

**Case C-426/22****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:**

28 June 2022

**Referring court:**

Szegedi Törvényszék (Hungary)

**Date of the decision to refer:**

16 June 2022

**Applicant:**

SOLE-MiZo Zrt.

**Defendant:**

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Hungary)

**Subject matter of the main proceedings**

Calculation of interest on value added tax ('VAT') which was not refunded as a result of a national condition contrary to European Union law.

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

Right to compensation for losses incurred through monetary erosion suffered on account of inflation until the actual payment of the interest due on the amount of VAT which was refunded late.

Article 267 TFEU.

**Questions referred for a preliminary ruling**

1. In circumstances in which, in accordance with national law, interest on the amount of excess deductible VAT which could not be recovered because of the paid consideration condition ('interest on the VAT') is calculated by the

application of an interest rate which undisputedly covers the short-term money market credit interest rate and which corresponds to the central bank's base rate increased by two percentage points, in relation to the VAT reporting period, so that that the interest runs from the day following the lodging of the VAT return form on which the taxable person indicated an excess of VAT that had to be carried forward to the following reporting period because of the paid consideration condition until the last day for lodging the next VAT return form, must European Union law, in particular Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive'); the principles of effectiveness and equivalence, direct effect and proportionality; and the judgment of the Court of Justice of 23 April 2020 in joined Cases *Sole-Mizo and Dalmandi Mezőgazdasági* (C-13/18 and C-126/18) ('judgment in *Sole-Mizo and Dalmandi Mezőgazdasági*'), be interpreted as precluding a practice of a Member State, such as that at issue in the present case, which does not permit, in addition to interest on the VAT, the payment of interest to compensate the taxable person for the monetary erosion of the amount in question caused by the passage of time following that reporting period up until the actual payment of that interest?

2. If the answer to the previous question is in the affirmative, must the European Union law mentioned in that question and the judgment in *Sole-Mizo and Dalmandi Mezőgazdasági* be interpreted as meaning that it is compatible with that law and that judgment for a national court to set the interest rate applicable to the monetary erosion by making that rate the same as the inflation rate?
3. Must the European Union law mentioned in question 1 and the judgment in *Sole-Mizo and Dalmandi Mezőgazdasági* be interpreted as precluding a practice of a Member State which, in calculating the amount of the monetary erosion, also takes into account the fact that, until compliance with the paid consideration condition, in other words until payment of the consideration for the goods or the service, the taxable person concerned had at its disposal the consideration paid for the purchases and the applicable tax, and which also assesses, in addition to the inflation rate recorded during the period of monetary erosion, how long the taxable person had to forgo (could not reclaim) the VAT?

### **Provisions of European Union law relied on**

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) (VAT Directive), Article 183.

Judgment of 23 April 2020, *Sole-Mizo and Dalmandi Mezőgazdasági* (C-13/18 and C-126/18, EU:C:2020:292) (judgment in *Sole-Mizo and Dalmandi Mezőgazdasági*).

Principles of effectiveness, equivalence, direct effect and proportionality.

### **Provisions of national law relied on**

Az adózás rendjéről szóló 2003. évi XCII. törvény (Law XCII of 2003 on General Tax Procedure; ‘the old Law on General Tax Procedure’), Paragraph 124/D and Paragraph 37.

Az adózás rendjéről szóló 2017. évi CL. törvény (Law CL of 2017 on General Tax Procedure; ‘the new Law on General Tax Procedure’), Paragraph 197(3) and Paragraph 274/G.

Judgment of the Kúria (Supreme Court, Hungary) No Kfv.V.35 577/2021/8, paragraphs 54 and 56.

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 On 30 December 2016, the applicant, relying on the order of 17 July 2014, *Delphi Hungary Autóalkatrész Gyártó* (C-654/13, not published, EU:C:2014:2127), filed with the tax authority claims for the calculation and payment of interest on the deductible VAT which had not been refunded in a reasonable period as a result of the application of the paid consideration condition (see the judgment of 28 July 2011, *Commission v Hungary*, C-274/10, EU:C:2011:530), calculated at a rate equivalent to twice the Hungarian central bank’s base rate and corresponding to different reporting periods falling between December 2005 and June 2011, and for compound interest for the late payment of that interest. The defendant, by decisions adopted in its capacity as the second-tier authority in the administrative appeal proceedings commenced as a result of those claims, ordered the payment of interest calculated at the central bank’s base rate, in the amount of HUF 104 165 000 (‘interest on the VAT’) and compound interest in the amount of HUF 34 660 000 (‘default interest’).
- 2 In the administrative appeal lodged against those decisions, the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged, Hungary) (predecessor of the referring court) asked the Court of Justice to give a preliminary ruling. Those preliminary-ruling proceedings gave rise to the judgment in *Sole-Mizo and Dalmandi Mezőgazdasági*.
- 3 In the light of that judgment, the applicant amended the forms of order sought as follows:
  - in the case concerning the *interest on the VAT*, it claimed that interest should be calculated on two different grounds: (1) interest on the VAT, calculated on the basis of the short-term money market credit interest rate, in respect of each reporting period in which the paid consideration condition was applied, and (2) interest in respect of the monetary erosion, calculated on the basis of

- an interest rate equivalent to the inflation rate for the period between the end of the periods referred to above and 6 December 2011 ('the monetary erosion period');
- in the case concerning *default interest*, the applicant claimed default interest calculated by applying a rate equivalent to twice the central bank's base rate to a principal amount consisting of the interest on the VAT referred to, in respect of the period between 6 December 2011 and the date of payment.
- 4 The referring court granted those forms of order by its judgments of 23 June 2020.
  - 5 In the meantime, the legislature amended the new Law on General Tax Procedure. First, it decided that the interest rate equivalent to the central bank's base rate, which was previously applicable, would be increased by two percentage points and, second, by the insertion of Paragraph 274/G, it stipulated that that amendment would also apply to pending cases and cases concluded by final judgment.
  - 6 The Kúria (Supreme Court), ruling on the appeals in cassation lodged by the defendant, set aside the judgments of the referring court of 23 June 2020 in the proceedings relating to interest on the VAT and in the proceedings relating to default interest and also set aside the first and second-tier decisions given by the defendant in those cases. In addition, the Kúria (Supreme Court) ordered the first-tier tax authority to conduct new proceedings in which it was required to give a decision, taking into consideration the new legislative provisions and the terms of the judgment in *Sole-Mizo and Dalmandi Mezőgazdasági*, on the forms of order which the applicant had amended in the judicial proceedings.
  - 7 The decision adopted by the first-tier tax authority, following the judgment of the Kúria (Supreme Court) referred to in paragraph 6, *in the case concerning the default interest* became final as no appeal was lodged against it.
  - 8 In its decision of 23 August 2021, the first-tier tax authority took into consideration paragraph 47 of the judgment in *Sole-Mizo and Dalmandi Mezőgazdasági* and calculated the *interest on the VAT* by applying a rate equivalent to the central bank's base rate increased by two percentage points, in accordance with the provisions of the new Law on General Tax Procedure. It did not grant the right to receive interest to compensate for the monetary erosion suffered by reason of the passage of time in respect of the monetary erosion period.
  - 9 In its administrative appeal to the defendant against that decision, the applicant contested the first-tier decision only as regards its final part, which was confirmed by the defendant.
  - 10 The applicant has brought an administrative appeal before the referring court against that decision of the defendant. In the appeal, the applicant seeks, primarily, the amendment of the defendant's decision so that the referring court upholds the

claim that it should be granted the right to receive interest in respect of the monetary erosion period and, in the alternative, the annulment of the defendant's decision and an order that the defendant conduct new proceedings. The applicant claims that the interest for the monetary erosion period should be calculated by applying, primarily, the central bank's base rate increased by two percentage points; or, in the alternative, by applying twice the central bank's base rate; or, in the further alternative, by applying a rate equivalent to the inflation rate.

### **Essential arguments of the parties in the main proceedings**

- 11 It is common ground between the parties that the tax authority was in default from 6 December 2011 as regards the interest on the VAT.
- 12 The *defendant* submits that the interest on the VAT, calculated by applying the central bank's base rate increased by two percentage points, is compatible with the judgment in *Sole-Mizo and Dalmandi Mezőgazdasági* and is sufficient by itself to compensate for the monetary erosion.
- 13 Moreover, EU law and the judgment cited grant the legislature of each Member State the power to determine the rate and method of calculating interest, provided that they observe the principles of equivalence, effectiveness and fiscal neutrality.
- 14 The defendant further contends that, given that the due date for payment of the interest on the VAT was 6 December 2011, the claim for compensation for the monetary erosion in relation to the reporting periods before that date is unfounded. In that connection, the defendant argues that traders do not pay interest in respect of monetary erosion on top of market credit interest either, since that type of interest also compensates for inflation.
- 15 The *applicant* submits that the interest on the VAT cannot, by definition, cover the loss caused by the passage of time (monetary erosion) because the interest on the VAT and the compensation that must be paid in respect of the monetary erosion period relate to different periods of time, on the one hand, and are calculated on the basis of different principal amounts, on the other.
- 16 The applicant contends that the principles of fiscal neutrality, effectiveness and equivalence require compensation covering the monetary erosion period in addition to the payment of interest on the VAT. The judgment in *Sole-Mizo and Dalmandi Mezőgazdasági* sets out that obligation specifically and expressly. In view of the fact that the interest rate equivalent to the central bank's base rate increased by two percentage points is not higher than the market rate but rather exactly the same as that rate, that interest is not sufficient to fulfil that requirement.
- 17 Furthermore, the judgment cited clearly stipulates that the interest on the VAT and compensation for the corresponding monetary erosion run from the date of the original VAT returns. Compensation for the monetary erosion does not amount to

a penalty for the tax authority's arrears and, for that reason, it is irrelevant that that authority only fell into arrears on 6 December 2011.

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

- 18 The referring court is uncertain, first, whether the tax authority's interpretation of the provision – to the effect that, since that authority only fell into arrears on 6 December 2011 and payment of interest on the VAT only became due on that date, no compensation is payable in respect of the monetary erosion period in so far as it concerns the monetary erosion of the amount concerned caused by the passage of time – is compatible with the correct interpretation of EU law laid down in the judgment in *Sole-Mizo and Dalmandi Mezőgazdasági* and with the settled case-law of the Court of Justice according to which its judgments take effect *ex tunc*.
- 19 The fact that the tax authority only fell into arrears on 6 December 2011 does not mean that interest on the VAT was also incurred from that time. The requirement to pay interest as a result of the paid consideration condition, laid down in contravention of EU law, is derived from the relevant provisions of the VAT Directive and from the general principles of the VAT system.
- 20 The requirement to pay interest in respect of the period prior to 6 December 2011 is not founded on the tax authority's default but on the objective fact of the late refund of the unlawfully retained VAT and on the late payment of interest on the VAT intended to compensate for the loss incurred as a result of that retention. Therefore, in the referring court's view, the defendant's claim to the effect that the requirement to pay interest in respect of the monetary erosion period is excluded because the payment of interest on the VAT had not fallen due is incorrect.
- 21 In addition, the method of calculating the interest on the VAT and the fact that the period used as a reference for the purposes of that calculation and the monetary erosion period may be different mean that the referring court is uncertain whether the interest on the VAT is by itself capable of compensating for that erosion.
- 22 By its second question, the referring court asks for clarification of whether it is appropriate to use an interest rate equivalent to the inflation rate to compensate for the monetary erosion.
- 23 In the referring court's view, in the light of the primacy of EU law, it is not possible to uphold the defendant's claim to the effect that the tax authority cannot refrain from applying the Hungarian legislation and cannot apply an interest rate different from the rate provided for in that legislation. In addition, a provision of Hungarian legislation setting the interest rate applicable in respect of the monetary erosion period does not yet exist and, therefore, that interest rate may be derived from EU law alone.

- 24 Paragraph 49 of the judgment in *Sole-Mizo and Dalmandi Mezőgazdasági* stipulates that interest must be paid which enables the taxable person to be compensated for the monetary erosion of the amount in question caused by the passage of time following the reporting period up until the actual payment of that interest.
- 25 The third question submitted by the referring court seeks to ascertain whether, in accordance with the decision of principle of the Kúria (Supreme Court) on the subject, when calculating the monetary erosion, account must also be taken of the fact that, until compliance with the paid consideration condition, in other words until payment of the consideration for the goods or the service, the taxable person concerned had at its disposal the consideration for the purchases and the applicable tax, and whether, in addition to the inflation rate recorded during the monetary erosion period, it is also necessary to assess how long the taxable person was unable to claim a VAT refund, contrary to EU law.

WORKING DOCUMENT