant on 13 October 2010, together with a new debit note for the same amount replacing the debit note dated 4 August 2010.

3 — Council Regulation of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1), as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ 2006 L 390, p. 1), ('the Financial Regulation').

4 — Commission Regulation of 23 December 2002 laying down detailed rules for the implementation of Regulation No 1605/ 2002 (OJ 2002 L 357, p. 1), in the version amended by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 (OJ 2007 L 111, p. 13), ('the implementing rules').

IV – **Procedure before the General Court and the judgment under appeal**

11. By applications lodged at the Registry of the General Court on 24 September and 10 December 2010, the present appellant brought two separate actions, the first seeking annulment of the Parliament measures which had been notified to him on 28 July and 16 August 2010 (Case T-431/10) and the second seeking annulment both of the latter measures and of those notified on 13 October 2010, and return of the file to the Secretary General of the Parliament to enable him to re-determine the amount to be recovered (Case T-560/10).

12. The applications for interim measures lodged by the appellant in those two cases were dismissed by the President of the General Court.[5] Cases T-431/10 and T-560/10 were joined by the General Court for the purposes of the entire written procedure, the oral procedure and judgment.

13. At the hearing on 18 April 2012, the appellant withdrew his action in Case T-431/10.

14. In paragraphs 22 to 32 of the judgment under appeal, the General Court declared admissible the action brought in Case T-560/10 in so far as it sought annulment of the decision of the Secretary General of the Parliament of 7 October 2010 ('the contested decision').

15. In support of that action, the appellant put forward, essentially, four pleas in law, alleging, first, expiry of the relevant limitation period, second, breaches of the principle *audi alteram partem* and of the principle of effective legal protection, third, breaches of the PEAM rules and, fourth, breach of the principle of proportionality.

16. In paragraphs 34 to 54 of the judgment under appeal, the General Court examined and rejected the first plea in law, alleging expiry of the relevant limitation period.

17. The General Court took the view, first, that the five-year limitation period referred to in Article 73a of the Financial Regulation must be calculated, having regard to Article 85b of the implementing rules, from the expiry date notified to the debtor in the debit note. In the present case, given the date of 20 January 2011 which had been notified to the appellant in the debit note of 13 October 2010, the limitation period had not expired.

18. Second, the General Court examined the appellant's first plea to the extent to which it alleged breach of the reasonable-period principle.

19. In that regard, the General Court indicated that the procedure commenced by the Parliament could have been undertaken more expeditiously, regard being had in particular to the length of time which had elapsed between the end of the appellant's term of office in the Parliament and the date of adoption of the contested decision, to the fact that relevant accounting documents were already in the Parliament's possession, and to the fact that the Parliament should have been alerted by the letter from the appellant seeking clarification of the arrangements for reimbursement of the expenses in question.

20. The General Court thus held that the Parliament had failed to fulfil the obligations imposed by the reasonable-period principle, whilst at the same time stating that an infringement of that principle could not result in annulment of a measure unless the infringement in question affected the exercise of its addressee's rights of defence. However, in the present case, the appellant had not put forward any argument alleging that his rights of defence had been adversely affected as a result of breach of the reasonable-period principle. The Parliament's breach of that principle could not therefore result in annulment of the contested decision.

5 — Respectively, orders in *Nencini* v *Parliament* of 19 October 2010 (T-431/10 R, EU:T:2010:441) and of 16 February 2011 (T-560/10 R, EU:T:2011:40).

21. In the subsequent paragraphs of the judgment under appeal, the General Court rejected the second plea as ineffective (paragraphs 55 to 63) and ruled that the third and fourth pleas were unfounded (paragraphs 64 to 101 and 102 to 113 respectively).

22. Consequently, the General Court removed Case T-431/10 from the Register, ordering the parties to bear their own costs, and also dismissed the action in Case T-560/10 and ordered the appellant to pay the costs of that case, including those of the proceedings for interim measures.

V – **Forms of order sought by the parties**

23. By his appeal, the appellant asks the Court of Justice to set aside the judgment under appeal and, if the appeal is upheld, to annul the contested decision or, in the alternative, to determine on an equitable basis the amount to be recovered or to remit the case to the Secretary General of the Parliament for such a determination.

24. The appellant also asks the Court of Justice to order the Parliament to pay the costs in Cases T-431/10 and T-561/10 and also the costs of the appeal.

25. The Parliament contends that the Court should dismiss the appeal and order the appellant to pay the costs.

VI – **Analysis**

26. The appellant puts forward five grounds of appeal, the first four of which are linked to the four pleas in law relied on at first instance.

27. Thus, the first ground of appeal alleges infringement of the rules on the limitation of actions and of the principles of legal certainty, reasonableness and effectiveness. In that ground, the appellant raises an objection of unlawfulness against Article 85b of the implementation rules and, in the alternative, also against Article 73a of the Financial Regulation.

28. The second ground of appeal alleges infringement of the principle of *audi alteram partem* and of the principle that effective judicial protection must be ensured; the third alleges misapplication of the PEAM rules; and the fourth alleges breach of the principle of proportionality in the determination of the amount to be recovered. Finally, by his fifth ground of appeal, the appellant objects to the award against him of all the costs in Case T-560/10 and of a portion of the costs in Case T-431/10.

29. The Parliament contests those grounds of appeal, contending that they are inadmissible or unfounded.

30. I shall concentrate my analysis on the first ground of appeal, since the remaining grounds must, for the reasons which I shall set out briefly below, be rejected at the outset as being inadmissible or unfounded.

A – *The first ground of appeal, alleging infringement of the rules on the limitation of actions and infringement of the principles of legal certainty, reasonableness and effectiveness*

31. The first ground of appeal, which challenges the reasoning set out in paragraphs 34 to 54 of the judgment under appeal, comprises essentially three parts.

32. First, the appellant maintains that the General Court misinterpreted Article 85b of the implementing rules in taking the view that the limitation period begins to run from the date notified to the debtor in the debit note. If the principles of legal certainty and effective judicial protection are not to be infringed, the limitation period can, he submits, start to run only from a date to be freely defined by the creditor, namely the day on which the creditor invokes the claim. According to the appellant, the period mentioned in Article 85b of the implementing rules, interpreted in the light of the principle of legal certainty, must be regarded as being 'a separate five-year period' which runs from the time of dispatch of the debit note and is added to the limitation period strictly so-called, referred to in Article 73a of the Financial Regulation. The latter period runs, according to the appellant, from the time at which the right can be exercised.

33. In the second place, in the event that the interpretation set out in the foregoing paragraph does not convince the Court, the appellant objects that Article 85b of the implementing rules is unlawful, on the ground that it is contrary to Article 73a of the Financial Regulation. In the alternative, he contends that both Article 85b of the implementing rules and Article 73a of the Financial Regulation are unlawful by reason of the fact that they disregard the 'essential legal basis' of the limitation of actions and breach the principles of legal certainty and of the rights of the defence.

34. In the third place, the appellant criticises the General Court on the ground that it wrongly examined, as an independent plea, his argument that a reasonable period had not been observed. According to the appellant, the General Court, instead of addressing his argument alleging breach of the rules on the limitation of actions and the need to adopt a consistent interpretation of Article 85b of the implementing rules, examined those arguments as relating to non-observance of a reasonable period as a corollary of the principle of sound administration.

35. I shall examine the three parts of the ground of appeal in the order set out above.

1. The first part, alleging misinterpretation of the rules on the limitation of actions

a) The concept of limitation of actions

36. Under Article 73a of the Financial Regulation, entitlements of third parties in respect of the European Union and entitlements of the European Union in respect of third parties are subject to a limitation period of five years.

37. That provision establishes, in EU law, an extinctive limitation period that applies generally and without prejudice to special rules, and which can therefore be compared to a limitation period under general law in the various national systems. [6]

38. The extinctive limitation of claims is a legal concept known in most contemporary legal systems. It is, to my knowledge, present in the legal systems of all the Member States without exception.

39. It is appropriate in this regard to reflect upon the axiological foundations of the limitation of actions as an institution of modern law. [7]

6 — It is also appropriate to distinguish Article 73a from other provisions of European Union acts which lay down limitation periods in respect of the power to impose sanctions or other punitive measures. See, with regard to sanctions imposed for infringements of Articles 101 TFEU and 102 TFEU, Article 25 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU and 102 TFEU] (OJ 2003 L 1, p. 1) and, with regard to fraud affecting the financial interests of the European Union, 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).

7 — Those foundations were established by Friedrich Carl von Savigny in his *System des heutigen römischen Rechts* (Volume 5., Berlin 1841, p. 267). I cite by reference to Kordasiewicz, B., '*Problematyka dawności*', in: *System prawa prywatnego*, Vol 2, *Prawo cywilne — Część ogólna*, Warsaw, CH Beck, Instytut Nauk Prawnych PAN 2012, p. 576.

40. First, as a matter of public policy, a legal system must be constructed in such a way as to avoid casting doubt on long-term factual situations. Furthermore, those situations are more often in conformity with law than the reverse. Objecting to them, having regard to the uncertainty of the evidence, therefore runs the risk of leading to unjust solutions. Moreover, the passage of time necessarily leads to the legalisation even of situations which are contrary to the law. After a long period of inaction, a person who is subject to an obligation may no longer be required to assume that he will be obliged to fulfil it. The passage of time gives rise to evidential difficulties, since the persons concerned cannot be obliged to retain evidence indefinitely. Finally, the limitation of actions encourages creditors to act with promptitude in order to enforce their rights.

41. Thus, the objective pursued by the limitation of actions, in addition to its stabilising role, lies first in the stigmatisation of inactivity on the part of a creditor who fails to display diligence in enforcing his rights. Second, the limitation of actions is intended to minimise litigation relating to long-standing disputes, which involves a high risk of arbitrary solutions resulting from evidential difficulties.

42. That said, the limitation of actions is regulated in different ways in the various legal systems and even within the same legal system for different types of claims. [8]

43. It should also be observed that the institution of limitation of actions does not consist solely of a time-limit but includes a whole set of conditions regarding its application, in particular: the starting date, the detailed rules for calculating the limitation period, causes of suspension and interruption of the running of time, the possibility of the period being changed by the parties, the effects of expiry of the period, and so forth.

44. All of those detailed aspects, which may be covered by different provisions, form an indivisible whole. Only the rules in their entirety provide a basis for assessing the true scope of statute-barring. [9]

b) The interpretation of Article 73a of the Financial Regulation and Article 85b of the implementing rules

45. In the present case, the interpretation as to what constitutes the five-year prescription period involves a joint reading of the provisions of the Financial Regulation and of the implementing rules.

46. The need for such a combined reading derives from the fact that Article 73a of the Financial Regulation defines the entitlements that are subject to limitation and lays down a period of five years, but delegates to the European Commission the task of determining the arrangements for its application, such as the starting date of the period and the conditions under which it may be interrupted. Those arrangements are governed by Article 85b of the implementing rules.

47. As regards the starting date, under Article 85b(1), first subparagraph, of the implementing rules, the limitation period applicable to entitlements of the European Union against third parties runs from ‘the expiry of the deadline communicated to the debtor in the debit note’.

8 — For an analysis of comparative law, see Hondius, E.W. (ed.), *Extinctive prescription: on the limitation of actions: reports to the XIVth Congress*, International Academy of Comparative Law, Athens 1994, and Zrałek, J., *Przedawnienie w międzynarodowym obrocie handlowym*, Zakamycze — Krakow, 2005.

9 — Thus, Hondius (op. cit., p. 8) cites a number of different factors having an influence on the scope of prescription, concluding that a discussion limited to only one aspect of prescription, such as the limitation period, makes no sense. In private international law, recourse to the public-policy exception, by reason of the inadequacy of the prescription period resulting from the *lex causae*, is confined to exceptional cases and necessitates a review of all the provisions having an impact on the length of the limitation period (see Zrałek, op. cit., p. 150).

48. I would observe that it is clear from a joint reading of the abovementioned provisions that, so far as entitlements of the European Union against third parties are concerned, the limitation period of five years laid down in Article 73a of the Financial Regulation starts to run on the expiry date indicated in the debit note.

49. That interpretation is corroborated by the objective of Article 73a of the Financial Regulation and by its legislative context.

50. I would observe that Article 73a of the Financial Regulation was included in the section entitled 'Recovery' in Part 1, Title IV, Chapter 5, of that regulation, which deals with the powers of the accounting officer of the European Union in the recovery procedure. It is clear from the preamble to the amending act which inserted Article 73a in the Financial Regulation that the new provision is intended in particular to limit in time the possibility of recovering European Union entitlements against third parties, in order to comply with the principle of sound financial management.[10] The introduction of a period that runs from the date determined at the start of the recovery procedure, and which governs that procedure, is consistent with the objective of upholding the principle of sound financial management.

51. That interpretation, according to which the period in question starts to run on the date indicated in the debit note, was also adopted in the judgment under appeal.

52. The General Court took the view in paragraphs 39 and 40 of the judgment under appeal that, by virtue of the relevant provisions of the Financial Regulation and of the implementing rules, the limitation period started to run in this case on 20 January 2011, that is to say, on the expiry date notified to the appellant in the debit note sent to him by the Parliament on 13 October 2010. On the date on which the contested decision was adopted, namely 7 October 2010, that period had not started to run and, consequently, prescription had not occurred in this case.

53. The appellant contends that that finding by the General Court is based on a misinterpretation of Article 85b(1), first subparagraph, of the implementing rules. According to the appellant, that provision, in so far as it refers to the date notified in the debit note, must be regarded as contemplating 'a separate five-year period' to the limitation period properly so-called, which, for its part, should run from the date on which the claim may be invoked.

54. I note that the interpretation advanced by the appellant is in no way supported by Article 73a of the Financial Regulation, which refers clearly, so far as entitlements of the European Union against third parties are concerned, to a single period of five years.

55. Furthermore, the approach proposed by the appellant appears to me to challenge the legality of Article 85b(1), first subparagraph, of the implementing rules and to lead potentially to an interpretation *contra legem*.

56. In fact, to take the view that, by adopting Article 85b of the implementing rules, the Commission introduced arrangements concerning 'a separate five-year period' to the one referred to in Article 73a of the Financial Regulation, as the appellant suggests, would be tantamount to stating that those arrangements are vitiated by illegality, in so far as they depart from the delegation of authority provided for in the second subparagraph of the abovementioned Article 73a.

57. Accordingly, I consider that the provisions at issue do not lend themselves to the interpretation proposed by the appellant and that the General Court acted correctly in law in holding that the period in question runs from the expiry date indicated in the debit note.

10 — See recital 26 in the preamble to Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation No 1605/2002 (OJ 2006 L 390, p. 1).

c) The consequences of the interpretation from the perspective of the principle of legal certainty

58. What are the consequences of my proposed interpretation in relation to the principle of legal certainty invoked by the appellant?

59. I must emphasise that, in my opinion, that principle militates against a right of action deriving from a claim being able to endure perpetually without limitation. Such a situation would undermine both the role of stabilising the legal system and the balance between the respective legitimate interests of debtors and creditors. It is in that sense that it may be said that extinctive limitation of actions constitutes a 'principle' common to modern legal systems.

60. The answer to the question whether the limitation period deriving from the interpretation given in the judgment under appeal enables the debtor's interests in terms of legal certainty to be safeguarded depends on the relationship between the time at which the European Union entitlement becomes payable and the time at which it is ascertained through the adoption of an administrative measure.

61. It is necessary to observe that, within the scheme of Article 60 of the Financial Regulation, the implementation of European Union revenue comprises, in particular, the determination of the amount receivable and the recovery thereof.

62. Under Article 71(2) of that regulation, any amount receivable by the European Union that is identified as being certain, of a fixed amount and due must be established by a recovery order, followed by a debit note addressed to the debtor.

63. Article 78(1) of the implementing rules specifies that the establishment by the European Union authorising officer of an amount receivable is to constitute 'recognition of the right of the [European Union] in respect of a debtor and establishment of entitlement to demand that the debtor pay the debt'. It is clear from Article 78(3) of those rules that the debit note is a means by which that determination is brought to the notice of the debtor. The debit note indicates the final date for payment, after which the institution will proceed to recover the amount due and default interest becomes payable.

64. I note in this regard that the possibility cannot be excluded that certain amounts owed to the European Union become payable only after the amount receivable has been established in accordance with Article 71(2) of the Financial Regulation.

65. Accordingly, the instrument recording the entitlement, which is notified to the debtor in the debit note, could, for certain claims, be regarded as an originating measure giving rise to the European Union's right to enforce the claim against the third party concerned. [11]

66. For such claims, the limitation period in Article 73a of the Financial Regulation and Article 85b of the implementing rules, which starts to run on the date indicated in the debit note, provides an adequate means of protecting the debtor's interests. For such claims, the date of notification of the debit note is very close to the date on which those claims become payable.

67. There is no doubt, however, that other European Union claims are already payable at the time when the measure establishing the amount receivable is adopted, that measure constituting, in that regard, a declaratory measure.

11 — _ See, for example, the judgment in *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission* (T-552/11, EU:T:2013:349, paragraphs 46 and 72). The General Court found that, for a payable debt to be able to arise by virtue of the contract at issue, concluded between the Commission and a third party, the Commission was required in particular to have specified the conditions for reimbursement of the sum unduly paid, and it did so in a debit note. This means that, in that case, the claim became payable only upon despatch of the debit note.

68. For claims of that kind, the period envisaged in Article 73a of the Financial Regulation and Article 85b of the implementing rules is insufficient as a means of protecting the debtor's interests deriving from the principle of legal certainty, given that it starts to run on the date chosen by the creditor, which has no connection with the time at which the claim arises or becomes payable.

69. There is thus a lacuna in EU law which might create the risk that certain European Union claims might be perpetuated indefinitely, given that the limitation period does not start to run until the time at which they are established and made the subject of recovery proceedings in accordance with the procedure laid down by the Financial Regulation.

70. The scope of that lacuna appears to be relatively limited by reason of the particular nature of the legal relationships of the European Union as creditor.

71. In the first place, as I have already said, for claims which become payable only when they have been established by the European Union authorising officer, the limitation period that runs from the date indicated in the debit note appears to be adequate.

72. Furthermore, so far as concerns amounts receivable by virtue of sanctions and punitive measures, legal certainty for individuals is ensured by the existence of special time-limits associated with the exercise of the power to impose punitive measures. [12]

73. Moreover, claims arising from the European Union's contractual relationships may be subject to limitation rules contained in the applicable law designated by the parties to the contract or by conflict rules. Finally, claims vested in the European Union against third parties as a result of an offence may also be subject to the national law designated by private-international-law rules. [13]

74. The fact nevertheless remains that certain European Union claims, such as the one at issue here, do not come within any of those hypothetical cases and are therefore liable to endure indefinitely until the EU institution establishes their existence and proceeds with their recovery.

d) The existence of the legislative lacuna

75. In my view, the lacuna here is one which cannot be remedied by interpretation of the Financial Regulation and the implementing rules.

76. In that regard, the appellant proposes that the provisions in question should be interpreted as establishing 'double' limitation, comprising two periods, each with a different starting point: in one case, the date on which the amount receivable may be claimed and, in the other, the date indicated in the debit note.

77. In my view, that approach would amount in reality to the Court having to depart from the wording of the legislation and to establish a new limitation period in addition to the one provided for by the Financial Regulation and the implementing rules.

78. I remain convinced that the European Union Courts must assume in full their role in order to condemn breaches of the principle of legal certainty in the individual cases brought before them.

12 — See footnote 6 above.

13 — In the absence of harmonisation of the law on non-contractual liability, national law may be applicable to claims resulting from an offence which adversely affects the European Union. See also the action for damages brought by the Commission before a Belgian court in respect of damage suffered as a result of concerted practices engaged in by a number of lift manufacturers. That action involved a request for a preliminary ruling, which gave rise to the judgment in *Otis and Others* (C-199/11, EU:C:2012:684).

79. That said, I do not think that that role can legitimately go so far as to establish a new limitation period.

80. In my opinion, establishment of the limitation period is a matter for the legislature.

81. There are a number of reasons for that view. In order to determine the limitation period, the legislature must weigh legal certainty for the debtor against the legitimate interest of the creditor in ensuring that legality is restored. In order to determine a specific period, that weighing of interests must take place *in abstracto* and not for a specific dispute. If one does not wish to compromise the legitimate expectations of the creditor, the limitation period and all the arrangements for its application must be established and known in advance. Moreover, the introduction of a limitation period makes it necessary to determine all of the conditions surrounding its application.

82. Those considerations apply with equal force in regard to the power to determine the starting point of the limitation period.

83. Indeed, identification of the starting point serves as a calibrator, as important as the limitation period itself, which enables a balance to be struck between the interests of the creditor and those of the debtor.

84. That balance can be defined differently in cases of contractual and non-contractual liability.

85. First, for claims deriving from infringement of a contractual term, the limitation period starts to run, as a general rule, from the moment at which the claim becomes payable, which usually coincides with the date on which the infringement occurred.

86. Second, for claims resulting from an offence, account must be taken of the fact that the creditor may not be immediately aware of the offence committed or may not even be aware that he has suffered loss. Moreover, he may not be in possession of all the information necessary to exercise a right of action.

87. In the case of the latter claims, determination of the starting point of the limitation period is a more delicate question, which is resolved in a variety of ways by the legislative bodies of the various Member States.

88. In the different legal systems, the starting point may be determined *a tempore facti*, that is to say, on the date on which the act was committed or the damage became apparent, or else it may be deferred *a tempore scientiae*. The latter time may in turn be identified differently: it may be the day on which the act or damage was discovered by the creditor, the day on which the act or damage ought reasonably to have been discovered, the day on which the creditor became certain of the causal link between the act and the damage, or even the day on which he became, or ought to have become, aware of the identity of the person responsible. [14] The criterion of awareness also implies determination of the level of information that is sufficient to trigger the running of time. [15] Moreover, certain legal systems lay down a different starting point for claims resulting from intentional misconduct or from acts liable to attract criminal proceedings. [16]

14 — See Hondius in: Hondius (ed.), op. cit., p. 21, referring to national reports contained in the work; and Zrałek, op. cit., p. 59.

15 — For example, academic writers in Poland agree that not just any information concerning the person responsible is sufficient and that the creditor must have information deriving from a competent source and of such scope that it makes it possible for the commission of the acts to be attributed to a known person with a sufficient degree of probability. See Kordasiewicz, op. cit., p. 612.

16 — For example, Article 442^1(2) of the Polish Civil Code lays down an exceptionally long limitation period, of 20 years from the day on which the act was committed, for claims concerning damage suffered as a result of a criminal act.

89. The choice between these various possibilities is an exercise in balancing interests which, in my view, comes clearly within the remit of the legislature.

90. For all those reasons, I consider that it is not feasible to establish a limitation period, or the starting point thereof, by way of a judicial decision. Even regardless of the number of possible solutions, the limitation period and its starting point must be known to the creditor in advance.

91. In certain exceptional cases, a court may amend the limitation period or the rules for its application,[17] but, as I have just emphasised, the possibility of introducing such a period or such rules seems to me not to fall within the purview of a court.

92. I consider that the absence of a period liable to extinguish certain European Union claims before they are established by the creditor is deplorable from the point of view of the principle of legal certainty.

93. Nevertheless, it is incumbent upon the legislature to remedy the situation by changing the rules governing application of the Financial Regulation.

e) The reasonable-period principle

94. In such circumstances, which give rise to legal uncertainty, the European Union Courts must, in my opinion, have recourse to any instrument within their powers in order to ensure full compliance with the principle of legal certainty in proceedings before them.

95. I have in mind in this connection the various legal concepts linked to the passage of time, which may vary according to the legal system but which are, like the concept of prescription, corollaries of the principle of legal certainty.

96. Under EU law, this role of an 'emergency solution' in regard to legal relations between EU institutions and private debtors is, in my view, most adequately fulfilled by the reasonable-period principle.

97. According to that principle, the transversal role of which has been confirmed on numerous occasions,[18] in cases where a period is not laid down by law, the EU institutions are required to observe a reasonable period in all their actions.

98. That reasonable period depends on the circumstances of the case and cannot be set by reference to a precise maximum limit, determined abstractly. Its application must be intended to protect, on a case-by-case basis, legal certainty for individuals in their relations with the European Union, where no period is prescribed by law.[19]

17 — In Polish law, the court may take action concerning the consequences of prescription in cases of abuse of rights, this possibility constituting a sort of 'safety valve' (see Kordasiewicz, op. cit., p. 606). In German law, the Bundesfinanzhof has held that it has 'emergency' powers ('*Notkompetenz*') enabling it to shorten the limitation period provided for in the old Paragraph 195 of the BGB (Federal Civil Code) (BFH, 7 July 2009, Az. VII R 24/06). Under EU law, the national court may be required to temper the prescription period obtaining under national law in cases where its application would not comply with the principles of equivalence and effectiveness (see, to that effect, the judgment in *Manfredi and Others*, C-295/04 to C-298/04, EU:C:2006:461, paragraphs 77 to 82).

18 — I shall confine myself to citing a few examples of its application in various areas, in particular: the recovery of aid unlawfully paid (*Falck and Acciaierie di Bolzano* v *Commission*, C-74/00 P and C-75/00 P, EU:C:2002:524); the clearance of EAGGF accounts (*Greece* v *Commission*, C-321/09 P, EU:C:2011:218); the recovery of costs incurred before the European Union Courts (order in *Dietz* v *Commission*, 126/76 DEP, EU:C:1979:158); the filing of a claim for compensation by an official (order in *Marcuccio* v *Commission*, T-157/09 P, EU:T:2010:403); and actions for the recovery of sums paid but not due in civil service matters (*Ronsse* v *Commission*, T-205/01, EU:T:2002:269).

19 — See, for a summary of the case-law of the Court on the meaning of 'reasonable period', the judgment in *Arango Jaramillo and Others* v *EIB* (C-334/12 RX II, EU:C:2013:134, paragraphs 27 to 34).

99. I must emphasise that application of the reasonable-period principle is not likely to guarantee the same degree of legal certainty and foreseeability of legal situations as is the legally prescribed limitation period, the duration and consequences of the expiry of which are determined in advance.

100. Nevertheless, in the absence of an appropriate legal period, recourse to the reasonable-period principle seems to me to be the appropriate way of ensuring that, in a particular dispute, a legislative lacuna in the matter of prescription does not undermine the legitimate interests of a debtor of the European Union.

101. In the present case, by basing its review on that principle, the General Court thus addressed the appellant's allegations in an area which was, at the same time, both appropriate to the role of the Court and capable of ensuring protection of the legitimate interests underlying the appellant's argument.

102. Furthermore, in his appeal, the appellant does not criticise the views expressed by the General Court in connection with that appraisal.

103. In particular, the appellant does not object to the reasoning in paragraph 51 of the judgment under appeal, which refers to a well-established tenet in the case-law of the Court of Justice according to which the finding of an infringement of the reasonable-period principle cannot lead to annulment of a measure unless the duration of the action taken by the institution was capable of impacting on the outcome of the procedure which led to the adoption of that measure. That applies, in particular, if the rights of defence of the addressee are potentially undermined.[20] However, the appellant does not challenge the General Court's finding that he had not demonstrated in this case that his rights of defence had been adversely affected.

104. In the light of all the foregoing observations, I consider that the first part of the appellant's first ground of appeal, alleging misinterpretation, is unfounded.

2. The second part: the objection of unlawfulness

105. The appellant maintains that Article 85b of the implementing rules and, in the alternative, also Article 73a of the Financial Regulation are unlawful.

106. I would point out that a submission made for the first time in an appeal before the Court of Justice must be rejected as inadmissible unless it is a plea that the General Court ought to have raised of its own motion.

107. According to the Court's consistent case-law, to allow a party to put forward for the first time before the Court of Justice a plea in law which he has not raised before the General Court would be tantamount to allowing that party to bring before the Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which had been brought before the General Court.[21]

108. As is clear from the file, the appellant did not claim before the General Court that either Article 73a of the Financial Regulation or Article 85b of the implementing rules was illegal.

109. Moreover, in his appeal, the appellant does not put forward any argument alleging infringement by the General Court of the obligation to raise a plea on grounds of public policy.

20 — See the judgments in *Technische Unie* v *Commission* (C-113/04 P, EU:C:2006:593, paragraph 48) and, by analogy, in *Groupe Gascogne* v *Commission* (C-58/12 P, EU:C:2013:770, paragraphs 73 and 74).

21 — Judgments in *Sison* v *Council* (C-266/05 P, EU:C:2007:75, paragraph 95) and in *Sweden and Others* v *API and Commission* (C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 126); and order in *EMC Development* v *Commission* (C-367/10 P, EU:C:2011:203, paragraph 93).

110. I accordingly take the view that the objection of unlawfulness put forward by the appellant in this case falls foul of the prohibition of new pleas at the appeal stage and is for that reason inadmissible.

3. The third part: the scope of the General Court's appraisal

111. The appellant contends, in essence, that the General Court erred in examining the breach of the reasonable-period principle rather than addressing his main argument alleging breach of the limitation rules.

112. That argument in fact raises two distinct problems. First, it relates to the question whether the General Court addressed the argument put forward by the appellant in the proceedings at first instance. Second, the question arises whether the General Court acted correctly in law in examining that argument in the context of compliance with the reasonable-period principle.

113. In the first place, with regard to the alleged lack of a reply, I would point out that the General Court is not required to address explicitly all the arguments put forward by the parties to the dispute. In fact, the reasoning given in a judgment of the General Court may be implicit, provided that it allows the interested parties to ascertain the grounds on which the General Court did not uphold their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review. [22]

114. In the present case, as is clear from the file, the appellant submitted before the General Court that a general principle of law exists according to which the limitation period starts to run from the time at which the creditor is able to enforce his claim. According to the appellant, that principle, being common to the legal systems of the Member States, ought to have prompted the General Court to reject any other interpretation of the limitation rules at issue.

115. The General Court implicitly, but necessarily, rejected that argument in paragraphs 38 to 42 of the judgment under appeal.

116. So far as concerns the allegation of a breach of the rules on the five-year limitation period, the General Court indicated that Article 73a of the Financial Regulation, relied upon by the appellant, refers to the date set in the implementing rules and must therefore be read in conjunction with those rules. Next, the General Court interpreted the concept of the five-year limitation period in the light of Article 85b of the implementing rules, finding that the limitation period runs, as follows expressly from that article, from the expiry date indicated in the debit note.

117. I consider therefore that the present part of the first ground of appeal is unfounded so far as concerns the alleged lack of a reply to an argument put forward at first instance.

118. Second, the appellant's criticism concerns the relevance of the analysis based on the reasonable-period principle.

119. First, even if it is assumed that the General Court could have dispensed with examination of compliance with the reasonable-period principle as a separate plea in annulment, that would mean only that the judgment under appeal contains superabundant reasoning, and that is not liable to lead to its annulment. Furthermore, as I have already observed in my analysis of the first part of the present ground of appeal, [23] the General Court was right in law to examine the appellant's argument in the light of the reasonable-period principle.

22 — See the judgment in *FIAMM and Others* v *Council and Commission* (C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 96 and the case-law cited).

23 — See points 94 to 104 above.

120. In my view, the appellant's argument alleging inappropriateness of the examination of the reasonable period, and likewise the third part of the first ground of appeal as a whole, must be rejected.

121. Concluding this analysis, I take the view that the first ground of appeal cannot be upheld.

B – *The second to fifth grounds of appeal*

122. By his second ground of appeal, the appellant criticises the General Court for distorting the second plea in his application, according to which he had been unable to submit his observations on all the points on which the contested decision was based.

123. I note that the appellant fails to specify clearly what the alleged distortion consists of, but refers in general terms to the factual description of the dispute. His allegations in connection with the second ground of appeal are therefore, from the outset, inadequately supported.

124. By his third ground of appeal, the appellant contends that, in rejecting the argument concerning the determination of domicile for the purpose of reimbursing travel expenses, the General Court was required to clarify the concept of domicile within the meaning of EU law. Moreover, according to the appellant, the General Court was not entitled to rule out all possibility of regularising the irregularity committed in the designation of the beneficiaries of the allowances, in so far as the facts alleged established that that irregularity was purely formal in nature.

125. In my view, by those allegations, albeit formulated in relation to a misinterpretation of the PEAM rules, the appellant is seeking in reality to secure a fresh appraisal of the facts, something which falls outside the jurisdiction of the Court of Justice in the context of an appeal.[24] The third ground of appeal is for that reason inadmissible.

126. The fourth ground of appeal, put forward in the alternative, alleges infringement of the principle of proportionality. The appellant maintains that, whilst the Parliament's claims had to be justified in principle, their amounts ought to have been moderated in order to take account of the appellant's *bona fides* and of the specific circumstances of the case.

127. Thus, the appellant is essentially reiterating the arguments examined and rejected by the General Court in paragraphs 102 to 113 of the judgment under appeal and does not point to any error in law vitiating the reasoning of that judgment. In my view, the fourth ground of appeal is consequently inadmissible.[25]

128. Finally, the fifth ground of appeal is concerned solely with the imposition of the costs in the two cases joined before the General Court.

129. I would point out that, under the second paragraph of Article 58 of the Statute of the Court of Justice, no appeal may lie regarding only the amount of the costs or the party ordered to pay them. According to well-established case-law, that rule applies to submissions concerning the alleged irregularity of the General Court's decision on costs, in the event of all the other grounds of appeal having been rejected.[26]

24 — See the judgment in *E.ON Energie* v *Commission* (C-89/11 P, EU:C:2012:738, paragraph 64 and the case-law cited).

25 — See, inter alia, the judgment in *Eurocoton and Others* v *Council* (C-76/01 P, EU:C:2003:511, paragraph 47).

26 — Judgments in *Henrichs* v *Commission* (C-396/93 P, EU:C:1995:280, paragraphs 65 and 66), and *Edwin* v *OHMI* (C-263/09 P, EU:C:2011:452, paragraph 78). Although the case-law cited declares such a plea relating to costs to be inadmissible, it would in my opinion be more appropriate to take the view that, in the event of rejection of the other grounds of appeal, there is no longer any need to examine it.

130. Accordingly, if the Court accepts my proposal that the first four grounds of appeal should be rejected, it will be unnecessary to examine the fifth ground of appeal alleging an irregularity on the part of the General Court when awarding costs in the proceedings.

131. Consequently, I propose that the second to fifth grounds of appeal be rejected and that the appeal as a whole therefore be dismissed.

132. Since the appellant has failed in his submissions, I propose, pursuant to Articles 184(1) and 138(1) of the Rules of Procedure, that he be ordered to pay the costs, in line with the form of order sought by the Parliament.

VII – **Conclusion**

133. Having regard to all of the foregoing, I propose that the Court dismiss the appeal and order Riccardo Nencini to pay the costs.