Case C-733/23

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:

1 December 2023

Referring court:

Administrativen sad Burgas (Bulgaria)

Date of the decision to refer:

21 November 2023

Appellant in cassation:

‘Beach and bar management’ EOOD

Respondent in cassation:

Nachalnik na otdel ‘Operativni deynosti’ Burgas

Subject matter of the main proceedings

Proceedings arising from the appeal in cassation brought by ‘Beach and bar management’ against the decision of the Rayonen sad Burgas (District Court, Burgas) confirming the decision by which the respondent in cassation imposed a financial penalty on the appellant in cassation for a tax offence.

Compatibility with Article 50 of the Charter of Fundamental Rights of the European Union (‘the Charter’) of the cumulation of coercive administrative measures and financial penalties ordered as against the same person for the same offence in different proceedings.

Compatibility with Article 49(3) of the Charter of an administrative penalty in the form of a ‘financial penalty’ subject to a high lower limit, without procedural law leaving it open to the court to set the financial penalty at an amount below that lower limit or to impose a more lenient type of penalty.

Compatibility with the first paragraph of Article 47 and Article 49(3) of the Charter of the imposition of a single overall coercive administrative measure in

respect of multiple offences and the permissibility of provisionally enforcing that measure before it has become final, without procedural law leaving it open to the court or the offender itself to review the proportionality of that measure in relation to the seriousness of each individual administrative offence.

Subject matter and legal basis of the request

The request for a preliminary ruling is made under subparagraph (b) of the first paragraph of Article 267 TFEU.

Questions referred for a preliminary ruling

1. Are Article 325 of the Treaty on the Functioning of the European Union, Article 273 of Council Directive 2006/112/EC of 28 November on the common system of value added tax and Article 50 of the Charter of Fundamental Rights of the European Union to be interpreted as permitting national legislation under which a single overall measure of 'sealing business premises and prohibiting access thereto' may be imposed in respect of multiple failures to fulfil tax obligations, where that measure is aimed exclusively at limiting the adverse effects of the offence, including the extent of the damage to the financial interests of the European Union, but not at punishing the offender, without that measure limiting the possibility of pursuing against that offender, in respect of each of those failures to fulfil tax obligations, independent proceedings of a punitive nature imposing on the taxable person a measure in the form of a financial penalty, it being the duty of the national court to examine and determine in each individual case which of the two objectives is pursued by the coercive administrative measure of 'sealing business premises and prohibiting access thereto' imposed at an earlier stage: prevention and restriction or punishment?

2. Are Article 325 of the Treaty on the Functioning of the European Union, Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Article 49(3) of the Charter of Fundamental Rights of the European Union to be interpreted as precluding a regime of penalties such as those at issue in the main proceedings, which, irrespective of the nature and seriousness of the offences, provides for a significant lower limit for the penalty in the form of a financial penalty, without providing for the possibility of imposing a penalty below the minimum amount laid down in the law or of replacing that penalty with a more lenient one?

3. Are Article 325 of the Treaty on the Functioning of the European Union, Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the first paragraph of Article 47, Article 48(1) and Article 49(3) of the Charter of Fundamental Rights of the European Union to be interpreted as precluding national legislation which

allows, in respect of multiple failures to fulfil tax obligations, the imposition of a single overall measure of 'sealing business premises and prohibiting access thereto' and – before that measure becomes final – its provisional enforcement, without giving the court and the offender itself the opportunity to review the proportionality of that measure in relation to the seriousness of each individual administrative offence?

Provisions of European Union law and case-law relied on

TFEU, Article 325(1) and (2)

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Article 273

Charter of Fundamental Rights of the European Union ('the Charter'), first paragraph of Article 47, Article 49(3), Article 50

Judgment of the Court of Justice of 4 May 2023, *MV – 98*, C-97/21, EU:C:2023:371

Provisions of national law relied on

Zakon za danak varhu dobavenata stoynost (Law on Value Added Tax; 'the ZDDS')

NAREDBA No N-18 ot 13.12.2006 za registrirane i otchitane chrez fiskalni ustroystva na prodazhbite v targovskite obekti, iziskvaniata kam softuerite za upravlenieto im i iziskvania kam litsata, koito izvarshvat prodazhbi chrez elektronen magazin (Regulation N-18 of 13 December 2006 on the registration and recording of sales on business premises by means of fiscal memory devices, the requirements governing software for their management and the requirements as regards persons making sales via online shops; 'Regulation No N-18')

Zakon za administrativnite narushenia i nakazania (Law on administrative offences and penalties; 'the ZANN')

Danachno-osiguritelen protsesualen kodeks (Code of tax and social security procedure; 'the DOPK')

Succinct presentation of the facts and procedure in the main proceedings

1 The appellant in cassation is a legal person which operates business premises, namely a bar and restaurant.

2 At 15.15 on 4 August 2022, revenue inspectors from the glavna direktsia 'Fiskalen kontrol' (General Directorate 'Tax Supervision') carried out an audit in the

appellant in cassation's business premises. The inspectors drew up a record of that audit, during which they had found two POS terminals on the premises as well as 85 POS terminal receipts for accepted payments by debit and credit cards during the period from 25 June 2022 to 26 July 2022, amounting in total to BGN 2978. In the case of those 85 payment transactions, it was found that no fiscal cash register receipts had been issued from the fiscal memory devices present in the bar and restaurant.

3 The administrative authority took the view that the omissions found to have occurred in the period from 25 June 2022 to 26 July 2022, in the form of the non-issue of cash register receipts for 85 sales, constituted 85 instances of infringement of Article 118(1) of the ZDDS, read in conjunction with Article 25(1)(1) of Regulation No N-18. That provision imposes on every trader an obligation to register and record all sales made in a business premises by issuing a fiscal cash register receipt generated by a fiscal memory device.

4 On 12 August 2022, the administrative authority issued an order imposing the coercive administrative measure of 'sealing business premises' for a period of 14 days and 'prohibiting access thereto' for the same period. In the order imposing the coercive administrative measure, the administrative authority authorised by separate decision the provisional enforcement of that measure.

5 The order imposing the coercive administrative measure of 12 August 2022 and the decision of the administrative authority, contained in that order, authorising its provisional enforcement, were challenged before the Administrativen sad Burgas (Administrative Court, Burgas) in two separate sets of proceedings. Those actions were dismissed.

6 At the time of the hearing of the main proceedings in the present case, the judicial decisions in the abovementioned two disputes are final and the penalty of 'sealing business premises and prohibiting access thereto' for a period of 14 days was enforced.

7 On the basis of the 85 notices establishing an administrative offence which had been issued, the penalising authority issued a total of 85 decisions imposing a penalty, including, inter alia, the decision at issue here, the facts relating to which it considered to be proved. For each of the 85 offences, a financial penalty equal to the minimum amount laid down in the provision on sanctions, BGN 500.00, was imposed on 'Beach and bar management'. The total sanction for all 85 offences thus amounts to BGN 42 500.00. The total amount of VAT not registered owing to the non-issue of cash register receipts for all 85 payment transactions completed via POS terminals amounts to BGN 268.02.

8 All 85 decisions were challenged before the District Court, Burgas. 85 sets of proceedings were instituted and the District Court, Burgas confirmed each decision that was the subject of an action. All 85 judgments of the District Court, Burgas are currently under appeal to the Administrative Court, Burgas, the

proceedings before which are not concluded but are to be stayed for the making of the present request for a preliminary ruling.

9 In this particular dispute (although the same is also true of all of the other 84 cases), the court of first instance considered the facts to be proved and found that the penalising administrative authority had applied the law correctly in forming the view that the company in question had committed the offence concerned. It found that the penalty imposed had been set at the minimum level provided for by law, and confirmed the decision imposing a penalty in full. That judgment was given before the delivery of the judgment of the Court of Justice of 4 May 2023 in Case C-97/21. In the grounds of its judgment, the court [of first instance] neither took into account the fact that the order of 12 August 2022 and the decision for its provisional enforcement had enforced the coercive administrative measure of 'sealing business premises and prohibiting access thereto' for a period of 14 days which had been imposed in respect of all 85 offences, nor gave any consideration to the legal effect of that enforced coercive administrative measure on the current second set of proceedings, which are concerned with a review of the financial penalty imposed in the amount of BGN 500.00.

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

10 The ZDDS governs the levying of VAT on every taxable supply of goods or services for consideration. That law provides for two types of measure in the event of non-compliance by the taxable person with the obligations arising from the ZDDS: on the one hand, the application of coercive administrative measures and, on the other hand, the imposition of administrative penalties (in this case, a financial penalty). In accordance with the judgment of the Court of Justice in Case C-97/21, coercive administrative measures are regarded as measures of a punitive nature (referred to as 'soft penalties' for the purposes of this request).

11 The imposition, challenge and enforcement of those two types of measure are subject to different procedural rules. Those relating to the imposition of a financial penalty follow the logic and the rules of the law of criminal procedure. The imposition of so-called soft penalties is governed by the rules of the law of administrative procedure and (in the case of subsidiarity) the law of civil procedure.

12 The adjudicating chamber is aware of and takes into account the legal conclusions set out by the Court of Justice of the European Union in the judgment of 4 May 2023 in Case C-97/21, in particular paragraphs 49 and 63.

13 The present case is governed by the same legal basis but differs in relation to the facts from the abovementioned case in such a way as to prompt on the part of the adjudicating chamber seised doubts as to whether the two cases are to be treated, from the point of view of the application of EU law, in the manner laid down in the judgment of 4 May 2023 in Case C-97/21.

14 So far as the facts are concerned, the essential difference lies in the fact that the applicant in the main proceedings in the course of which the judgment of 4 May 2023 in Case C-97/21 was given challenged two measures (which were regarded by the Court of Justice as penalties) imposed for a single offence: 1. a soft penalty in the form of the coercive administrative measure of 'sealing business premises and prohibiting access thereto'; and 2. a financial penalty.

15 As well as in cases such as the foregoing, a soft penalty in the form of the coercive administrative penalty of 'sealing business premises and prohibiting access thereto' may also be ordered in respect of more than one offence, that is to say, in respect of a number of similar offences committed by one and the same person.

16 The present case differs from the case previously decided by the Court of Justice in that, following the audit that was conducted, which covered a whole financial period of one month, not just one but 85 individual offences were found to have been committed. In this case, the soft penalty in the form of the coercive administrative measure of 'sealing business premises and prohibiting access thereto' was imposed in respect of all of the offences which the audit had found to have been committed, considered as a whole.

17 In the present case, the adjudicating chamber seised finds that the coercive administrative measure of 'sealing business premises and prohibiting access thereto' is not punitive but restrictive in nature and is aimed at limiting the extent of the damage caused to the financial interests of the European Union by temporarily bringing to a halt a commercial activity which, on account of the offences found by the auditors, is damaging to the system of VAT in the longer term.

18 This view is based primarily on Article 22 of the ZANN, according to which the effect of coercive administrative measures is, on the one hand, both deterrent and restrictive and 'preventing the adverse consequences of administrative offences' but can, on the other hand, also be punitive, as the Court of Justice held in its judgment in Case C-97/21.

19 In the present case, 85 sales made within one month were not registered with a fiscal memory device. Under national law, each omission constitutes a separate offence. A single overall soft penalty in the form of the coercive administrative measure of 'sealing business premises and prohibiting access thereto' for a period of 14 days was imposed in respect of all of the offences found to have been committed, without any individual examination of each of the 85 offences, including from the point of view of the seriousness of each and the proportionality to its seriousness of the corresponding share of the overall soft penalty in the form of the coercive administrative measure. An individual determination of the share of the penalty amount in proportion to the seriousness of each individual offence is not required by law and was not carried out in those now concluded proceedings.

20 The soft penalty itself, namely the coercive administrative measure, was enforced. From a formal point of view, therefore, it seems reasonable to consider, in the light of what the Court of Justice held in Case C-97/21, that the offender has already been penalised for the same offence and that the court, in the absence of a statutory mechanism for coordinating the soft penalty already imposed and the financial penalty at issue in the main proceedings, should not penalise that offender again. The referring court takes the view that, in the case at hand, which concerns the imposition of a coercive administrative measure in respect of 85 offences considered as a whole, such an approach to the issue would infringe Article 325 TFEU and Article 273 of Directive 2006/112, since it would prevent the penalty imposed for each particular offence from being individualised, thus restricting the possibility of verifying whether the penalty is lawful, justified and appropriate. That approach also makes it impossible to examine whether the measures so ordered act as a deterrent and afford effective protection, in accordance with Article 325 TFEU, so as to ensure the correct collection of VAT and prevent evasion within the meaning of Article 273 of Directive 2006/112.

21 In the view of the adjudicating chamber seised, that soft penalty, namely the coercive administrative measure, is not capable of attaining those fundamental objectives, since it has a dual nature, with the primary one being restrictive rather than punitive in nature, and fulfils punitive functions too only in some cases.

22 In order to substantiate its view, the court seised would like to explain, from a procedural point of view, the mechanism and scope of the review under national law of the order imposing a soft penalty in the form of a coercive administrative measure.

23 Unlike the procedure for contesting a proper penalty, which is governed entirely by the rules of criminal procedure, and thus requires proof of the subject and object of the criminal offence, of the subjective and objective elements of the act, and of the legality of the type and severity of the penalty imposed, the judicial review conducted in the context of an action contesting a soft penalty in the form of a coercive administrative measure covers consideration of the following. Was the order imposing the coercive administrative measure issued by a competent authority? Was it issued in the legal form prescribed by law? Was the procedure for its issue followed in such a way as not to restrict the applicant’s ability to present all of his or her arguments and to gather all of the evidence considered by him or her to be relevant, without restricting his or her rights of defence? Are there genuine factual grounds for the issue of the contested order and do they correspond to the legal grounds given therein for its issue? Is the extent of the coercive administrative measure imposed proportionate and justified? Some of the objective and subjective elements of the offence are not assessed.

24 It should also be noted that, when reviewing the imposition of a soft penalty in the form of a coercive administrative measure, the court has no option to shorten or extend the period for which it was ordered. In the event that the adjudicating chamber considers that measure to be disproportionate, the only option available

to it is to revoke the measure in its entirety, but it cannot adjust/individualise that measure according to the seriousness of the offence(s).

25 Next, it is crucial to note that, even if the court finds the measure ordered to be fair and proportionate in itself, that measure may still be annulled, for example because the formal conditions for its issue were not fulfilled, even though the offender and the offence were established.

26 On the one hand, this prompts misgivings on the part of the adjudicating chamber as to whether the revocation in this way of a coercive administrative measure which has been ordered may be regarded as an acquittal for the purposes of Article 50 of the Charter, in which case, in the absence of a mechanism for coordinating the soft penalty in the form of a coercive administrative measure and the financial penalties provided for, the conduct of a second set of penalty proceedings would be precluded on the ground that these would constitute criminal proceedings not properly conducted with due regard for all the required guarantees and standards.

27 On the other hand, the court also has doubts as to whether the imposition of this soft overall penalty, in the form of a coercive administrative measure, in respect of numerous tax offences, in the manner set out above, without the individual consideration of each of the 85 offences committed, may be regarded as a first conviction for the purposes of Article 50 of the Charter, where the penalty for each offence has not been duly individualised and not all of the standards laid down in the law of criminal procedure for the protection of the offender have been complied with, such as, for example, the option of provisional enforcement of the coercive administrative measure, which is directly contrary to the presumption of innocence enshrined in Article 48(1) of the Charter.

28 The case giving rise to the present request for a preliminary ruling calls for an assessment of the legality of the proceedings leading to the imposition of a financial penalty on the offender. Since those proceedings progressed more slowly than the administrative proceedings for the imposition of a soft penalty in the form of a coercive administrative measure, they are, chronologically, the second set of proceedings against the trader. It therefore falls to the referring court to examine whether the first, soft penalty in the form of a coercive administrative measure of ‘sealing business premises and prohibiting access thereto’ for a period of 14 days constitutes a ‘conviction’ for the purposes of the Charter, that is to say, whether criminal proceedings in the broader sense of that term were conducted, whether a measure of a criminal nature was imposed, and whether, from a factual point of view, that measure was ordered in respect of the same offence. That examination is by its nature an application of the ‘Engel’ test, that is to say, an algorithm introduced by the ECtHR in *Engel and Others v. Netherlands* and established in its case-law, which has been fully adopted and further developed by the Court of Justice in its judgments (*Bonda*, C-489/10, paragraph 37, *Hans Åkerberg Fransson*, C-617/10, and others).

29 In applying that test, the referring court, first of all, has doubts as to whether the first set of proceedings (in which the soft penalty in the form of a coercive administrative measure was imposed) involved the conduct of proceedings which, by their nature, constitute criminal proceedings in the broader sense of that term, inasmuch as that measure was ordered in respect of all of the 85 offences found to have been committed, considered as a whole. That measure is not individual, which is to say that it is not ordered in respect of one in particular of those 85 offences (as, for example, in the situation that was examined by the Court of Justice in Case C-97/21), and, from a legal point of view, does not constitute a cumulation of 85 individual soft penalties in the form of coercive administrative measures. If that soft penalty in the form of a coercive administrative measure were to be regarded as a penalty within the meaning of Case C-97/21, it would not be individualised in relation to each particular offence committed. This would lead directly to a breach of the principle of proportionality laid down in Article 49(3) of the Charter, according to which the severity of the penalty must not be disproportionate to the criminal offence – a circumstance which neither the court seised nor the offender itself is able to assess in relation to the contested soft penalty in the form of a coercive administrative measure that was imposed in respect of 85 offences considered as a whole.

30 National law does not in fact provide for the procedural possibility of cumulating administrative penalties. On the contrary, in accordance with Article 18 of the ZANN, an individual penalty is to be imposed for each offence.

31 Lastly, that soft penalty in the form of a coercive administrative measure is neither included in a specific list of penalties imposed, nor taken into account in the assessment of the repeated or systematic commission of an offence, as is the case with penalties for criminal offences or financial penalties which are imposed in administrative penalty proceedings such as the main proceedings.

32 Considered as a whole, all of the circumstances of the present case, as described, might give the impression that, in a case such as that in the main proceedings, in which a coercive administrative measure was imposed in respect of 85 offences considered as a whole but the extent to which that measure is ordered in respect of each particular offence is not individualised, the safeguarding function of the coercive administrative measure, which restricts the amount of unregistered and uncharged VAT to that in the original findings, does not simply prevail over its punitive nature but is in practice the only manifestation of the coercive administrative measure in the main proceedings as specifically described, and is aimed exclusively at limiting the extent of the damage to the financial interests of the European Union.

33 The adjudicating chamber seised takes the view that, in such a case, the national courts have jurisdiction to assess which manifestation of the dual nature of the measure in question was applied in each individual case, and should exercise that jurisdiction. That procedural possibility is fully consistent with the guidance given

by the Court of Justice to the national courts in the judgment in *Hans Åkerberg Fransson*, C-617/10.

34 The court does not call into question the considerations set out in Case C-97/21 with respect to the high level of severity of the soft penalty in the form of a coercive administrative measure in relation to the offence in respect of which it was imposed in the main proceedings that formed the subject of the judgment of 4 May 2023 in Case C-97/21. Where, however, that measure concerns 85 individual offences relating to evasion of the obligation to register sales and collect VAT, in other words, concerns ongoing and persistent conduct which, according to the findings of the officials concerned, lasted for at least one month, that measure does not in the view of the referring court seem so excessively severe and disproportionate as to have to be treated as a measure of a punitive nature, but, as mentioned above, is aimed rather at limiting the extent of the overall damage caused to the EU budget by the numerous administrative offences committed.

35 Should the Court of Justice endorse the position set out above and concur with the referring court's view that the soft penalty in the form of a coercive administrative measure ordered in respect of all 85 administrative offences, in the case of which the seriousness of each particular offence and the extent to which the coercive administrative measure pertains to each particular offence were not individualised, does not constitute a 'conviction' within the broader sense of that term, it must be assumed, in the light of the *ne bis in idem* principle, that there are no procedural obstacles precluding the referring court from hearing and determining the second set of administrative penalty proceedings brought before it and imposing a financial penalty should it find that the company committed the offence at issue.

36 In this connection, the referring court would like to know whether Article 325 TFEU, Article 273 of Directive 2006/112 and Article 50 of the Charter are to be interpreted as permitting national legislation under which a single overall coercive administrative measure of 'sealing business premises and prohibiting access thereto' may be ordered in respect of multiple failures to fulfil tax obligations, where that measure is aimed exclusively at limiting the adverse effects [of those offences], including the extent of the damage to the financial interests of the European Union, but not at punishing the offender, without that measure restricting the possibility of pursuing against the same offender, in respect of each of those offences, independent proceedings of a punitive nature imposing on the taxable person a punishment in the form of a 'financial penalty', it being the duty of the national court to examine and determine in each individual case which of the two objectives is pursued by the soft penalty imposed in the form of the coercive administrative measure of 'sealing business premises and prohibiting access thereto': prevention and restriction or punishment.

37 If the Court of Justice finds this to be the case in a situation such as that in the main proceedings, it will fall to the court to examine the substance of the administrative-law dispute. In that event, the adjudicating chamber will have to

examine the lawfulness of the penalty imposed by the penalising administrative authority (if the court finds that the offence in question was committed).

38 The grounds of the judgment of 4 May 2023 in Case C-97/21 already state that the financial penalty provided for in respect of the offence at issue is of an excessively 'severe' nature – paragraph 48 of the judgment. However, in so far as the present case concerns the fact that a sale in the amount of BGN 30.00 was not registered and that VAT in the amount of 9% of the sale value, that is to say, in the amount of BGN 2.70, was not collected, the sum relevant to the adjudicating chamber seised is the minimum amount of the financial penalty laid down by law. In the case of legal persons, that amount is BGN 500.00.

39 On the one hand, it is to be noted that this case concerns the fulfilment of an element of an offence simply through an omission, that is to say the 'non-issue of a cash register receipt', which is not linked to the extent of the damage caused to the financial interests of the European Union. On the other hand, the amount of VAT uncharged and unpaid as a result of that omission is one of the essential points of reference for assessing the severity of the penalty, since it determines the amount of VAT evaded and not collected, in fulfilment of the obligation laid down in Article 325 TFEU and Article 273 of Directive 2006/112, which permit the use at national level of any means to collect VAT and to restrict the damaging effects of any illegal activity which adversely affects the financial interests of the European Union.

40 In addition to the foregoing, it is to be recalled that Article 18 of the ZANN obliges the penalising administrative authority to impose in respect of each offence a separate penalty which is to be discharged separately. The law does not take into account the overall effect of the entire series of penalties which may be imposed on an offender. It thus makes no provision for the legal concept of the 'cumulation' of penalties, as criminal law does.

41 In the context of the assertions made in the previous paragraph, it strikes the adjudicating chamber as disproportionate, in the light of Article 49(3) of the Charter, that the abovementioned legal concept of the cumulation of penalties is envisaged for the purposes of criminal justice, which penalises more serious unlawful acts, namely criminal offences, but not for less serious offences which are dealt with in accordance with the procedure provided for in the ZANN, as in the present case. This entails a risk for the imposition of a penalty that is disproportionate in its type and amount, as considered from the point of view of the amount of the damage to the financial interests of the European Union, without the possibility of carrying out a full and actual assessment of the severity of the penalty in relation to the actual offence. This is also contrary to Article 47(1) of the Charter, since the offender does not have access to an effective remedy by which to obtain a fair punishment for the cumulative adverse effects of all 85 administrative offences.

42 The fact that the legal concept referred to in the previous paragraph does not exist as a possible means of individualising financial penalties in cases concerning administrative offences seems even more serious in the light also of the fact that the procedural provisions of the ZANN do not allow the chamber dealing with the case to set a financial penalty below the amount laid down by law, while, at the same time, that minimum amount is of a not insignificant nominal value. In this particular case, those circumstances may lead to the imposition of a total of 85 financial penalties, each of which has a minimum value of BGN 500.00 and the overall punitive effect of which amounts to BGN 42 500.00, a sum which is almost certainly more likely to contribute to the offender's insolvency than to have a deterrent and corrective effect on that offender.

43 The adjudicating chamber takes the view that, on a comparative analysis, the prescribed penalty of BGN 500 seems disproportionately high in relation to the VAT evaded, which, as stated above, amounts to BGN 2.70. The abovementioned total amount of the penalty for all 85 offences also seems disproportionately high in relation to the total amount of the unregistered VAT arising from all 85 offences, which runs to BGN 268.02.

44 On the other hand, dispensing entirely with imposing punitive penalties of any type or amount, on account of the trifling nature of each individual offence, would not help achieve the effects and discharge the tasks imposed on the Member States by Article 325 TFEU and Article 273 of Directive 2006/112 either, in so far as the present case concerns an ongoing and persistent illegal activity which has been proved to have been perpetuated on a daily basis for at least a month.

45 For the reasons set out above, the referring court has doubts as to whether a legal system such as the [Bulgarian] one, which provides for a significant lower penalty limit for offences the adverse effects of which on the financial interests of the European Union are a hundred times lower than the penalty prescribed, without authorising the imposition of a penalty below the minimum amount prescribed by law or of an overall penalty of the most severe type and amount in respect of all the offences committed by the trader, before the latter is convicted for the first time by a final administrative or judicial act, infringes the principle of proportionality provided for in Article 49(3) of the Charter.

46 Lastly, if the Court of Justice were to take the opposite view, to the effect that the coercive administrative measure ordered in respect of all 85 offences constitutes a 'conviction' in the broader sense of that term, that is to say, if that coercive administrative measure is regarded as a penalty within the meaning of the judgment in Case C-97/21 and there is no individualisation in relation to each particular offence committed, the referring court has doubts as to whether this might not run directly counter to the principle that the penalty must be proportionate to the offence committed, enshrined in Article 49(3) of the Charter, according to which the severity of the penalty must not be disproportionate to the criminal offence – a circumstance which neither the adjudicating chamber seised nor the offender itself is able to assess in the case of a soft penalty in the form of a

coercive administrative measure which was imposed in respect of 85 offences considered as a whole. The fact that there is no mechanism for presenting a defence against each of the individual offences for which an overall soft penalty in the form of a coercive administrative measure is envisaged leads the adjudicating chamber also to conclude that Article 47(1) of the Charter is infringed, inasmuch as the proceedings thus provided for do not guarantee the right of the appellant in cassation to an effective remedy and a fair trial.