Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

13 July 2023 (*)

(Reference for a preliminary ruling – Value added tax (VAT) – National legislation providing for the possibility of suspending, without any temporal limit, the limitation period for action by the tax authorities in the event of court proceedings – Repeated tax procedures – Regulation No 2988/95 – Scope – Principles of legal certainty and effectiveness of EU law)

In Case C?615/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Szegedi Törvényszék (Szeged High Court, Hungary), made by decision of 4 October 2021, received at the Court on 4 October 2021, in the proceedings

Napfény-Toll Kft.

v

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

THE COURT (Fifth Chamber),

composed of E. Regan (Rapporteur), President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Fifth Chamber, D. Gratsias, M. Ileši? and I. Jarukaitis, Judges,

Advocate General: A. Rantos,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 10 November 2022,

after considering the observations submitted on behalf of:

– Napfény-Toll Kft., by L. Detvay, O. Kovács, P. Nagy and Gy. Tiborfi, ügyvédek,

– the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,

– the Spanish Government, by A. Ballesteros Panizo, acting as Agent,

– the European Commission, by F. Blanc, J. Jokubauskait?, and A. Sipos, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 February 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the principles of legal certainty and effectiveness of EU law in the context of the application of Council Directive

2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The request has been made in proceedings between Napfény-Toll Kft. and Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Authority, Hungary) concerning that company's right to deduct from the amount of value added tax (VAT) for which it is liable the amount of VAT due in respect of various acquisitions of goods made in June 2010 and between November 2010 and September 2011.

Legal context

European Union law

Directive 2006/112

3 Recital 8 to Directive 2006/112 provides:

'Pursuant to Council Decision 2000/597/EC, Euratom, of 29 September 2000 on the system of the European Communities' own resources [(OJ 2000 L 253, p. 42)], the budget of the European Communities is to be financed, without prejudice to other revenue, wholly from the Communities' own resources. Those resources are to include those accruing from VAT and obtained through the application of a uniform rate of tax to bases of assessment determined in a uniform manner and in accordance with Community rules'.

Regulation (EC, Euratom) No 2988/95

4 Article 1 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), provides:

'1. For the purposes of protecting the European Communities' financial interests, general rules are hereby adopted relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Community law.

2. "Irregularity" shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.'

5 Article 3(1) and (3) of that regulation provides:

'1. The limitation period for proceedings shall be four years as from the time when the irregularity referred to in Article 1(1) was committed. …

In the case of continuous or repeated irregularities, the limitation period shall run from the day on which the irregularity ceases. In the case of multiannual programmes, the limitation period shall in any case run until the programme is definitively terminated.

The limitation period shall be interrupted by any act of the competent authority, notified to the person in question, relating to investigation or legal proceedings concerning the irregularity. The limitation period shall start again following each interrupting act.

However, limitation shall become effective at the latest on the day on which a period equal to twice the limitation period expires without the competent authority having imposed a penalty, except

where the administrative procedure has been suspended in accordance with Article 6(1).

…

3. Member States shall retain the possibility of applying a period which is longer than that provided for in paragraphs 1 and 2 respectively.'

Decision 2007/436/EC

6 Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources (OJ 2007 L 163, p. 17), which repealed and replaced Decision 2000/597, provides in Article 2(1)(b):

'Revenue from the following shall constitute own resources entered in the general budget of the European Union:

…

(b) … the application of a uniform rate valid for all Member States to the harmonised VAT assessment bases determined according to Community rules. …'

Hungarian law

Legislation relating to the suspension of limitation periods in tax matters

7 Paragraph 164 of the az adózás rendjér?l szóló 2003. évi XCII. törvény (Law No XCII of 2003 establishing a Code of Tax Procedure) [*Magyar Közlöny* 2003/131 (XI. 14.)], in the version applicable to the dispute in the main proceedings ('the former Code of Tax Procedure') provides:

'(1) The right to make a tax assessment is time-barred after five years from the last day of the calendar year in which the declaration or notification relating to that tax should have been made or, where there is no such declaration or notification, in which the tax should have been paid.

…

(5) In the event of judicial review of the decision of the tax authority, the limitation period in respect of the right to establish the correct amount of tax due ceases to run from the date on which the decision of the second-level tax authority became final until the date on which the court decision becomes final and therefore, in the event of an appeal, until the date when a ruling is given on that appeal.'

8 The former Code of Tax Procedure was repealed and replaced, with effect from 1 January 2018, by the provisions of the az adóigazgatási rendtartásról szóló 2017. évi CLI. törvény (Law No CLI of 2017 on the organisation of the tax authorities) (*Magyar Közlöny* 2017/192), in the version applicable to the dispute in the main proceedings, and those of the az adózás rendjér?l szóló 2017. évi CL. törvény (Law No CL of 2017 establishing a Code of Tax Procedure) (*Magyar Közlöny* 2017/192), in the version applicable to the dispute in the main proceedings ('the new Code of Tax Procedure').

9 Paragraph 203(3) of the new Code of Tax Procedure reproduces, in essence, the content of Paragraph 164 of the former Code of Tax Procedure. Under that Paragraph 203(3), if the taxpayer has brought an administrative appeal against a decision of the tax authority, the limitation period

for the tax authority to be entitled to establish the correct amount of the tax due is suspended from the date on which the decision of the second-level tax authority becomes final until the date on which the court decision becomes final or, in the event of an appeal, until the date when a ruling on that appeal is given.

10 Paragraph 203(7)(c) of that new code provides that that limitation period is to be extended by 12 months, inter alia, if, in the context of examining an administrative appeal brought against a decision of the tax authority, the court before which the dispute is brought orders a new procedure to be initiated.

11 In accordance with Paragraph 271(1) of the new Code of Tax Procedure, the provisions of that new code, including those of Paragraph 203(7)(c) of the new code, are to be applied to procedures initiated or repeated after the entry into force of the new code.

The case-law concerning the application of the legislation relating to the suspension of limitation periods in tax matters

12 In the judgment Kfv.I 35.343/2019/11, the Kúria (Supreme Court, Hungary) stated, as regards the objective pursued by the legislation relating to the suspension of limitation periods in tax matters:

‘In the context of the former Code of Tax Procedure, it is the very fact of “judicial review”, and not the content of the decision which concludes that review, which is a condition for the suspension and extension of the limitation period to apply. Judicial review commences with the bringing of the action … No *ex tunc* legal effect may attach to a null and void decision once a finding of such nullity has been made; however, the tax authority, on account of the judicial review, may take a decision specific to producing legal effects within the period referred to in the former Code of Tax Procedure.’

13 By a decision of 25 January 2022, that is to say, delivered after the request for a preliminary ruling had been made, the Alkotmánybíróság (Constitutional Court, Hungary) annulled Paragraph 271(1) of the new Code of Tax Procedure in so far as it included the term ‘repeated’, on the ground, in essence, that that term had the effect of making the extension of the limitation period laid down in Paragraph 203(7)(c) of that new code applicable, retroactively, to repeated procedures already in progress.

The dispute in the main proceedings and the question referred for a preliminary ruling

14 Napfény-Toll deducted from the amount of VAT which it was liable to pay the amount of VAT due in respect of various acquisitions of goods made during June 2010 and between November 2010 and September 2011.

15 In December 2011, the Nemzeti Adó – és Vámhivatal Dél-budapesti Igazgatósága (National Tax and Customs Authority – Directorate of Budapest South, Hungary) initiated, as first-level authority, a tax inspection which was notified to Napfény-Toll on 13 December 2011.

16 Following that tax inspection, that directorate took the view that part of the amount of tax deducted by Napfény-Toll in respect of the periods concerned ought not to have been deducted, since some of the invoices relied on for that purpose did not correspond to any real economic transaction and some others were part of a tax fraud of which Napfény-Toll was aware. Accordingly, by a decision dated 8 October 2015 (‘the administrative decision at the first level’), that directorate ordered Napfény-Toll to pay tax arrears totalling 144 785 000 Hungarian forint (HUF) (approximately EUR 464 581) and imposed a fine on it of HUF 108 588 000 (approximately

EUR 348 433), as well as a late-payment penalty of HUF 46 080 000 (approximately EUR 147 860).

The first administrative decision at the second level

17 By decision of 11 December 2015, notified on 14 December 2011 (‘the first administrative decision at the second level’), the Nemzeti Adó – és Vámhivatal Közép-magyarországi Regionális Adó F?igazgatósága (National Tax and Customs Authority – Directorate-General of the Central Hungary Region, Hungary) (‘the Directorate-General of the Central Hungary Region’), now the Appeals Directorate of the National Tax and Customs Authority, before which Napfény-Toll had lodged a complaint, acting as the second-level administrative tax authority, overturned the administrative decision at the first level as regards the late-payment penalty imposed on Napfény-Toll and dismissed that complaint as to the remainder. Napfény-Toll brought an action against the first administrative decision at the second level.

18 By judgment of 2 March 2018, which became final on the same day, the F?városi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court, Hungary) set aside the first administrative decision at the second level and ordered a new procedure to be initiated. As grounds for its judgment, the F?városi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court) stated that it had found that that first administrative decision was vitiated by contradictory reasoning. The court stated that the second-level administrative decision set out facts which were different from those found in the administrative decision at the first level, but at the same time that the first-level tax authority had correctly established the facts.

The second administrative decision at the second level

19 By a decision of 5 March 2018, served on Napfény-Toll on 7 March 2018 (‘the second administrative decision at the second level’), the Directorate-General for the Central Hungary Region, in essence, confirmed the administrative decision at the first level. However, it reduced the amount of the late-payment penalty imposed on Napfény-Toll.

20 By judgment of 5 July 2018, which became final on the same day, the F?városi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court), before which Napfény-Toll had brought an action, set aside the second administrative decision at the second level and ordered a new procedure to be initiated, on the ground that (i) the second administrative decision at the second level, which was taken on the first business day following the delivery of the judgment of 2 March 2018, reproduced, largely word for word, the first administrative decision at the second level, without however demonstrating the extent to which that second administrative decision amended the finding made in the administrative decision at the first level, since the consequences of that judgment of 2 March 2018 were accordingly only formal, and, (ii) the second administrative decision at the second level still contained contradictory observations with regard to whether the transactions concerned were real.

21 By a judgment of 30 January 2020, the Kúria (Supreme Court, Hungary), before which the tax authority had brought an appeal, upheld the judgment of 5 July 2018 for two reasons. First, in so far as the statement of reasons for the second administrative decision at the second level was a reproduction of the first administrative decision at the second level, the Kúria (Supreme Court) held that the F?városi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court) had been fully entitled to find that the Directorate-General of the Central Hungary Region had failed to comply with the binding guidance established in the judgment of 2 March 2018. Admittedly, that directorate-general, as it had submitted, had only a short period of time before the right to make a tax assessment and, consequently, to establish the amount of VAT to be repaid

would be time-barred, but such a circumstance did not exempt it from performing its legal obligations. Second, the Kúria (Supreme Court) held, as the F?városi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court) had done, that the second administrative decision at the second level was vitiated by contradictory reasoning.

The third administrative decision at the second level

22 By decision of 6 April 2020 (‘the third administrative decision at the second level’), the Directorate-General of the Central Hungary Region upheld the administrative decision at the first level, although it modified the amount of the late-payment penalty imposed on Napfény-Toll. As grounds for its position, that Directorate-General stated that its findings of fact were no different from those established in the administrative decision at the first level, which had correctly established those facts.

23 The applicant brought an appeal before the Szegedi Törvényszék (Szeged High Court, Hungary), the referring court, against that third administrative decision at the second level on the ground, inter alia, that, pursuant to Paragraph 164(1) and (5) of the former Code of Tax Procedure, the tax authority’s right to assess VAT amounts to be repaid is time-barred after five years from the last day of the calendar year in which the declaration or notification relating to that tax should have been made or, where there is no such declaration or notification, in which that tax should have been paid. The tax authority’s right to assess VAT amounts to be repaid in respect of the periods concerned had ceased to exist before the date when the third administrative decision at the second level was adopted. The applicant takes the view that the repeated adoption of decisions is contrary to the principle of legal certainty which the limitation period is supposed to protect. That is all the more so since, in the case at issue in the main proceedings, while the second initiation of a new procedures took place, that was on account of the failure of the Directorate-General of the Central Hungary region to comply with the guidance contained in the first court decision. It was therefore due to the fault of that directorate-general that the procedure at issue in the main proceedings has gone on for almost 10 years since the beginning of the tax inspection notified to Napfény-Toll.

24 In that context, the referring court notes that Paragraph 164(5) of the former Code of Tax Procedure lays down no limit on the number of times a tax procedure may be repeated by the tax authority or the total duration of suspension of that procedure. Under the case-law of the Kúria (Supreme Court), limitation is suspended throughout the entire duration of the judicial review of a decision by that authority. Accordingly, there is no limit on how long the suspension of the limitation period in cases of judicial review can last, with the result that the tax authority’s right to assess VAT amounts to be repaid could be extended by a number of years or even, in extreme cases, by decades. For that reason, the referring court has doubts as to the compatibility of the legislation at issue in the main proceedings and the administrative practice relating to it with the principles of legal certainty and effectiveness.

25 In those circumstances the Szegedi Törvényszék (Szeged High Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Are the principles of legal certainty and of effectiveness, which form part of [EU] law, to be interpreted as not precluding legislation of a Member State which does not allow the courts to exercise any discretion, such as [that provided for in] Paragraph 164(5) of [the former Code of Tax Procedure], and the practice based on that legislation, under which, in matters of [VAT], the limitation period in respect of the right of the tax authorities to make a tax assessment is to be suspended for the whole duration of judicial review, regardless of the number of repeat administrative tax procedures, with no ceiling on the cumulative duration of the suspensions where there are several rounds of judicial review, one after another, including in cases where the court

ruling on a decision of a tax authority taken as part of a repeat procedure following on from an earlier court decision finds that the tax authority failed to comply with the guidance contained in that court decision, that is to say, where it is due to the fault of that authority that the new court proceedings took place?'

The proceedings following the submission of the request for a preliminary ruling

26 Following the request for a preliminary ruling being lodged, the referring court sent the Court of Justice, by letter of 3 May 2022, a copy of the decision of the Alkotmánybíróság (Constitutional Court) of 25 January 2022, by which the latter court annulled Paragraph 271(1) of the new Code of Tax Procedure in so far as that provision included the term 'repeated', as well as a copy of a second decision of the Alkotmánybíróság (Constitutional Court) dated 26 April 2022 also to that effect.

27 By letter of 30 June 2022, the Court asked the referring court to confirm, having regard to certain information initially provided, that, following the decision of the Alkotmánybíróság (Constitutional Court) to annul Paragraph 271(1) of the new Code of Tax Procedure in so far as that provision included the term 'repeated', the proceedings at issue in the main proceedings were not, in any event, time-barred.

28 By letter of 7 July 2022, the referring court stated, in essence, that the sole effect of the decision of the Alkotmánybíróság (Constitutional Court) was to time-bar the tax authority's right to assess the amount of VAT collected which had to be repaid in respect of the 2010 tax year. By contrast, as regards the 2011 tax year, that court stated that it will assess whether or not that right of the tax authority is time-barred in the light of the answer which will be given by the Court in relation to the question referred.

Consideration of the question referred

29 By its question, the referring court is, in essence, asking whether the principles of legal certainty and effectiveness of EU law must be interpreted as precluding legislation of a Member State and the administrative practice related to it, under which, in relation to VAT, the limitation period in respect of right of the tax authorities to assess that tax is to be suspended for the whole duration of judicial review, regardless of the number of repeat administrative tax procedures following those reviews and with no ceiling on the cumulative duration of the suspensions of that period, including in cases where the court ruling on a decision of the tax authority concerned taken as part of a repeat procedure following on from an earlier court decision finds that that tax authority failed to comply with the guidance contained in that court decision.

30 As a preliminary point, it should be noted that, as EU law stands, EU law does not lay down a period within which the right of the tax authorities to assess VAT is time-barred, and it also does not, a fortiori, specify the circumstances in which such a period ought to be suspended.

31 It is true that Regulation No 2988/95, which was referred to at the hearing before the Court, lays down certain requirements for calculating and suspending the limitation periods for proceedings in respect of the irregularities referred to in that regulation. However, it is apparent from Article 1(2) of that regulation that it is to apply only in the event of prejudice to the EU budget by reducing or losing revenue accruing from own resources 'collected directly on behalf of the Union'. While it follows from recital 8 of Directive 2006/112 and Article 2(1)(b) of Decision 2007/436 that revenue from the application of a uniform rate valid for all Member States to the harmonised VAT assessment bases constitutes own resources of the European Union, with the result that, according to the case-law of the Court, there is a link between the collection of VAT revenue in compliance with the EU law applicable and the availability to the EU budget of the

corresponding VAT resources (judgment of 26 February 2013, *Åkerberg Fransson*, C?617/10, EU:C:2013:105, paragraph 26), the fact remains that VAT cannot be regarded as collected directly on behalf of the European Union within the meaning of Article 1(2) of Regulation No 2988/95.

32 First, that tax is collected by the taxable persons and only subsequently paid by them to the Member States. Second, in accordance with Article 1 of Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ 1989 L 155, p. 9), the European Union's own resources based on VAT are not made up of simply of a percentage of the revenue from that tax actually collected, but result from the application of a uniform rate to the VAT assessment base of the Member States, itself calculated in accordance with Article 3 of that regulation and subject to various adjustments laid down in the provisions of that regulation.

33 In that regard, it is true that the Court has recognised the applicability of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Luxembourg on 26 July 1995 (OJ 1995 C 316, p. 48) to cases of fraud concerning revenue accruing from the application of a uniform rate to the harmonised VAT assessment base determined according to EU rules. However, Article 1 of that convention does not, it is clear, include a condition regarding direct collection of the revenue concerned on behalf of the European Union, contrary to the clear wording of Article 1(2) of Regulation No 2988/95 (see, to that effect, judgment of 8 September 2015, *Taricco and Others*, C?105/14, EU:C:2015:555, paragraph 41).

34 In the absence of applicable provisions of EU law, it is for Member States to establish and apply rules on limitation periods in relation to the right of tax authorities to assess VAT due, including the procedures for suspension and/or interruption of that limitation period (see, by analogy, judgment of 21 January 2021, *Whiteland Import Export*, C?308/19, EU:C:2021:47, paragraph 45).

35 However, while establishing and applying those rules falls within the competence of the Member States, the Member States must exercise that competence in a manner consistent with EU law, which requires reasonable time limits to be laid down which protect both the taxable person and the authority concerned (see, by analogy, judgment of 8 September 2011, *Q-Beef and Bosschaert*, C?89/10 and C?96/10, EU:C:2011:555, paragraph 36).

36 In that regard, the Court has found that a five-year limitation period, applicable to applications for reimbursement of VAT overpayments which began to run from the end of the calendar year in which the time limit for paying the tax expired was consistent with EU law (see, to that effect, judgment of 20 December 2017, *Caterpillar Financial Services*, C?500/16, EU:C:2017:996, paragraph 43).

37 In the light of that case-law, a limitation period regarding the right of the tax authority to assess the VAT due which, as in the case in the main proceedings, ran for five years from the last day of the calendar year in which the declaration or notification relating to that tax should have been made, or, where there is no such declaration or notification, after the last day of the calendar year in which the tax should have been paid, must, by analogy, be regarded as compatible with EU law.

38 That is the context in which the referring court asks whether the principles of legal certainty and effectiveness must be interpreted as precluding such a limitation period from being able to be suspended for the whole duration of judicial review.

39 In the first place, it should be recalled that the principle of legal certainty forms part of the

EU legal order and that, as such, must be observed by the Member States in the exercise of the competences referred to in paragraphs 31 and 32 of the present judgment (see, to that effect, judgments of 10 December 2015, *Veloserviss*, C?427/14, EU:C:2015:803, paragraph 30 and the case-law cited, and of 20 May 2021, *BTA Baltic Insurance Company*, C?230/20, not published, EU:C:2021:410, paragraph 45).

40 In accordance with settled case-law, that principle is aimed at ensuring foreseeability of situations and legal relationships and requires, inter alia, that the tax position of a taxable person having regard to his or her rights and obligations vis-à-vis the tax or customs authorities should not be open to challenge indefinitely (judgment of 10 December 2015, *Veloserviss*, C?427/14, EU:C:2015:803, paragraph 31 and the case-law cited), which means that, in order for that taxable person to be able effectively to rely on that principle being applicable, that taxable person must be able to rely on a specific legal situation.

41 Since before the expiry of the limitation period laid down for that purpose, the tax authority has notified the taxable person concerned of its intention to re-examine that taxable person's tax position and, thereby, implicitly, to withdraw its decision to accept that taxable person's declaration, that taxable person can no longer rely on the situation which arose on the basis of that declaration, with the result that the principle of legal certainty cannot, in such a case and in the absence of other circumstances, be infringed (see, to that effect, judgment of 9 July 2015, *Cabinet Medical Veterinar Dr. Tomoiag? Andrei*, C?144/14, EU:C:2015:452, paragraph 40).

42 Moreover, since the requirements arising from the application of the principle of legal certainty are not absolute, the Member States must ensure they are weighed against the other requirements inherent in their membership of the European Union, in particular those set out in Article 4(3) TEU, to take any appropriate measure, general or particular, to ensure the fulfilment of the obligations arising from the Treaties or from acts adopted by the institutions under those Treaties. Accordingly, the national rules laying down the rules for the suspension of the limitation period in respect of the right of the tax authority to assess the VAT due must be devised in such a way as to find a balance between, on the one hand, the requirements inherent in applying that principle and, on the other hand, those enabling Directive 2006/112 to be implemented effectively and efficiently, since it is necessary to evaluate that balance by taking into consideration all elements of the national limitation rules (see, by analogy, judgment of 21 January 2021, *Whiteland Import Export*, C?308/19, EU:C:2021:47, paragraphs 49 and 50).

43 While national legislation and administrative practice such as those described by the referring court – the foreseeability of the application of which vis-à-vis individuals is not contested in the dispute in the main proceedings – are capable of causing the duration of such a limitation period to be extended, they are, however, not capable, in principle, of causing the situation of the taxable persons concerned to be under challenge indefinitely. By contrast, such a suspension makes it possible to ensure the effective and efficient implementation of Directive 2006/112 cannot be jeopardised by dilatory actions being brought and therefore that such implementation is not undermined by reason of a systemic risk that acts constituting infringements of that directive may go unpunished (see, by analogy, judgment of 21 January 2021, *Whiteland Import Export*, C?308/19, EU:C:2021:47, paragraphs 53 and 56).

44 Accordingly, it must be held that the principle of legal certainty does not preclude national legislation and administrative practice which provides that the limitation period in respect of the right of the tax authorities to assess VAT is to be suspended for the whole duration of judicial review, regardless of the number of times the administrative tax procedure concerned has had to be repeated following those reviews and with no ceiling on the cumulative duration of the suspensions of that period.

45 In the second place, as regards the principle of effectiveness, to which the referring court also referred in its question, it should be recalled that that principle circumscribes, with the principle of equivalence – compliance with which has not been called into question by the referring court – the procedural autonomy which the Member States enjoy in defining the detailed rules for the implementation of rights which the EU legal order confers on individuals, where EU law does not contain any specific legislation in that regard.

46 Rules of national law concerning (i) the time limits in which the rights and obligations laid down by Directive 2006/112 and (ii) the conditions for suspending those time limits, constitute rules for the implementation of the provisions of that directive and are therefore, on that basis, required to comply with the principles of effectiveness and of equivalence (see, to that effect, in particular, judgments of 20 December 2017, *Caterpillar Financial Services*, C?500/16, EU:C:2017:996, paragraph 37; of 26 April 2018, *Zabrus Siret*, C?81/17, EU:C:2018:283, paragraph 38; of 14 February 2019, *Nestrade*, C?562/17, EU:C:2019:115, paragraph 35; and of 23 April 2020, *Sole-Mizo et Dalmandi Mez?gazdasági*, C?13/18 and C?126/18, EU:C:2020:292, paragraph 53) which is not disputed in the present case.

47 Therefore, in accordance with the principle of effectiveness, those procedural rules must not be framed so as to make it, in practice, impossible or excessively difficult to exercise the rights conferred by the EU legal order (see, to that effect, judgments of 19 July 2012, *Littlewoods Retail and Others*, C?591/10, EU:C:2012:478, paragraph 28, and of 28 June 2022 *Commission* v *Spain (Breach of EU law by the legislature)*, C?278/20, EU:C:2022:503, paragraph 33).

48 However, the fact that national legislation or national administrative practice provides that the limitation period in respect of the right of the tax authorities to assess VAT is to be suspended for the whole duration of judicial review, regardless of the number of times the administrative tax procedure has had to be repeated following those reviews and with no ceiling on the cumulative duration of the suspensions of that period, is not such as to make it, in practice, impossible or, at the very least, excessively difficult to exercise the rights conferred by the EU legal order.

49 The suspension of the limitation period in respect of the right of the tax authorities to assess that tax for the whole duration of judicial review in no way prevents that taxable person from relying on the rights conferred by the EU legal order and, in particular, by Directive 2006/112, but by contrast is intended to enable that taxable person effectively to assert the rights which he derives from EU law, while at the same time preserving the rights of the tax authorities.

50 Moreover, in the present case, it is apparent from the description of the facts set out in the request for a preliminary ruling that the applicant in the main proceedings was able to bring appeals against the successive decisions taken by the tax authorities and, on those occasions also renewed, and was able to assert its rights under EU law. In particular, despite the existence of the legislation and administrative practice at issue in the main proceedings, that applicant was able to rely, based on the principle of legal certainty, on the obligation, on the part of the Member States, to lay down a reasonable limitation period within which those authorities may reopen the procedure examining the situation of a taxable person. Accordingly, it is apparent from the documents before the Court, and it was confirmed, moreover, at the hearing before the Court both

by the Hungarian Government and by the applicant in the main proceedings, that the right of the tax authorities to assess the VAT due on transactions which occurred in June 2010 had ceased to exist, without the tax authority having managed to issue an amended notice in accordance with the provisions of Directive 2006/112.

51 Therefore, it must be held that the principle of effectiveness also does not preclude national legislation and an administrative practice which provides that the limitation period in respect of the right of the tax authorities to assess VAT is to be suspended for the whole duration of judicial review, regardless of the number of times the administrative tax procedure has had to be repeated following those reviews and with no ceiling on the cumulative duration of the suspensions of that period.

52 In the third place, it should be noted, as the Advocate General observed in points 60 to 65 of his Opinion, that the fact that neither the principle of legal certainty nor the principle of effectiveness prevent such legislation or such administrative practice does not preclude EU law, in certain circumstances, from requiring certain inferences to be drawn from the repetition of an excessive number of tax procedures before a decision is reached which complies with Directive 2006/112 or from the excessive duration of the cumulative duration of the suspensions of the limitation period in respect of that right of the tax authorities.

53 Where a national administration implements EU law in respect of a person, that person enjoys, by virtue of the right to sound administration which reflects a principle of EU law, the right to have his or her situation dealt with within a reasonable period of time (see, to that effect, judgment of 14 May 2020, *AGROBET CZ*, C?446/18, EU:C:2020:369, paragraph 43), and then, in the event of legal proceedings, the right to have his or her case heard within a reasonable period of time, in accordance with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.

54 Therefore, once the procedure for examining the situation of a taxable person in the light of the rules of the common system of VAT has been reopened, the principle of sound administration and Article 47 of the Charter of Fundamental Rights require that the duration of such a review and, where appropriate, subsequent judicial review must not be unreasonable in the light of the particular circumstances of each case.

55 Although any unsuccessful attempt by the tax authorities to comply with a court decision applying provisions of EU law and the resulting subsequent extension of the duration of the administrative procedure cannot constitute an infringement of EU law, that could, by contrast, be the case where that administrative procedure has had to be repeated on account of the manifest infringement, by that authority, of a decisive ground of a court decision concerning that administrative procedure, in so far as that ground was clearly and explicitly stated in that court decision.

56 However, it should be recalled that the excessive length of proceedings, whether administrative or judicial, is capable of justifying the annulment of the decision taken at the end of that procedure only where that length has had an effect on the ability of the person concerned to defend him or herself (see, to that effect, judgments of 26 November 2013, *Gascogne Sack Deutschland* v *Commission*, C?40/12, EU:C:2013:768, paragraph 81, and of 8 May 2014, *Bolloré* v *Commission*, C?414/12 P, not published, EU:C:2014:301, paragraph 84).

57 In so far as, during the limitation period, taxable persons must expect that their legal situation which arose based on their tax return may be challenged, then, when the tax authority informs them of the reopening of the procedure examining that situation, that that may mean they must justify the information contained in their tax return and, lastly, when they bring an action

against the amended notice issued at the end of that procedure, that they must establish that their claim is well founded by means of an offer to prove, it is for them to ensure that they keep all the relevant supporting documents relating to their tax return until the tax decisions become final. Given the predominant role of the tax return and the documentary evidence in the common VAT system for the purposes of establishing the accuracy of taxable persons' returns, it is therefore only in exceptional circumstances that it could be established that the excessive length of an administrative or judicial procedure is capable of having had an impact on the ability of the person concerned to defend him or herself.

58 In the present case, it is not apparent from the file before the Court that the referring court's assessment of the validity of the third administrative decision at the second level depends exclusively on evidence not covered by the obligation referred to in the preceding paragraph and which, because of the tax procedures being repeated or the cumulative duration of the suspensions of the limitation period, has since ceased to exist.

59 It is nevertheless for that court to determine whether, in the light, in particular, of the facts of the case, those multiple repetitions of the administrative procedure and suspensions of the limitation period may constitute a breach, by the tax authorities or by the national courts, of their obligations of sound administration and to give a ruling within a reasonable time period respectively, which has, moreover, had an impact on the ability of the person concerned to defend him or herself.

60 In the light of all of the foregoing, the answer to the question referred is that the principles of legal certainty and effectiveness of EU law must be interpreted as not precluding legislation of a Member State or the related administrative practice, under which, in relation to VAT, the limitation period in respect of the right of the tax authorities to assess that tax is suspended for the whole duration of judicial review, regardless of the number of times the administrative tax procedure has had to be repeated following those reviews and with no ceiling on the cumulative duration of the suspensions of that period, including in cases where the court ruling on a decision of the tax authority concerned taken as part of a repeat procedure, following on from an earlier court decision, finds that that tax authority failed to comply with the guidance contained in that court decision.

Costs

61 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 (Fifth Chamber) hereby rules:

The principles of legal certainty and effectiveness of EU law must be interpreted as not precluding legislation of a Member State or the related administrative practice, under which, in relation to value added tax, the limitation period in respect of the right of the tax authorities to assess that tax is suspended for the whole duration of judicial review, regardless of the number of times the administrative tax procedure has had to be repeated following those reviews and with no ceiling on the cumulative duration of the suspensions of that period, including in cases where the court ruling on a decision of the tax authority concerned taken as part of a repeat procedure, following on from an earlier court decision, finds that that tax authority failed to comply with the guidance contained in that court decision.

[Signatures]

* Language of the case: Hungarian.