

Case C-184/19**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

26 February 2019

Referring court:

Curtea de Apel București (Romania)

Date of the decision to refer:

19 December 2018

Appellant:

Hecta Viticol SRL

Respondents:

Agenția Națională de Administrare Fiscală (ANAF) — Direcția Generală de Soluționare a Contestațiilor

Biroul Vamal de Interior Buzău

Direcția Generală Regională a Finanțelor Publice Galați

Subject matter of the main proceedings

Administrative appeal whereby the appellant seeks annulment of various administrative acts adopted by the respondents in which Principal Company SA, subsequently incorporated into the appellant company, was obliged to pay an amount of RON 59 461 575 by way of excise duty on still fermented beverages other than beer and wines.

Subject matter and legal basis of the request for a preliminary ruling

Interpretation is sought, under Article 267 TFEU, of Articles 7, 11 and 15 of Directive 92/83, of Article 5 of Directive 92/84, and of the principles of legal certainty and the protection of legitimate [expectations].

Questions referred

1. Do Articles 7, 11 [and] 15 of Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages and Article 5 of Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages preclude the provisions of Article I(21) and Article IV(1) of Ordonanța de urgență [a Guvernului] nr. 54 din 23 iunie 2010 privind unele măsuri pentru combaterea evaziunii fiscale (Government Emergency Order No 54 of 23 June 2010 laying down certain measures to address tax evasion)?
2. Do the principles of legal certainty and the protection of legitimate [expectations] preclude the rule laid down in Article I(21) and Article IV(1) of Ordonanța de urgență [a Guvernului] nr. 54 din 23 iunie 2010 privind unele măsuri pentru combaterea evaziunii fiscale, inasmuch as it alters the rate of excise duty on still fermented beverages other than beer and wines?

Provisions of EU law relied on

Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21), Articles 7, 11 and 15;

Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages (OJ 1992 L 316, p. 29), Article 5.

Provisions of national law relied on

Legea nr. 571 din 22 decembrie 2003 privind Codul fiscal (Law No 571 of 22 December 2003 establishing the Tax Code) ('Law No 571/2003'), in the version in force prior to the adoption of Ordonanță de urgență a Guvernului nr. 54/2010 (Government Emergency Order No 54/2010).

The rate of excise duty on fermented beverages other than beer and wines was set at EUR 0 (zero). That Law provided that it was to be amended only by the adoption of a Law, promoted, as a general rule, six months before the date of its entry into force, and that any amendment thereto was to enter into force from the first day of the year following the year in which it was adopted by means of a Law.

Ordonanța de urgență a Guvernului nr. 54 din 23 iunie 2010 privind unele măsuri pentru combaterea evaziunii fiscale (Government Emergency Order No 54 of 23 June 2010 laying down certain measures to address tax evasion) ('OUG No 54/2010'). Article I(21) amends Law No 571/2003 by establishing an

excise duty on fermented drinks other than beer and wines of EUR 100 per hectolitre of product, and Article IV provides that that duty is to apply as from 1 July 2010.

Succinct presentation of the facts and the main proceedings

- 1 By tax inspection report of 29 April 2011, drawn up by the Direcția județeană pentru accize și operațiuni vamale Buzău (County directorate for excise and customs operations, Buzău), it was established that, during the period from 1 April 2010 to 31 December 2010, Principal Company SA had marketed, under tax warehouse conditions, the still fermented beverage 'CETERA', applying an excise duty of EUR 0 (zero) per hectolitre of product. However, according to the tax inspectorate, from the date of entry into force of OUG No 54/2010 — 1 July 2010 — that company should have applied an excise duty of the equivalent in RON to EUR 100 per hectolitre of product.
- 2 As a result, a tax assessment notice was issued on 3 May 2011 whereby Principal Company SA was ordered to pay an amount of RON 59 461 575 by way of excise duty on still fermented beverages other than beer and wines.
- 3 The complaint brought against that tax assessment notice was rejected as unfounded by the Direcția Generală de Soluționare a Contestațiilor (Directorate-General for the settlement of complaints) by decision of 25 July 2017, with that body finding that the tax assessment notice was lawful and well founded and arguing in addition that, by a decision of 22 March 2012, the Curtea Constituțională (Constitutional Court) had recognised the constitutionality of the provisions of OUG No 54/2010 following a plea of non-constitutionality raised by Principal Company SA in another case.
- 4 On 14 June 2013 Principal Company SA merged with the appellant, Hecta Viticol SRL, the former being incorporated into the latter. The appellant brought an administrative appeal before the referring court against the decision of 25 July 2017, the decision of 3 May 2011, and the inspection report of 29 April 2011, seeking annulment of those acts.

Essential arguments of the parties to the main proceedings

- 5 **The appellant** raises two grounds of appeal. By the first ground, it submits that, from a tax perspective, Directives 92/83 and 92/84 treat still wine and still fermented beverages in a similar way, including both in a single category of products subject to excise duty. Accordingly, the same rate of excise duty should be applied in both cases. However, through OUG No 54/2010 a differential tax treatment was introduced in respect of those two categories of products, inasmuch as wine was made subject to an excise duty of EUR 0 per hectolitre, while fermented beverages other than beer and wines were made subject to an excise

duty of EUR 100 per hectolitre. Consequently, the national legislation is not in line with the directives referred to above.

- 6 By the second ground, the appellant invokes the principles of the neutrality of tax measures, tax certainty, legal certainty and the predictability of the law. The appellant thus contests the amendment of Law No 571/2003 by a Government Emergency Order, the entry into force of OUG No 54/2010 less than 10 days after its publication in the Monitorul Oficial (Official Gazette) and the lack of any transitional provisions in that legislative act, notwithstanding the prohibition, laid down in that Law, on introducing amendments to the Tax Code by adopting an act other than a Law and on such amendments entering into force earlier than the first day of the year following the year in which they were adopted.
- 7 **The respondents** maintain that a request for a preliminary ruling is inadmissible, inasmuch as, under Article 267 TFEU, the question submitted to the Court may not concern specific aspects of the case brought before the referring court. In addition, any ruling by the Court would be neither useful nor relevant for the purpose of resolving the dispute in the main proceedings.
- 8 As regards the alleged infringement of Directives 92/83 and 92/84, the respondents invoke the decision of the Curtea Constituțională of 22 March 2012 from which it is apparent that OUG No 54/2010 does not infringe the provisions of the Constituția României (Romanian Constitution), which means it would be useless to refer a question to the Court of Justice for a preliminary ruling.
- 9 Lastly, the respondents contend that Directives 92/83 and 92/84 have been repealed and that their provisions have already been transposed into national legislation.

Succinct presentation of the reasons for the reference

- 10 Having rejected the pleas of inadmissibility put forward by the respondents and having considered that a request for a preliminary ruling would be admissible and useful for the purposes of resolving the dispute in the main proceedings, the referring court observes that Directives 92/83 and 92/84 have not been repealed but are still in force, as can be seen by consulting EUR-Lex.
- 11 As regards the first question, which has been raised at the appellant's request, the referring court states that an answer from the Court of Justice is necessary in order for it to be able to give a ruling on the dispute before it.
- 12 As regards the second question, the referring court observes that, contrary to certain provisions set out in Law No 571/2003, that Law has not been amended by the adoption of a Law, but by the adoption of a Government Emergency Order, and that the amendment at issue did not enter into force on the first day of the year following the year in which it was adopted, but less than 10 days after its publication in the Monitorul Oficial. In addition, that Government Emergency

Order does not contain any transitional provisions. Accordingly, the referring court considers that OUG No 54/2010 infringes the principles of legal certainty and the protection of legitimate [expectations].

WORKING DOCUMENT