

Case C-230/20**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:**

3 June 2020

Referring court:

Augstākā tiesa (Senāts) (Latvijas) (Supreme Court, Latvia)

Date of the decision to refer:

2 June 2020

Appellant:

AAS 'BTA Báltica Insúmanse Company'

Other party to the proceedings:

Valsts ieņēmumu dienests (National Tax Authority)

Subject matter of the main proceedings

An appeal lodged against a decision of the tax authorities concerning enforcement of a [customs] tax debt against the guarantor.

Purpose and legal basis of the request for a preliminary ruling

Pursuant to Article 267 TFEU, the referring court requests an interpretation of Article 221(3) of Regulation No 2913/92 in order to determine whether the guarantor should be deemed a debtor in the broad sense of the term and whether, consequently, the time limits applicable to the debtor apply to the guarantor. If this is not the case, [the court asks] whether the guarantor must be regarded as the person subject to enforcement of the decision or of the debt, or a person concerned by the enforcement, to whom, therefore, the Member State's laws on enforcement apply, including the rules on time limits. If the guarantor is not regarded as a debtor or the person subject to enforcement of the decision or a person concerned by the enforcement, the referring court asks whether the requirement implied by

the principle of legal certainty, which requires a reasonable time limit to be observed, also applies to the guarantor.

Questions referred

- 1) Must the guarantor referred to in Article 195 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, be regarded as a debtor within the meaning of Article 221(3) [of the regulation] to whom, therefore, the time limit established in Article 221(3) applies?
- 2) If the answer to question 1 is in the negative, can the guarantor be regarded, pursuant to Article 232(1)(a) of the regulation, as the person subject to enforcement of the decision or the debt, or the person concerned by the enforcement, to whom, the Member State's rules on enforcement, including those on time limits, therefore apply?
- 3) If, under the applicable laws of the European Union, the guarantor is not regarded as a debtor within the meaning of Article 221(3) of the regulation or as the subject of the enforcement of the decision or as a person concerned by the enforcement, can the requirement implied by the principle of legal certainty, which requires a reasonable limitation period to be observed, be applied to the guarantor?

Provisions of EU law cited

Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000]: Article 1, Article 4(12), Article 195(1), Article 221, Article 222 and Article 232(1)(a).

Provisions of national law cited

Likums 'Par nodokļiem un nodevām' (Law on taxes and duties): Article 23(1) and (2) and Article 26(8).

Muitas likums (Law on customs) (in force until 5 July 2016): Articles 12(1) and 26(1).

Administratīvā procesa likums (Law on administrative procedure): Article 64 and Article 360(4).

Ministru kabineta 2011.gada 6. septembra noteikumi Nr. 691 'Noteikumi par nodokļu parāda galvojumu preču muižošanai' (Decree No 691 of the Council of

Ministers of 6 September 2011 on provisions governing guarantees of tax debts in respect of customs clearance of goods; repealed as from 2 August 2017): paragraphs 2, 18, 19, 21, 46 and 53(2).

Case-law of the Court of Justice of the European Union

Judgments of the Court of Justice:

- 8 May 2008, *Ecotrade*, C-95/07 and C-96/07 (EU:C:2008:267, paragraph 48) (reasonable period);
- 21 January 2010, *Alstom Power Hydro*, C-472/08 (EU:C:2010:32, paragraph 16) (tax position of the taxable person not to be open to challenge indefinitely) and paragraph 21 (reasonable period);
- 10 December 2015, *Veloserviss*, C-427/14 (EU:C:2015:803) (limitation periods), paragraph 30 (principle of legal certainty), paragraph 31 (tax position of the taxable person not to be open to challenge indefinitely);
- 21 June 2012, *Elsacom*, C-294/11 (EU:C:2012:382, paragraph 29) (tax position of the taxable person not to be open to challenge indefinitely);
- 22 December 2010, *ASTIC*, C-488/09 (EU:C:2010:820, paragraph 41) (time limits upon expiry of which notification of a customs debt to the debtor may no longer be made);
- 22 November 2017, *AEBTRI*, C-224/16 (EU:C:2017:880, paragraphs 97 and 105) (concept of ‘debtor’);
- 25 January 2017, *Ultra-Brag*, C-679/15 (EU:C:2017:40, paragraph 22) (concept of ‘debtor’);
- 17 November 2011, *Jestel*, C-454/10 (EU:C:2011:752, paragraph 12) (concept of ‘debtor’);
- 15 April 2010, *Barth*, C-542/08 (EU:C:2010:193, paragraph 28) (reasonable limitation period);
- 14 June 2012, *CIVAD*, C-533/10 (EU:C:2012:347, paragraph 23) (reasonable limitation period).

Brief summary of the facts and the main proceedings

- 1 The appellant, the insurer ‘BTA Baltic Insurance Company’, a public limited company, (formerly ‘InterRisk Vienna Insurance Group’), offered SIA ‘H9L’ a general guarantee in respect of which a general guarantee policy was concluded which was in force from 5 April 2012 to 4 April 2013.

- 2 When the Valsts ieņēmumu dienests (National Tax Authority; ‘VID’) carried out a customs check at the warehouse of SIA ‘H9L’ on 11 February 2013, it found that the goods that had been declared to be under a ‘customs warehousing’ procedure were not there. As a result, by a decision of 8 April 2013, the VID proceeded to calculate the import duties payable by SIA ‘H9L’.
- 3 That decision was confirmed following a challenge submitted to the VID, but it was not complied with, and so the VID initiated enforcement of the outstanding tax debt.
- 4 On 27 September 2016, the court enforcement officer returned the collection orders, without having enforced them, to the VID, having attempted unsuccessfully to enforce them against the principal debtor for a considerable period of time. Therefore, on 12 May 2017 the VID approached the appellant, as the guarantor, to demand payment of the tax debt owed by SIA ‘H9L’.
- 5 The appellant challenged this enforcement action at a higher level within the organisation, but the VID dismissed the appeal by a decision of 16 June 2017.
- 6 The appellant subsequently brought an action against this latter decision before the Administratīvā rajona tiesa (District Administrative Court), which upheld that action.
- 7 However, the Administratīvā apgabaltiesa (Regional Administrative Court), which heard the case on appeal, dismissed the arguments of the [now] appellant by its judgment of 28 December 2018.
- 8 The Regional Administrative Court noted that it was not disputed in the proceedings that the debt owed by SIA ‘H9L’ had arisen during the term of the policy issued by the appellant. Under paragraph 22 of Decree No 691 of the Council of Ministers, the guarantor was required to pay the tax debt within the period of 10 days stipulated in subparagraph 24(1) [of that decree].
- 9 [According to the court,] the time limits established in the national legislation for calculating the amount of tax owed, issuing a demand to the debtor and enforcing the debt against the debtor refer to the debtor, not the guarantor, who is not the debtor within the meaning of the Customs Code, the Law on taxes and duties and the Law on customs.
- 10 [In the opinion of the Regional Administrative Court,] the VID had followed the procedural requirements for enforcement action established by the national legislation, first taking action against the debtor and then, when it found that the debt could not be enforced against the debtor, approaching the guarantor. Moreover, in accordance with national law, it restricted its claim against the guarantor to the amount of the principal debt in respect of import duties.

- 11 [According to the aforementioned court,] there was no law, either at the time when the existence of the tax debt was confirmed or now, fixing a time limit on a demand for payment of the tax debt from the guarantor.
- 12 [In its opinion,] however, the VID acted in a timely fashion, seven months after being informed that the debt could not be enforced, demanding payment from the guarantor of the debt owed by SIA 'H9L'.
- 13 The appellant brought an appeal on a point of law before the referring court.

Main arguments of the parties to the main proceedings

- 14 The appellant believes that a time limit of more than 4 years since the issue of the administrative decision declaring the existence of the customs debt cannot be considered reasonable. Moreover, in its view, the fact that the VID had attempted (albeit unsuccessfully) to enforce the debt against SIA 'H9L' is irrelevant.
- 15 It argues that the Regional Administrative Court could have applied the general time limits established in the Law on administrative procedure, or Article 221(3) of the Customs Code, or the three-year period applicable by analogy with other areas of law (notification of the contingency insured, receivables arising from commercial transactions).
- 16 Moreover, the appellant does not understand why it should not be protected by the requirement arising from the principle of legal certainty — which is recognised by the case-law of the Senāts (Supreme Court) and which requires a reasonable limitation period — as well as by the principle of sound administration.
- 17 In this regard, the appellant relies on the case-law of the Court of Justice of the European Union on the concept of reasonable period and on limitation periods, noting that the Court of Justice has held that the tax position of the taxable person cannot be open to challenge indefinitely.
- 18 The appellant considers that the approach adopted in the judgment of the Regional [Administrative] Court in applying and interpreting the laws is contrary to the rulings of the Court of Justice, and it therefore requests that various questions be referred to that court concerning limitation periods in relation to guarantors.

Brief summary of the reasons for the request for a preliminary ruling

- 19 Article 23(1) of the Law on taxes and duties establishes that, following a tax inspection ([or] audit), the tax authorities shall determine or adjust the specific amounts to be included in tax returns, the taxable income ([or] losses) and the calculation of taxes ([or] duties), in accordance with tax laws, and may impose a fine within three years of the end of the payment period established in the legislation. Article 26(8) of the same law stipulates that decisions concerning the

collection of outstanding tax payments must be implemented within three years of the date of the decision. Under Article 360(4) of the Law on administrative procedure, the limitation period for implementing these decisions is three years. The Law on customs stipulates that where a customs debt arises or may arise, the customs authorities shall require a guarantee.

- 20 The Supreme Court notes on this point that it must decide whether there is justification for demanding payment from the appellant of the customs debt which it guaranteed. It is therefore essential to clarify whether there is a specific time limit on demanding payment of the debt from the guarantor that must be observed by the customs authorities.
- 21 The regulations governing relations between the tax debtor and the State are clear, particularly as regards time limits on the State's pursuit of the taxpayer or principal debtor. By contrast, the laws contain no explicit time limit on pursuing the guarantor for payment of the debt. On this point, the Supreme Court notes that the case-law of the Court of Justice ([judgment in] *Veloserviss*), recognises the principle of legal certainty, which is part of EU law and which means that the tax position of the taxable person cannot be open to challenge indefinitely (paragraph 30).
- 22 The Supreme Court notes that, as highlighted by the Court of Justice, Article 221(3) of the Customs Code fixes the time limits upon expiry of which notification of a customs debt to the debtor may no longer be made ([judgment in] *Astic*, paragraph 41). The Supreme Court harbours doubts over whether the application of that precept is excluded in these proceedings, and also considers that it is not absolutely clear to which types of person this rule applies, or whether it also applies to the guarantor.
- 23 With regard to the concept of 'debtor', the Supreme Court notes that Article 4(12) of the Customs Code defines a debtor as any person liable for payment of a customs debt. According to the case-law, a debtor may be any person who was aware or should reasonably have been aware that an obligation established in the customs laws has not been satisfied, or who acted on behalf of a person who was under an obligation to comply, or who was involved in acts that led to a breach of obligations ([judgments in] *AEBTRI*, paragraphs 97 and 105, and *Ultra-Brag*, paragraph 22). In any event, a person who is involved in a customs procedure can be regarded as a debtor. Moreover, although the Court of Justice has held that the concept of 'debtor' is both broad and exhaustive ([judgments in] *AEBTRI*, paragraph 95, and *Jestel*, paragraph 12), the Supreme Court is unsure as to whether the guarantor can be regarded as a debtor within the usual meaning of the term referred to above since, in each specific case, the guarantor becomes involved in the dispute where a breach of customs law has been discovered, it has proved impossible to enforce the debt against the principal debtor, and the tax which remains unpaid without good reason must be collected.

- 24 Under Latvian law, a person who becomes a guarantor may intervene either in specific [tax] relations between the taxpayer and the VID, once the tax debt has already arisen, or solely in possible future relations, where the tax debt is still only potential. Therefore, in the latter scenario, there is a degree of uncertainty over the role of the guarantor in relations between the taxpayer and the tax authorities. Moreover, in the present case, the tax authorities informed the guarantor of the debts that had arisen only after it had been pursuing enforcement action for some time.
- 25 The Supreme Court is also unsure as to whether the actions of the tax authorities are lawful, since it is not clear whether, where the guarantor intervenes in relations between the taxpayer and the tax authorities which are still no more than potential, it should be regarded as a debtor for the purposes of Article 221(3) of the Customs Code, or whether it should be considered an independent legal entity.
- 26 Paragraph 21 of Decree No 691 of the Council of Ministers recognises the right of the guarantor to ask the VID for information on various specific acts or omissions by the person responsible in connection with enforcement of the guarantee, including [information] on the tax debts. The guarantor is therefore able to some extent to confirm for him- or herself the situation regarding the guarantees he or she has provided. However, it is not clear whether that possibility is sufficient to justify the uncertainty (as regards the time limit) in guarantee relationships.
- 27 Moreover, under the first paragraph of Article 195 of the Customs Code, the guarantor is to undertake in writing to pay jointly and severally with the debtor the secured amount of a customs debt which falls to be paid. He or she could therefore be regarded as a debtor for the purposes of Article 221(3) [of the Customs Code], and would thus be classed as one of the persons who, in accordance with Article 221(3), must be informed of the customs debt within three years.
- 28 The Customs Code does not specify the enforcement procedure that must then be followed, and therefore it is for each specific Member State to legislate in that regard. However, according to the case-law of the Court of Justice, Member States' rules must comply with EU law, in this case, the Customs Code ([judgment in] *Veloserviss*, paragraph 19). In other words, they must comply with the principle of legal certainty and, more specifically, [they must provide for] a reasonable limitation period, ([judgments in] *Barth*, paragraph 28, in *CIVAD*, paragraph 23, [and in] *Veloserviss*, paragraph 32). Under Latvian law that period is three years (Article 360(4) of the Law on administrative procedure; Article 26(8) of the Law on taxes and duties).
- 29 While it is clear that, in enforcing the tax debt, the tax authorities must comply with certain time limits, since a situation cannot be allowed to arise in which absolutely no time limit is laid down, there is no clear answer to the question of whether those time limits must also apply to the guarantor. In order to resolve this question, it is necessary to clarify the role of the guarantor in the relationship of customs obligations existing between the taxpayer and the tax authorities at the

debt enforcement stage. The Supreme Court therefore entertains doubts concerning the interpretation of EU law. If the answer to the first question referred is in the affirmative, the question regarding the time limit in respect of the guarantor at the enforcement stage will be superfluous. However, if the response to the first question is in the negative, it will be necessary to clarify whether, even though the guarantor was not the addressee of the decision determining the amount of the debt or the person directly concerned [by the decision], he or she must be regarded as the addressee of the decision concerning the enforcement of the debt ([arising from] enforcement of the determination) or the person concerned [by it] and, therefore, whether the Member State's rules on enforcement should apply to him or her, including the rules on time limits. If neither of these solutions is compliant with EU law, it will be necessary to determine whether the principle of legal certainty can be used to derive a requirement to comply with a reasonable limitation period, which would be determined by the court in the light of the circumstances of each specific case.