

Case C-482/21

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:

5 August 2021

Referring court:

Fővárosi Törvényszék (Budapest High Court, Hungary)

Date of the decision to refer:

29 June 2021

Applicant:

Euler Hermes SA Magyarországi Fióktelepe

Defendant:

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Authority, Hungary)

Subject matter of the main proceedings

Action for amendment or annulment of an administrative decision refusing to grant an application for reduction of the taxable amount for value added tax ('VAT') on transactions underlying debts assigned to an insurer which have become irrecoverable.

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

Whether the reduction of the taxable amount for VAT on irrecoverable debts can be relied on by the assignee of a debt (Directive 2006/112, Article 90).

Article 267 TFEU.

Questions referred for a preliminary ruling

Do the principles of proportionality, fiscal neutrality and effectiveness –having regard, in particular, to the fact that a Member State may not charge an amount of VAT exceeding that actually received by the supplier of goods or services in respect of that supply of goods or services – and the exemption laid down in Article 135(1)(a) of the VAT Directive – particularly as regards the requirement that that activity is to be treated as a single exempt transaction, by reference to the principles laid down in points 35, 37 and 53 of the Advocate General’s Opinion in Case C-242/08, *Swiss Re* – and the obligation to guarantee the free movement of capital and services in the internal market preclude a practice of a Member State pursuant to which the reduction applicable to the taxable amount in the event of definitive non-payment, as provided for in Article 90(1) of the VAT Directive, is not applicable where an insurer, in the course of its commercial credit insurance business, paid an indemnity to the insured person in respect of the taxable amount and also in respect of the VAT due when the risk materialised (non-payment by the insured’s client), meaning that, under the insurance contract, the debt, together with all associated rights of enforcement, was assigned to the insurer, in the following circumstances:

- (i) at the time when the debts in question became irrecoverable, national law did not allow any reduction of the taxable amount in respect of an irrecoverable debt;
- (ii) since the incompatibility of that prohibition with Union law was made clear, national positive law has consistently excluded outright the refund of VAT on an irrecoverable debt to the original supplier of the goods or services (the insured person) on the grounds that the insurer has reimbursed that amount of VAT to the supplier; and
- (iii) the insurer is able to show that its claim against the debtor has become definitively irrecoverable?

Provisions of European Union law relied on

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Articles 73, 90 and 135.

Provisions of national law relied on

Az adózás rendjéről szóló 2017. évi CL. törvény (Law CL of 2017 on General Taxation Procedure; ‘the Law on General Taxation Procedure’), Article 196.

Az általános forgalmiadóról szóló 2007. évi CXXVII. törvény (Law CXXVII of 2007 on value added tax), Articles 5, 55, 56 and 77.

Az adóigazgatási rendtartásról szóló 2017. évi CLI. törvény (Law CLI of 2017 Regulating the Tax Authority), Article 12.

Succinct presentation of the facts and procedure in the main proceedings

- 1 Euler Hermes SA Magyarországi Fióktelepe ('the applicant') is an insurance company which, in the course of its business, assumes the obligation to pay insured persons an indemnity in respect of a specified debt in the event of non-payment by the insured's client. The amount of the indemnity is generally set at 90% of the value of the unpaid debt plus VAT. Under the contract, payment of the indemnity results in the transfer to the applicant of the portion of the debt corresponding to the value of the insurance and all rights originally attributed to the insured. However, the applicant bears the effective burden of the VAT which insured persons have unsuccessfully passed on to their clients.
- 2 Relying on the order of the Court of Justice of 24 October 2019 in *Porr Építési Kft.* (C-292/19, EU:C:2019:901), the applicant submitted to the tax authority on 31 December 2019 an application for a refund of the VAT included in the amounts paid in respect of insurance with effect from 1 January 2014, accounted for in the invoices issued with an enforcement date later than 1 December 2013, for a total amount of HUF 225 855 154 and EUR 128 240.44, plus the applicable interest.
- 3 The applicant based its application on the fact that, in connection with the insurance product in question, it had paid the insurance, also including VAT, in respect of debts which had become definitively irrecoverable. For that reason, it claimed a reduction *a posteriori* of the taxable amount.
- 4 On 29 January 2020, the Nemzeti Adó- és Vámhivatal Észak-budapesti Adó- és Vámigazgatósága (Budapest North Tax and Customs Directorate of the National Tax and Customs Authority, Hungary) (first-tier tax authority) rejected that application. It based its decision on the fact that the transactions which gave rise to the irrecoverable debts had not been carried out by the applicant.
- 5 The applicant appealed against that first-tier decision, following which the Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Authority, Hungary; 'the defendant') upheld the first-tier decision on 15 April 2020. It based its decision on the fact that, from a tax law perspective, the applicant was not the insured persons' successor under the insurance contracts. Accordingly, one of the substantive conditions for a refund of the tax had not been met.
- 6 The applicant lodged an administrative appeal before the referring court, seeking, principally, the amendment of the defendant's decision and, in the alternative, the annulment of that decision and an order that the defendant conduct a new procedure.

The essential arguments of the parties in the main proceedings

- 7 The applicant submits that the tax authority infringed EU law by refusing it the right to a refund of VAT on an irrecoverable debt arising as a result of contracts that it concluded with the insured persons. As the successor of those insured persons, the applicant was entitled to claim a VAT refund since, pursuant to the insurance contract, it became the clients' successor under civil law. Taking into account the principle of fiscal neutrality, it is also entitled to a VAT refund pursuant to EU law. The artificial separation of the elements of the insurance relationship, which leads to different treatment for tax purposes, infringes provisions of EU law and the case-law of the Court of Justice. The amount of VAT constitutes a real disadvantage for the applicant, distorts competition and also creates prohibited discrimination.
- 8 In the defendant's submission, it follows from a reading of EU law in conjunction with national law that a taxable person whose claim against his debtor has become definitively irrecoverable is entitled to a reduction of the taxable amount in respect of irrecoverable debts. In theory, this means that the applicant for a reduction of the taxable amount must be a taxable person who was previously subject to declaration and fiscal obligations in relation to the supplies of goods and services which it carried out and which gave rise to the irrecoverable debts. That condition is not satisfied in this case.
- 9 The defendant contends that the applicant was not indirectly required to pay the tax either, since it was able to set the insurance premium at an amount proportional to the magnitude of the risk assumed. Therefore, a reduction of the taxable amount could, as the case may be, lead to unjust enrichment of the applicant.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 10 According to the referring court, the essential issue in the main proceedings is the compatibility with EU law and with the general EU law principles of proportionality, fiscal neutrality and effectiveness of national legislation and an administrative practice of the national tax authorities which, in the event of assignment of an irrecoverable debt, do not allow a refund of the VAT applicable to that debt to either the person who originally carried out the taxable transaction or to the assignee of the debt.
- 11 In that respect, the referring court states, first, that, in accordance with Article 196(3)(a) of the Law on General Taxation Procedure, the insured person does not have the right to a refund of 90% of the amount of VAT unsuccessfully passed on by him, as a result of total or partial non-payment, because the insured person transferred that right to the applicant under the insurance contract. At the same time, the defendant refuses to refund the tax to the applicant, claiming that a substantive requirement has not been met, namely that the applicant did not carry out the transactions concerned and did not bear the corresponding tax obligations.

- 12 The referring court considers that it is not possible to adjudicate on the main proceedings without the Court of Justice providing the necessary interpretation in preliminary ruling proceedings on the questions set out above.

WORKING DOCUMENT