

Case C-677/19**Request for a preliminary ruling****Date lodged:**

11 September 2019

Referring court:

Tribunalul Vâlcea (Romania)

Date of the decision to refer:

25 April 2019

Applicant:

S.C. Valoris S.R.L.

Defendants:Direcția Generală Regională a Finanțelor Publice Craiova —
Administrația Județeană a Finanțelor Publice Vâlcea

Administrația Fondului pentru Mediu

[...]

*TRIBUNALUL VÂLCEA – SECȚIA A II-A CIVILĂ (Regional Court, Vâlcea,
Romania — Second Civil Division)*

ORDER

Public hearing of 25 April 2019

[...]

Entered in the register of administrative and tax cases is an action brought by the applicant S.C. Valoris S.R.L. against the defendant Direcția Generală Regională a Finanțelor Publice Craiova – Administrația Județeană a Finanțelor Publice Vâlcea (Regional Directorate-General of Public Finances of Craiova, Romania — County Administration for Public Finances of Vâlcea, Romania) and the defendant, joined in an action on a warranty or guarantee, Administrația Fondului pentru Mediu (Environment Fund Administration, Romania), concerning a claim for reimbursement of an environmental stamp duty.

[...]

THE TRIBUNALUL

on the matter of referring a question to the Court of Justice of the European Union for a preliminary ruling, observes as follows:

I. Subject matter of the dispute. Relevant facts

1. The applicant, S.C. Valoris S.R.L., a company with its registered office in Râmnicu Vâlcea, [...] submitted an application to the Tribunalul Vâlcea (Regional Court, Vâlcea) on 30 January 2019 seeking an order requiring the defendants Direcția Generală Regională a Finanțelor Publice Craiova – Administrația Județeană a Finanțelor Publice Vâlcea (Regional Directorate-General of Public Finances of Craiova — County Administration for Public Finances of Vâlcea) and Administrația Fondului pentru Mediu (Environment Fund Administration) to reimburse it the sum of RON 2 451 which it paid in environmental stamp duty, together with tax interest calculated from the date of payment to the date of reimbursement, and costs.

2. The applicant paid the sum of RON 2 451 on 25 August 2014 so that it could register in Romania a [...] car which it had purchased in the Netherlands, where it had first been registered on 12 January 2007.

3. The obligation to pay the environmental stamp duty was laid down, at the time of registration of the vehicle, by Article 4(a) of Ordonanța de urgență a Guvernului nr. 9/2013 privind timbrul de mediu pentru autovehicule (Government Emergency Order No 9/2013 concerning the environmental stamp duty in respect of motor vehicles) ('OUG No 9/2013').

4. On 7 August 2017 Ordonanța de urgență a Guvernului nr. 52/2017 privind restituirea sumelor reprezentând taxa specială pentru autoturisme și autovehicule, taxa pe poluare pentru autovehicule, taxa pentru emisiile poluante provenite de la autovehicule și timbrul de mediu pentru autovehicule (Government Emergency Order No 52/2017 concerning the reimbursement of sums paid by way of the special tax on cars and motor vehicles, the pollution tax on motor vehicles, the tax on polluting emissions from motor vehicles and the environmental stamp duty on motor vehicles) ('OUG No 52/2017') entered into force. That order established the entitlement of taxpayers that had paid taxes of the kind mentioned in the title of the order (including the environmental stamp duty) to request reimbursement, together with interest [OR 2] for the period between levying and reimbursement, by lodging an application with the competent tax authority.

5. Under Article 1(2) of OUG No 52/2017, applications for reimbursement had to be submitted by 31 August 2018, failing which they would be invalid.

6. The applicant failed to comply with that time limit, instead lodging with the Administrația Județeană a Finanțelor Publice Vâlcea (County Administration for Public Finances of Vâlcea) its application for the reimbursement of RON 2 451 on 6 December 2018.

7. By letter of 7 January 2019, the defendant tax authority informed the applicant that its application for reimbursement was refused, since it had been lodged out of time.

II. Provisions of national law applicable in the present case

8. The substantive law which applies in this case is as follows:

Article 4 of OUG No 9/2013 (in force until 31 January 2017):

‘The obligation to pay the stamp duty, which is payable only once, arises: (a) upon the registration with the competent authority, in accordance with the law, of the acquisition of ownership of a motor vehicle by its first owner in Romania, upon the issue of a registration certificate and upon the issue of a registration number; ...’

Article 1 of OUG No 52/2017:

‘(1) Taxpayers who have paid the special tax on cars and motor vehicles referred to in Articles 214¹ to 214³ of Legea nr. 571/2003 privind Codul fiscal (Law No 571/2003 establishing the Tax Code), as subsequently amended and supplemented, the pollution tax on motor vehicles, established by Ordonanța de urgență a Guvernului nr. 50/2008 pentru instituirea taxei pe poluare pentru autovehicule (Government Emergency Order No 50/2008 establishing the pollution tax on motor vehicles), approved by Law No 140/2011, the tax on polluting emissions from motor vehicles, established by Legea nr. 9/2012 privind taxa pentru emisiile poluante provenite de la autovehicule (Law No 9/2012 establishing the tax on polluting emissions from motor vehicles), as subsequently amended, or the environmental stamp duty on motor vehicles, established by [OUG No 9/2013], approved, with amendments and supplements, by Law No 37/2014, as subsequently amended and supplemented, and who have not been reimbursed such tax or duty prior to the entry into force of the present order, may request reimbursement, together with interest for the period between the date of levying and the date of reimbursement, by making an application to the competent central tax authority. The rate of interest shall be that laid down in Article 174(5) of Legea nr. 207/2015 privind Codul de procedură fiscală (Law No 207/2015 establishing the Tax Procedure Code), as subsequently amended and supplemented.

(2) Taxpayers shall be entitled to apply for reimbursement, as referred to in paragraph (1), as from the date of entry into force of the present order, irrespective of the date on which the tax or duty was levied. By way of derogation

from Article 219 of Law No 207/2015, as subsequently amended and supplemented, applications for reimbursement shall be lodged by no later than 31 August 2018, failing which they shall be invalid.'

Article 168 of Legea nr. 207/2015 privind Codul de procedură fiscală (Law No 207/2015 establishing the Tax Procedure Code):

'(1) Upon application by the taxpayer/payer, any sums unduly paid and received shall be reimbursed.'

Article 219 of Law No 207/2015:

'The right of taxpayers/payers to apply for reimbursement of taxes shall become time-barred 5 years after 1 January of the year following the year in which the right to reimbursement arose.' [OR 3]

III. Provisions of EU law relevant to the present case

9. The Tribunalul considers that Article 110 of the Treaty on the Functioning of the European Union is relevant to the present case. Article 110 TFEU provides:

'No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.'

10. Furthermore, a number of principles and pronouncements which might be relevant to the present dispute appear in the case-law of the Court of Justice of the European Union ('the Court'):

In so far as concerns *the principle of sincere cooperation* enshrined in Article 4(3) of the Treaty on European Union, the Court has held that *'a Member State may not adopt provisions making repayment of a tax held to be contrary to [EU] law by a judgment of the Court, or whose incompatibility with [EU] law is apparent from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those which would otherwise be applied to repayment of the tax in question'* (judgments of 10 September 2002, *Prisco and CASER*, C-216/99 and C-222/99; of 2 October 2003, *Weber's Wine World and Others*, C-147/01; and of 30 June 2016, *Ciup*, C-288/14).

It is also apparent from the case-law of the Court that *'compliance with the principle of equivalence implies that Member States are not to lay down procedural rules that are less favourable in actions based on infringement of EU law than those which apply to actions based on infringement of national law that are similar, having regard to their purpose, cause of action and essential characteristics'* (judgments of 19 July 2012, *Littlewoods Retail and Others*, C-591/10, and of 30 June 2016, *Ciup*, C-288/14).

The Court has also stated that remedies provided in domestic law for the recovery of certain taxes levied in breach of EU law must comply with the principle of effectiveness, which means that they should not be subject to procedural rules that render it ‘*virtually impossible or excessively difficult to obtain reparation*’ (judgments of 10 July 1997, *Palmisani*, C-261/95, and of 12 December 2006, *Test Claimants in the FII Group Litigation*, C-446/04).

IV The reasons for which the referring court is making the present request for a preliminary ruling

11. In its judgment of 9 June 2016 in *Budişan* (C-586/14), the Court held that, while Article 110 TFEU does not preclude a Member State from introducing a tax on motor vehicles which is levied on imported second-hand motor vehicles at the time of their first registration in that Member State and on motor vehicles already registered in that Member State at the time of the first transfer, within that Member State, of the ownership of those motor vehicles, it does preclude that Member State from exempting from that tax motor vehicles already registered and in respect of which a tax previously in force but found to be incompatible with EU law has been paid and not reimbursed.

12. That judgment was delivered after a number of other judgments in which the Court held that pollution taxes on motor vehicles that had been instituted previously in Romanian law and which were similar to the environmental stamp duty were contrary to EU law (judgments of 7 April 2011, *Tatu*, C-402/09, and of 7 July 2011, *Nisipeanu*, C-263/10; order of 3 February 2014, *Câmpean and Ciocoiu*, C-97/13 and C-214/13; judgment of 14 April 2015, *Manea*, C-76/14).

13. Consequently, the Romanian Government adopted OUG No 52/2017, so as to make provision for the full reimbursement, including interest, of all taxes similar in nature to those just mentioned. **[OR 4]**

14. However, as has been stated, Article 1(2) of OUG No 52/2017 laid down a time limit within which taxpayers were required to lodge with the competent tax authorities their applications for reimbursement, that is to say, by no later than 31 August 2018. Accordingly, individuals who had paid the relevant taxes were allowed approximately 1 year in which to exercise their right to reimbursement (from 7 August 2017, when OUG No 52/2017 entered into force, until 31 August 2018).

15. In the action which it has brought before the referring court, the applicant, which failed to comply with the abovementioned time limit, submits that that time limit infringes EU law, in that it restricts the right of taxpayers to obtain within the generally applicable limitation period laid down by Article 219 of the Codul de procedură fiscală (Tax Procedure Code) the reimbursement of taxes that have been unlawfully levied. The applicant also maintains that, according to the case-law of the Court, periods of between 3 and 5 years have been regarded as reasonable for the exercise of the right to reimbursement of such taxes.

16. The referring court considers it useful and necessary to have the Court's interpretation of the extent to which the principles of sincere cooperation, equivalence and effectiveness, as they are presented in the Court's case-law, are observed or otherwise by the introduction of a time limit that applies to the exercise of the right to reimbursement of a tax levied in breach of EU law, such as that laid down in Article 1(2) of OUG No 52/2017.

17. In that context, it should be noted that the time limit laid down in Article 1(2) of OUG No 52/2017 is a special time limit that was laid down in an *ad hoc* manner to apply to applications for the reimbursement of pollution taxes. No similar time limits are laid down for applications for the reimbursement of other sums paid into the State budget in breach of domestic law.

18. In so far as concerns taxes and other fiscal charges that have been found by national courts to have been established and levied in breach of provisions of domestic law, the right to reimbursement may be exercised by the taxpayer within the limitation period governed by Article 219 of *Legea nr. 207/2015 privind Codul de procedură fiscală* (Law No 207/2015 establishing the Tax Procedure Code), that is to say, within a period of 5 years following 1 January of the year following the year in which the right to reimbursement arose.

19. The question therefore arises of whether the principles of sincere cooperation and equivalence have been observed, inasmuch as the Romanian legislature has introduced a time limit that applies only to the reimbursement of pollution taxes, while the reimbursement of other sums levied in breach of domestic law are not subject to such a time limit, the limitation period which applies to the exercise of the right to reimbursement being significantly longer (5 years).

20. Moreover, it has been held in the case-law of the Court that EU law allows the stipulation of reasonable time limits (failing which the action will be time-barred) for bringing proceedings for the reimbursement of sums unduly paid, in the interests of legal certainty, which protects both the taxpayer and the administration concerned (judgments of 16 December 1976, *Rewe-Zentralfmanz and Rewe-Zentral*, C-33/76; of 17 July 1997, *Haahr Petroleum*, C-90/94; and of 17 November 1998, *Aprile*, C-228/96). Such reasonable time limits cannot be regarded as contrary to the principle of effectiveness, even if the expiry of those time limits necessarily entails the dismissal of the action brought (judgment of 28 November 2000, *Roquette Frères*, C-88/99). Thus, a time limit under domestic law of 3 years has been found to be reasonable (judgment of 15 September 1998, *Edis*, C-231/96).

21. Given that the time limit of approximately 1 year laid down in Article 1(2) of OUG No 52/2017 is shorter than other time limits which the referring court has identified in the case-law of the Court as being compatible with the principle of effectiveness, the Tribunalul [OR 5] considers it necessary, in order to resolve the

present dispute, to obtain an answer from the Court as to the interpretation of the principles at issue.

ON THOSE GROUNDS,

IN THE NAME OF THE LAW

ORDERS:

That the following question is to be referred to the Court of Justice of the European Union, pursuant to Article 267 TFEU, for a preliminary ruling:

Are the principles of sincere cooperation, equivalence and effectiveness to be interpreted as precluding a provision of national law, such as Article 1(2) of Ordonanța de urgență a Guvernului nr. 52/2017 (Government Emergency Order No 52/2017), which has laid down a time limit of approximately 1 year for the lodging of applications for the reimbursement of certain taxes levied in breach of EU law, while domestic legislation lays down no similar time limit for the exercise of the right to reimbursement of sums levied in breach of domestic law?

[...] [procedural matters and signatures]

WORKING DOCUMENT