



RESEARCH NOTE

FROM THE RESEARCH AND DOCUMENTATION DIRECTORATE

The classification of interest due in the event of repayment of unlawful administrative penalties as default interest

[...]

[...]

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[...]

SUMMARY

INTRODUCTION

1. The Research and Documentation Directorate (DRD) received a request for a research note, the purpose of which is, in essence, to examine the legislation and case-law, within the Member States selected, in order to identify the interest paid by public authorities, in the event of repayment without delay of an unlawful administrative financial penalty (the ‘unlawful penalties’) following its annulment (the ‘annulment decision’).
2. The Member States selected for this research note are **Austria, Belgium, Bulgaria, Finland, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Romania and Spain.** ¹
3. As a preliminary point, it should be noted that, in view of the scope of the request, namely, the repayment of penalties imposed by the administration, this note will not deal with contractual/agreed interest in both civil and administrative law.
4. That said, it should be recalled, first, that it follows from the settled case-law of the Court that any person on whom a national authority has imposed the payment of a tax, duty, charge or other levy in breach of EU law, has the right, under EU law, to obtain the repayment from the Member State concerned of the corresponding sum of money together with the payment of interest intended to compensate for the unavailability of that sum (judgment in *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others*, ² paragraphs 51 and 52).
5. Secondly, it must be borne in mind that, recognised in Roman law as ‘*mora debitoris*’ (‘delay on the part of the debtor’), ‘default interest’ (‘*intérêts moratoires*’ in French) was intended to compensate for a delay in the performance of an obligation. [...]
6. It is in the light of those characteristics [...] that this note will identify the national legal systems in which public authorities must pay interest, the *dies a quo* of which corresponds to the date of payment of an unlawful penalty, including those that classify it as default interest (I). This note will then identify the Member States in which default interest can be applied in the event of a delay in the repayment of such a penalty (II).

¹ [...]

² Judgment of 28 April 2022, *Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions and Others* (C-415/20, C-419/20 and C-427/20, [EU:C:2022:306](#)).

7. The question of repayment of an unlawful penalty does not arise in principle in **Germany** (generally speaking ³) since payment of the fine is not required as long as legal remedies are possible. It also does not arise in principle in **Austria** ⁴ or in **Finland**, ⁵ with regard to penalties in the field of competition, in so far as penalties are only imposed in that field by judicial means and their payment is not due until all judicial redress procedures have been exhausted. Lastly, in **Ireland**, since the bringing of a legal action against an administrative financial sanction in competition law has suspensory effect, ⁶ the question of the repayment of such a penalty and, a fortiori, of the payment of interest does not arise in that field either.

I. INTEREST WITH THE DATE OF PAYMENT OF THE UNLAWFUL PENALTY AS THE *DIES A QUO*

8. Eleven of the thirteen national legal systems selected (**Belgium, Bulgaria, Finland, France, Greece, Hungary, Ireland, Italy, Netherlands, Romania and Spain**), have a general or special regime under which, in principle, interest for the repayment of an unlawful penalty, has a *dies a quo* that corresponds to the date of payment of that penalty. Although the payment of that interest is not conditional on the finding of a delay, it is sometimes referred to as default interest or interest on late payment (A.). Elsewhere it is given another designation (B.).
9. It should be noted that, in **Austria**, neither the legislation nor the case-law provides for the payment of interest in the event of repayment, without delay, of an unlawful penalty.

³ Under Article 89 of the Ordnungswidrigkeitengesetz (Law on administrative offences) ('the OWiG') of 19 February 1987 ([BGBl. 1987 I, p. 602](#)), as amended by Article 5 of the Law of 14 March 2023 (BGBl. 2023 I, No 73), an administrative decision imposing a fine is enforceable only when it has become final, that is to say, no further legal remedy against the measure exists. With regards to competition law more specifically, see Bechtold, R., Bosch, W., *GWB – Gesetz gegen Wettbewerbsbeschränkungen*, 10th edition, C.H. Beck, Munich, 2021, annotation 1, under Article 81 of the GWB; Biermann, J., Immenga/Mestmäcker, *Wettbewerbsrecht*, 6th edition, C.H. Beck, Munich, 2020, annotation 28 of the introduction to Article 81 of the GWB.

⁴ Article 2 of the [Wettbewerbsgesetz](#) (Law on competition) of 16 April 2002 (BGBl. 2002 I, No 62), in the 20 April 2023 version (BGBl. 2023 I, No 33).

⁵ Articles 37a, 49a and 49b of the [Kilpailulaki](#) (Law on competition) of 12 August 2011 (948/2011), as last amended by Law 546/2021.

⁶ Article 15AA(4) of the [Competition \(Amendment\) Act 2022](#): 'A decision to impose an administrative financial sanction shall not take effect unless the decision is confirmed by the High Court under section 15AY or 15AZ, as the case may be'.

A. MEMBER STATES WHICH DESIGNATE INTEREST AS DEFAULT INTEREST OR INTEREST ON LATE PAYMENT

10. In **France**, in the specific field of tax litigation, there is, in the event of repayment of undue tax,⁷ a type of interest explicitly designated by law as '*moratoire*' (the literal meaning of which is 'delayed'; '*les intérêts moratoires*' has been translated for the purposes of this research note as default interest throughout), which, in addition to the fact that it applies automatically, runs from the date of payment.⁸ The payment of that interest is therefore not linked, notwithstanding its literal classification, to a finding of late repayment by the public authority. That interest rate, which is compensatory, is 0.20%⁹ per month (or 2.40% per annum).¹⁰ Default interest in tax law in France applies, specifically, [...] where the public authority reimburses the amount of the unlawful penalty without delay in relation to the period prescribed following the annulment decision.
11. In addition, in **Greece, Hungary and Italy**, there is interest, which although designated by the legislature as interest on late payment, applies in the event of repayment of an unlawful penalty without delay. In those three Member States,

⁷ The notion of taxation must be understood in a broad sense, since it refers not only to taxes but also to interest on late payment or other unduly paid penalties. According to the Bulletin officiel des impôts ('BOI'), bearing the reference [BOI-CTX-DG-20-50-30 No 40 of 7 July 2021](#):

'Pursuant to Article L. 208 of the [livre des procédures fiscales (Book of tax procedures) ('the LPF')], any rebate granted following a contentious claim seeking compensation for an error made in the tax base or calculation of taxes shall give rise to the payment of default interest.

The basis for the default interest shall consist of all the sums unduly paid by the taxpayer in respect of taxation and which are refunded to that taxpayer following the total or partial upholding of his or her claim. The undue sum shall mean not only taxes, but also late payment interest or other unduly paid penalties.

Pursuant to Article L. 208 of the LPF in conjunction with Article R.* 208-2 of the LPF, default interest runs from the date of payment of the sums unduly paid by the taxpayer until the date on which those sums are repaid by the administration.'

⁸ Article [L. 208](#) of the LPF:

'Where the State is ordered by a court to grant a tax rebate or where a rebate is granted by the administration following a claim for compensation for an error made in the tax base or in the calculation of taxes, the sums already collected shall be refunded to the taxpayer and shall give rise to the payment of default interest at the rate provided for in [Article 1727](#) of the code général des impôts (General Tax Code) ('the CGI'). Interest accrues from the date of payment. It is not capitalised.

When the sums deposited by way of guarantees pursuant to [Articles L. 277](#) and [L. 279](#) must be repaid, in whole or in part, the sum to be repaid is increased by the interest provided for in the first paragraph. If the taxpayer has provided guarantees other than a cash payment, the costs incurred by the taxpayer shall be reimbursed within the limits and under the conditions laid down by decree.'

⁹ [Article 1727 of the CGI](#).

¹⁰ Since 1 January 2006, Article L. 208 of the LPF has determined the rate of default interest by reference to the rate of late payment interest payable by taxpayers in the event of insufficient or late payment of the tax, as provided for in Article 1727 of the CGI. See judgments of the [Conseil d'État \(Council of State, France\), 10th and 9th subsections combined, 26 December 2012, 331672, not published, Recueil Lebon](#); of the [Cour administrative d'appel de Paris \(Administrative Court of Appeal, Paris, France\), Second Chamber, 9 July 2009, 08PA06073](#); [BOI-CTX-DG-20-50-30 No 160](#); Documentation Pratique Francis Lefebvre Fiscal, CONT II 19050 to 19065. The increase of five percentage points on the expiry of a period of two months as from the date on which the court decision became enforceable, provided for under [Article L-313-3 of the code monétaire et financier \(Monetary and Financial Code\)](#), does not apply to default interest owed by the State ([BOI-CTX-DG-20-50-30 No 160](#)).

the *dies a quo* for calculating that interest on late payment starts to run from the date of payment of the unlawful penalty.

12. More specifically, in the case of **Greece**, there is interest on late payment,¹¹ which may however apply in the event of repayment without delay. At a rate of 3%, it is intended to compensate for loss of enjoyment¹² and it applies from the date of the undue payment.¹³
13. In **Hungary**, Article 65 of the Law on the taxation system,¹⁴ entitled ‘Interest on late payment’ applies, its title notwithstanding, from the date of payment of the undue financial penalty or tax, without any provision for late payment by the public authority.¹⁵ That interest on late payment is intended to compensate the taxpayer for costs or loss of income.¹⁶ The rate is equivalent to that of a late payment penalty,¹⁷ namely the Hungarian Central Bank base rate, plus five percentage points.¹⁸
14. In **Italy**, in the field of taxation, pursuant to Article 44(1) of Decree No 602 of the President of the Republic of 29 September 1973,¹⁹ concerning interest for the delay in the repayment of the taxes paid, ‘a taxpayer who has made direct payments or who has been entered in the register for an amount of tax greater than that actually due for the same period shall be entitled, in respect of the highest sum actually paid, to interest of 1.375% for each whole half-year excluding the first, between the date of payment [...] and the date of the order issued by the finance authority [...]’.
15. However, the Italian Court of Cassation, in a judgment of 27 April 2023,²⁰ ruled that, notwithstanding the title chosen by the legislature, namely interest for the delay, the interest due to the taxpayer in the event of repayment is not due in respect of the ‘*mora*’ (‘delay’) but serves to compensate the taxpayer for the loss of enjoyment of the amount unduly paid.

¹¹ [Διάταγμα της 26.6/10.7.1944](#) ‘περί κώδικος των νόμων περί δικών του Δημοσίου’ (Decree of 26 June/10 July 1944 codifying the laws on State trials) (FEK A’ 139), Article 21.

¹² ΣτΕ (Council of State, Greece), judgment No 686/2020 *apofasi tis 22.4.2020, σκ. 9*.

¹³ See footnote **Error! Bookmark not defined.**

¹⁴ Article 65, entitled ‘Interest on late payment’, of Law 2017. évi CL. törvény az adózás rendjéről (Law No CL of 2017 on the system of taxation) (‘the Law of 2017 on the system of taxation’).

¹⁵ Judgments of the Legfelsőbb Bíróság (former Supreme Court, Hungary), Kfv.I.35.215/2005/7 and Kfv.I.35.261/2009/6.

¹⁶ Communication from the Tax and Finance Supervisory Authority, [ΑΕΕ 2010/8](#) (based on the abovementioned judgments in cases Kfv.I.35.215/2005/7 and Kfv.I.35.261/2009/6).

¹⁷ Article 65(1bis) of the Law of 2017 on the system of taxation. Since the rate of that interest corresponds to that of a late-payment penalty, the rate is higher if there is a delay in repaying the sum concerned to the taxpayer.

¹⁸ Article 209(1) of the 2017 Law on the system of taxation.

¹⁹ [Decreto del Presidente della Repubblica No 602 del 1973](#) (Decree No 602 of the President of the Republic of 29 September 1973 laying down provisions on the collection of income tax) of 29 September 1973 (GURI No 268 of 16 October 1973) (‘the DPR No 602/1973’).

²⁰ Corte di Cassazione (Court of Cassation, Italy), judgment of 27 April 2023, [No 11189](#).

16. It should be noted that, in **France, Greece and Hungary**, there is, to date, no case-law like that of the Italian Court of Cassation which addresses the issue of the discrepancy between, on the one hand, the title of the provisions classifying the interest as default interest or interest on late payment and, on the other hand, the fact that the application of those provisions is not conditional on any finding of delay.

B. MEMBER STATES WHICH DO NOT DESIGNATE INTEREST AS DEFAULT INTEREST OR INTEREST ON LATE PAYMENT

17. In ten of the Member States selected (**Belgium, Bulgaria, Finland, Greece, Hungary, Ireland, Italy, Netherlands, Romania and Spain**), there exists interest which is designated in terms other than '*moratoire*' (default interest) or interest on late payment, the *dies a quo* of which is fixed from the date of payment of the unlawful penalty. The interest can be divided into three categories, depending on the function formally conferred on it.

1. INTEREST PAID BY WAY OF COMPENSATION FOR LOSS OF ENJOYMENT

18. Seven Member States, namely, **Bulgaria, Finland, Greece, Ireland, Netherlands, Romania and Spain**, provide for interest in the event of the repayment of an unlawful penalty, intended to compensate for loss of enjoyment.
19. **In Bulgaria**,²¹ that interest is referred to by law as 'statutory interest'.²² It applies, including in competition law, for the 'expired period', that is to say, from the date of payment of the undue amount,²³ at a rate equal to the Bulgarian

²¹ The Bulgarian legislature has provided for a general system of repayment or compensation, where a judicial or administrative decision which has entered into force has recognised the debtor as having a claim for amounts unduly paid or in respect of levies, compulsory social security contributions, taxes, fines, pecuniary penalties (collected or imposed) by the revenue authorities (Articles 128 to 132 of the [Danachno-osiguriteln protsesualen kodeks \(Tax and Social Insurance Procedure Code\) \(DV No 105 of 29 December 2005\) \('the DOPK'\)](#)).

Pursuant to Article 129(5) and (6) of the DOPK:

'(5) Within thirty days of the date on which it receives a judicial or administrative decision that has entered into force, the tax authority shall be required to repay in full or to compensate in accordance with Article 129(2)(2), the amounts mentioned in that decision, together with the interest accrued pursuant to Article 129(6), where that judicial or administrative decision has recognised the debtor as having a claim ...

(6) Amounts unduly paid or collected, with the exception of compulsory social security contributions, shall be repaid with interest at the statutory rate for the expired period, where they have been paid or collected on the basis of an act of the tax authority. In other cases, amounts shall be repaid with interest at the statutory rate from the date on which they should have been repaid in accordance with Article 129(1) to (4)'.

²² First sentence of Article 129(6) of the DOPK.

²³ See Varhoven administrativen sad (Supreme Administrative Court, Bulgaria), 1st Chamber, [judgment No 6783 of 31 May 2017, Case No 8800/2016](#).

National Bank's main interest rate for the period concerned plus 10 percentage points.²⁴

20. In **Spain**, the law requires the payment of statutory interest²⁵ in the event of repayment of an unlawful penalty. It applies, including in competition law,²⁶ but not in tax matters, from the date of payment of the undue amount until actual repayment, at a rate of 3.25%.²⁷
21. In respect of **Finland**, with the exception of financial penalties in competition matters imposed by judicial means only (see paragraph 7, above), there are two types of interest: first, repayment interest,²⁸ provided for by tax legislation, in particular in respect of directly enforceable economic penalties in relation to taxes and charges, but the scope of which has been extended to all other areas.²⁹ That interest rate corresponds to the annual reference interest rate reduced by two percentage points (but by at least 0.5%). Secondly, interest, provided for under the regime of directly enforceable economic penalties, whether criminal or not (for example, penalties in the field of financial markets³⁰ and the protection of personal data³¹). In that context, if the sum of money paid in order to settle the claim must be repaid in full or in part to the debtor as a result of a decision of a higher court that has become enforceable, or for any other reason, the authority which received the sum of money must repay the amount and pay 6% interest per annum as from the date of payment up to the date of repayment.³²

²⁴ [Postanovlenie \(order\) No 100 of 29 May 2012 of the Ministerski savet \(Council of Ministers, Bulgaria\)](#).

²⁵ Article 81 of Ley [47/2003](#), General Presupuestaria (General Budgetary Law No 47/2003) of 26 November (BOE No 284 of 27 November 2003).

²⁶ See decision of the National Competition Authority of 9 March 2017 ([Expte VS/0305/10 UVAS DENOMINACIÓN ORIGEN VALDEPEÑAS](#)).

²⁷ The statutory interest rate is approved annually. For 2023, the rate is set at 3.25% by [Ley 31/2022 de Presupuestos Generales del Estado para el año 2023](#) (Law 31/2022 approving the general State budget for 2023) of 23 December 2022 (BOE No 308 of 24 December 2022).

²⁸ Veronkantolaki (Law on the collection of taxes) (No [11/2018](#)), Articles 37 and 38.

²⁹ Laki verojen ja maksujen täytäntöönpanosta (Law on the application of taxes and charges) (No [706/2007](#)), Articles 1 and 3.

³⁰ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6 and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ([OJ 2014 L 173, p. 1](#)), Article 14.

³¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ([OJ 2016 L 119, p. 1](#)), Article 83.

³² Laki sakon täytäntöönpanosta (Law on the enforcement of fines) (No [672/2002](#)), Article 22(1).

22. In **Greece**, statutory interest³³ of 3%,³⁴ mainly in respect of *lis pendens*,³⁵ applies from the date of payment of the unlawful penalty.³⁶ It is intended to compensate the loss of enjoyment during *lis pendens*.³⁷ Such interest is not cumulative with the interest on late payment referred to above (see paragraph 12, above).
23. In **Ireland**, there is a judicial interest of 2%,³⁸ with a margin of judicial discretion,³⁹ which applies (except in competition matters, because appeals have suspensory effect; see paragraph 7, above) from the date of the unlawful payment,⁴⁰ including in the case of repayment of tax penalties.⁴¹
24. In the **Netherlands**, that interest is referred to by law as statutory interest,⁴² under the general regime in force in administrative law (with the exception of two

³³ Nomos 4607/2019 Κύρωση της Συμφωνίας για την Ασιατική Τράπεζα Υποδομών και Επενδύσεων, Εναρμόνιση του Κώδικα Φ.Π.Α. με την Οδηγία (ΕΕ) 2016/1065, Ενσωμάτωση των σημείων 1, 2, 4 και 5 του άρθρου 2 και των άρθρων 4, 6, 7 και 8 της Οδηγίας 1164/2016, Τροποποίηση του ν. 2971/2001 και άλλες διατάξεις (Law 4607/2019 on the ratification of the Agreement of the Asian Infrastructure and Investment Bank, harmonisation of the VAT Code with Directive 2016/1065, transposition of Article 2(1), (2), (4), (5) and Articles 4, 6, 7 and 8 of Directive 1164/2016, amendment of Law 2971/2001 and other provisions) (FEK A' 65/24.4.2019).

³⁴ See footnote 33, Article 45(1) and (3).

³⁵ See footnote 33.

³⁶ According to case-law, Article 21 of the State Trials Code must be interpreted as meaning that interest is due from the date of the action seeking repayment of the unduly paid penalty (to that effect, ΟλΣτΕ (Council of State, Assembly, Greece), No 2190/2014, *apofasi tis* 12 June 2014). However, in accordance with judgment of the Council of State No 686/2020, interest is payable as from the date of the undue payment.

³⁷ ΔΠρΠειρ (Administrative Court of Piraeus, Greece) No 7989/2017, *Αιδικ* 4/2018, p. 678.

³⁸ [Statutory Instrument No 624 of 2016 – Courts Act 1981 \(Interest on Judgment Debts\) Order 2016](#).

³⁹ [Courts Act 1981](#), Article 22.

⁴⁰ High Court (Ireland), judgment of 18 December 1996, [O'Rourke v Revenue Commissioners](#) (No 2.) [1996] 2 IR 1.

⁴¹ With regard to administrative penalties ('penalties') in tax matters, the Taxes Consolidation Act 1997, Part 47, contains a significant number of provisions on penalties, tax fines, interest payable for late payment of tax and other penalties ('Penalties, Revenue Offences, Interest on Overdue Tax and Other Sanctions'). Those penalties are assimilated and consolidated, for the purposes for their collection, with the tax to which they correspond. Some of those provisions contain interest rates in the event of late payment, or interest payable where income tax was underestimated in cases such as fraud, but none of those provisions deals with the refund of unlawful penalties or, a fortiori, provides for interest rates for those purposes. In its decision in [Harris v Quigley](#) ([2005] IESC 79), the Supreme Court (Ireland)) confirmed, with regard to the Taxes Consolidation Act 1997, the principle that, except in the case of a provision excluding a right to repayment of a levy imposed under the Act, the ordinary law governing the recovery of undue payments applies. By analogy, in the absence of a provision stipulating a special interest rate, the applicable interest rate is the rate of interest under ordinary law.

⁴² Article [4:102](#)(1) of the Algemene wet bestuursrecht (General law on administrative law) provides: 'If a payment to an administrative authority has been made on the basis of a decision that has been amended or annulled by a decision given on a claim or appeal, the administrative authority shall be liable to pay statutory interest ("wettelijke rente"), in relation to the period between payment and repayment on the excess amount'. Under [4:102](#)(2), the administrative authorities must also pay statutory interest where a decision to refuse payment has been replaced by a decision to pay following a claim or an appeal.

derogatory regimes in tax matters⁴³). It applies as from the date of payment of the penalty at a rate of 4%.⁴⁴

25. Lastly, in **Romania**, the Tax Procedure Code⁴⁵ provides for interest on any sums to be returned or repaid from the public budget (that is to say, any public debt, not only tax debts). It applies as from the date of payment of the unduly paid sum,⁴⁶ at a rate of 0.02% per day, or 7.3% per annum.⁴⁷

2. INTEREST PAID IN RETURN FOR THE UNDUE ENJOYMENT BY A PUBLIC AUTHORITY

26. Two of the selected Member States differ (**Hungary** and **Italy** (with the exception of the field of taxation)) from those in the previous category in that they approach the factor of enjoyment not from the point of view of the loss suffered by the debtor but from the perspective of the unfair profit made by the public authority.
27. First, in **Hungary**, while there is no general system for the repayment of unlawful penalties, competition law legislation,⁴⁸ by contrast, does require the public authority to pay interest⁴⁹ in the event of the repayment of such penalties. The purpose of that interest is to grant compensation at a flat rate, in return for the enjoyment from which the public authority benefited.⁵⁰ The base rate used is that

⁴³ No interest is payable where a tax assessment notice or a tax adjustment notice relating to income tax ('inkomstenbelasting') or corporation tax ('vennootschapsbelasting') is either reduced or cancelled, following a claim or subsequent legal proceedings, or is reduced *ex officio* (Article 30fe of the [Algemene wet inzake rijksbelastingen](#) (General law on State taxes)). In addition, where a tax notice is reduced to an amount lower than that already paid, recovery interest is paid only when the person concerned has submitted a request for deferred payment which has been rejected ([Article 28b of the Invorderingswet 1990](#) (Law on the recovery of taxes of 1990) and [Kamerstukken \(parliamentary documents\) II, session 2011-2012, 33003, No 3, p. 35](#)).

⁴⁴ Article [6:120](#) du Burgerlijk Wetboek (Civil Code of the Netherlands). [Besluit van 15 december 2022 tot vaststelling wettelijke rente \(Decision of 15 December 2022 establishing statutory interest\)](#) (Stb. 2022, 520).

⁴⁵ [Legea No 207/2015](#) privind Codul de procedură fiscală (Law No 207/2015 on the Tax Procedure Code) ('the Tax Procedure Code') of 20 July 2015 (*Monitorul Oficial al României*, Part I, N° 547 of 23 July 2015).

⁴⁶ Article 182(2) of the Tax Procedure Code. See also Curtea Constituțională (Constitutional Court, Romania), Decision of 20 October 2015, [No 694/2015](#).

⁴⁷ Article 182(4) of the Tax Procedure Code, read in conjunction with Article 174(5), of that code.

⁴⁸ Article 84(1) of the [1996. évi LVII. törvény a tisztességtelen piaci magatartás és a versenykorlátozás tilalmáról](#) (Law No LVII of 1996 on the prohibition of unfair commercial practices or practices restricting competition ('the 'Law on unfair commercial practices')). See, also, Alkotmánybíróság (Constitutional Court, Hungary), Decision [3124/2015](#) (VII.9.) AB, paragraph 47.

⁴⁹ Kúria (Supreme Court, Hungary), judgment Kf.IV.37.308/2019/7, paragraphs 27 to 30.

⁵⁰ Alkotmánybíróság (Constitutional Court, Hungary), Decision [3124/2015](#) (VII.9.) A, paragraph 47.

of the Hungarian Central Bank,⁵¹ which applies as from the date of the undue payment.⁵²

28. On the other hand, in **Italy**, regular interest or compensatory interest under civil law applies in administrative law⁵³ with the exception of the field of taxation.⁵⁴ The function of that interest is to compensate for the enjoyment of a sum by another. Interest is charged at a rate of 5% from the time the amount due is determined and payable.⁵⁵ With regard to the repayment of penalties under competition law, the Italian Council of State, hearing cases seeking enforcement, held that, following an annulment decision, the public authority must repay the amount of the unduly paid penalty, together with statutory interest, for the period between the date of payment of the fine and the actual repayment.⁵⁶

3. INTEREST PAID BY WAY OF COMPENSATION FOR THE LOSS ACTUALLY SUFFERED

29. Lastly, in **Belgium**, compensatory interest applies under civil law. Notwithstanding the lack of case-law precedents, it appears that the purpose of that interest is to compensate fully for the loss actually suffered. Interest, the rate of which is set by the court, applies from the date on which the loss arose, so that, in the event of the repayment of an unlawful penalty, the *dies a quo* for its calculation should correspond to the date of the undue payment of that penalty.⁵⁷

⁵¹ Article 84(1) of the Law on unfair commercial practices.

⁵² The date from which that interest is due is not fixed by law but, according to case-law and on reading the judgments, it can be seen that interest should be paid from the moment the fine was paid by the undertaking, even though it should not have done so (Kúria (Supreme Court, Hungary), judgments Kf.IV.37.308/2019/7 and Kf.II.37.137/2019/6.).

⁵³ [Article 1282 of the Codice civile](#) (Italian Civil Code), entitled, 'Interest in relation to pecuniary obligations', provides that 'claims for fixed sums of money that are due and payable shall bear interest by operation of law, unless otherwise provided by law or instrument'. The possibility of applying that interest seems to follow implicitly from the judgment of the Consiglio di Stato (Council of State, Italy) of 21 February 2008, [No 636](#).

⁵⁴ See, the recent judgment of the Corte suprema di cassazione (Supreme Court of Cassation, Italy) of 27 April 2023, [No 11189](#), in which it held that, in relation to tax refunds (overpaid tax which, in this case, had been paid following a tax adjustment adopted by the public administration), the interest owed by the Treasury to the taxpayer in respect of the late repayment is subject to the rules on six-monthly refunds, pursuant to Articles 38 and 44 of DPR No 602/1973, without application of the ordinary civil rules, given that tax rules are a special field.

⁵⁵ See the Corte suprema di cassazione (Supreme Court of Cassation, Italy), judgment of 18 July 2002, No 10428.

⁵⁶ Consiglio di Stato (Council of State, Italy), [judgments of 4 March 2003, No 2940/2003](#) and [No 2941/2003, and of 8 October 2008, No 4934](#). Even though in those cases the administration had not immediately repaid the amount due and had obliged the undertakings in question to bring the matter before the court for enforcement, the judgments make no reference to that factor for the purpose of determining the statutory interest to be paid. It should be noted that, in those judgments, the Consiglio di Stato (Council of State) did not specify the nature of the interest which it described as 'statutory interest'.

⁵⁷ See Article 5.241 of the [Belgian Civil Code](#), which provides that, 'in the event of the late payment of a value obligation, the creditor shall be entitled to full compensation, except in the cases provided for by law or contract. Compensatory interest shall be due from the date on which the loss arose.'

II. DEFAULT INTEREST APPLICABLE IN THE EVENT OF LATE REPAYMENT OF UNLAWFUL PENALTIES

30. The right to obtain interest for the late payment of an obligation exists in the Member States and is based on the general principles common to them all.⁵⁸
31. Of the thirteen legal systems selected, four provide for default interest in the event of late payment by the public authority (**Austria, Belgium, Italy and Spain**). It follows that, unlike the interest in force in the tax field in France (see paragraph 10, above), such default interest does not apply where the public authority repays the amount of the unlawful penalty without delay after the annulment decision.
32. In **Austria**,⁵⁹ **Belgium**⁶⁰ and **Italy**,⁶¹ it is classified as default interest, as provided for by the Civil Code. In **Belgium**, default interest also applies in tax matters.⁶² Furthermore, in **Spain**, there are two different types of default interest, namely default interest *stricto sensu*⁶³ and procedural default interest,⁶⁴ covered

⁵⁸ Opinion of Advocate General Bot in *Commission v IPK International*, C-336 P, [EU:C:2014:2170](#), paragraphs 62 and 63.

⁵⁹ Articles 1333 and 1334 of the Allgemeines Bürgerliches Gesetzbuch ([Austrian Civil Code](#)) ('the ABGB') and the settled case-law of the Verfassungsgerichtshof (Constitutional Court, Austria), according to which default interest under Articles 1333 and 1334 of the ABGB must also be applied to public law obligations in respect of public debts (judgment Verfassungsgerichtshof (Constitutional Court, Austria) of 7 June 2010, [A 16/09](#)). Consequently, an authority whose decision has been annulled by the decision of an appeal court is obliged to pay default interest (judgment of the Verfassungsgerichtshof (Constitutional Court) of the 27 February 1996, [A 18/95](#)). That concept of public debt is understood in a broad sense, since that principle applies to all 'administrative criminal matters', with the exception of unlawful tax penalties, for which the law does not provide for the payment of interest.

⁶⁰ See the second paragraph of Article 5.206 of the [Belgian Civil Code](#): '(Default interest (*les intérêts moratoires*')) is late payment interest due by way of compensation for the late performance of an obligation to pay a sum'. For a detailed analysis, see: [Samoy, I., Stijns, S. and Jansen, S., 'Chapitre IV – Dommages et intérêts compensatoires et moratoires' in Dubuisson, B. and Jourdain, P. \(dir.\), *Le dommage et sa réparation dans la responsabilité contractuelle et extracontractuelle*, 1st edition, Brussels, Bruylant, 2015, pp. 145 to 213.](#)

⁶¹ [Article 1224 of the Italian Civil Code](#) provides that: 'In respect of obligations relating to a sum of money, statutory interest is payable from the date of formal notice of default, even if it was not previously due and even if the creditor cannot prove any loss'. See [Corte suprema di cassazione \(Court of Cassation\), united sections, judgment of 15 June 2016, No 12324.](#)

⁶² Under Article 418(1) of the Code des impôts sur le revenu 1992 ([Income Tax Code 1992](#)) ('the CIR 92'), 'in the event of a repayment of taxes, withholding taxes, advance payments, interest on late payment, tax increases or administrative fines, default interest shall be granted at the rate as determined in accordance with point 2 of the first subparagraph of Article 2(2/1) of the Law of 5 May 1865 on interest-bearing loans, from the first day of the month following the month in which the administration was given formal notice by summons or by other equivalent document'. With regard to VAT, see Article 91(4) and (5) of the [code de la taxe sur la valeur ajoutée \(Value Added Tax Code\)](#). According to the case-law, 'default interest shall be awarded whenever a sum unduly collected by the State, which has been withheld by the tax authorities, depriving the taxpayer of interest on the sums of money of which he or she has been unduly deprived, is repaid to the taxpayer, irrespective of the reason for which it is necessary to repay the tax levied and its incidentals.' (Court of Cassation (Belgium), judgment of 14 December 2018, [No F.4.0111.N, ECLI:BE:CASS:2018:ARR.20181214.3](#)).

⁶³ 'Moratorios' o 'de demora'. [Ley 47/2003](#), General Presupuestaria (General Budgetary Law 47/2003), Article 24.

by the General Budgetary Law and the Law on the organisation of administrative courts, respectively.

33. In those four legal systems (**Austria** (with the exception of financial penalties in competition matters; see paragraph 7, above), **Belgium** (both in civil and tax law), **Italy** (with the exception of tax law) and **Spain** (in respect of the abovementioned two types of default interest)), that interest is conditional on a finding of a delay in the performance of a payment obligation following an annulment decision. The function of the interest is to compensate for the effects of that delay.
34. With regard to the *dies a quo* for the calculation of that interest, in **Belgium**,⁶⁵ as in **Italy**,⁶⁶ the law expressly provides that it corresponds to a formal notice to pay. In **Austria**, the *dies a quo* is the date of notification of the repayment request, or from the date on which the court application is lodged, following the annulment decision.⁶⁷
35. In **Spain**, the purpose of default interest *stricto sensu* is to compensate for the loss of enjoyment of the monies owed as a result of the delay. The *dies a quo* for its calculation corresponds to the date of the submission of a written claim or an administrative or judicial action,⁶⁸ to be made at the earliest on the expiry of a period of three months after the notification of the judgment,⁶⁹ in the absence of the repayment of the unlawful penalty by the public authority.
36. By contrast, the purpose of procedural default interest here is to ensure that the public authority complies with the annulment decision handed down by the court.⁷⁰ It is for that reason that the legislature made the right to payment automatic and fixed its *dies a quo* as the date of notification of the annulment

⁶⁴ ‘Intereses procesales’, provided for in Article 106 of Ley 29/1998 reguladora de la Jurisdicción Contencioso-Administrativa (Law 29/1998 on the organisation of the administrative courts) of 13 July 1998 (BOE No 167 of 14 July 1998, p. 23516).

⁶⁵ In accordance with ordinary law, (see [Article 5.240](#) of the Belgian Civil Code), under tax legislation ([Article 418\(1\) of the CIR 92](#)), interest applies from the first day of the month following that in which the administration was validly given formal notice.

⁶⁶ [Article 1224 of the Italian Civil Code](#). Cian Trabucchi, *Commentario breve al codice civile*, CEDAM, 2020, p. 1296; Chiné, Fratini, Zoppini, (a cura di), *Manuale di diritto civile*, Nel diritto editore, p. 853.

⁶⁷ Verfassungsgerichtshof (Constitutional Court, Austria), judgment of 7 June 2010, [A 16/09](#). Rechtssatz (legal rule) RS0023392.

⁶⁸ Tribunal Supremo (Supreme Court, Spain), judgment of 10 July 1992 ([ECLI:ES:TS:1992:20996](#)). See also Pajuelo, F., ‘La ejecución de las sentencias’ in Palomar, A., *Tratado de la Jurisdicción Contencioso-Administrativa* (Tomo II) 3rd ed. Thomson Reuters, Cizur Menor (2017), p. 714 et seq. In so far as the creditor’s application does not necessarily have to take the form of an action, a written claim to the public administration would also be valid for the purpose of establishing the *dies a quo*.

⁶⁹ Article 24 of the General Budgetary Law establishes a period of three months from the notification of the judgment declaring the obligation to pay or recognition of such an obligation by the administration.

⁷⁰ It should be noted that Article 106 of Law 29/1998 on the organisation of administrative courts is to be found in Chapter IV of Title IV of that Law, which deals with the enforcement of judgments (‘Ejecución de sentencias’). On the function of procedural interest, see also the Tribunal Constitucional (Constitutional Court, Spain), judgment 69/1996 of 18 April (BOE No 123, of 21 May 1996), [ECLI:ES:TC:1996:69](#).

decision issued by the court.⁷¹ Furthermore, notwithstanding the lack of case-law on that point, with regard not only to its function, which distinguishes it from the function of statutory interest, but also to the *dies a quem* of the latter (see paragraph 20, above), procedural default interest may be applied cumulatively with the latter.

CONCLUSION

37. A comparison of the legal systems in force in the thirteen Member States selected for the purposes of this research note shows that, in **Germany**, the question of repayment of an unlawful penalty does not, in principle, arise. The same applies in **Austria**, where there is no right to interest where there is repayment, without delay, of such a penalty.
38. In the other eleven Member States, there is interest that may apply within the strict scope of this note, namely the repayment without delay by public authorities of unlawful penalties, the *dies a quo* of which is set from the date of payment of the unlawful penalty.
39. Those eleven Member States include **France**, where, in the specific field of tax litigation, although the payment of that interest is not conditional on a finding of delay, it is classified as '*moratoire*' (default interest). The same is true in **Greece** and, in tax law, in both **Hungary** and **Italy**, where that interest is sometimes classified as interest on late payment, whereas elsewhere, it is referred to differently. It should be noted, however, that, in **Italy**, the Court of Cassation has recently held that, notwithstanding the title chosen by the legislature, namely 'interest for the delay', the interest due to the taxpayer in the event of repayment is not due in respect of the '*mora*' ('delay'), but serves to compensate the taxpayer for the loss of enjoyment of the amount unduly paid.
40. It follows that, in ten national legal systems (**Belgium, Bulgaria, Finland, Greece, Hungary, Ireland, Italy, the Netherlands, Romania and Spain**), there is a general or special regime, under which interest, classified other than default interest or interest on late payment, is paid in respect of the repayment without delay of an unlawful payment, the *dies a quo* of which corresponds to the date of its payment.
41. In addition, the right to obtain interest for the late payment of an obligation exists in the Member States and is based on the general principles common to them all. Of the thirteen legal systems selected, four provide for default interest which applies in the event of late payment by a public authority (**Austria, Belgium, Italy and Spain**).

[...]

⁷¹ Pajuelo, F., 'La ejecución de las sentencias: in Palomar, A., *Tratado de la Jurisdicción Contencioso-Administrativa* (Tomo II) 3rd ed. Thomson Reuters, Cizur Menor (2017), p. 714 et seq.