Provisional text

JUDGMENT OF THE COURT (Sixth Chamber)

14 October 2020 (*)

(Reference for a preliminary ruling – Principles of EU law – Principle of sincere cooperation – Principles of equivalence and effectiveness – Recovery of taxes levied by a Member State in breach of EU law – Time limit for lodging applications for reimbursement of such taxes – No similar time limit for the reimbursement of sums levied by that Member State in breach of national law)

In Case C-677/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Vâlcea (Regional Court, Vâlcea, Romania), made by decision of 25 April 2019, received at the Court on 11 September 2019, in the proceedings

SC Valoris SRL

v

Direcţia Generală Regională a Finanţelor Publice Craiova – Administraţia Judeţeană a Finanţelor Publice Vâlcea,

Administraţia Fondului pentru Mediu,

THE COURT (Sixth Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Safjan and N. Jääskinen (Rapporteur), Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Romanian Government, by E. Gane, R. I. Haţieganu and L. Liţu, acting as Agents,

– the European Commission, by C. Perrin and A. Armenia, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the EU law principles of sincere cooperation, equivalence and effectiveness.

2 The request has been made in proceedings between, on the one hand, SC Valoris SRL (‘Valoris’)

and, on the other hand, the Direcţia Generală Regională a Finanţelor Publice Craiova – Administraţia Judeţeană a Finanţelor Publice Vâlcea (Regional Directorate of Public Finance, Craiova – Provincial Public Finance Administration, Vâlcea, Romania) (the 'Provincial Public Finance Administration, Vâlcea') and the Administraţia Fondului pentru Mediu (Environment Fund Administration, Romania), concerning the reimbursement of a sum paid by Valoris in respect of an environmental stamp duty for motor vehicles, a tax held to be incompatible with EU law after it had been paid.

Legal context

OUG No 9/2013

3 Ordonanța de urgență a Guvernului nr. 9/2013 privind timbrul de mediu pentru autovehicule (Government Emergency Order No 9/2013 concerning the environmental stamp duty in respect of motor vehicles), of 19 February 2013 (*Monitorul Oficial al României*, Part I, No 119 of 4 March 2013; 'OUG No 9/2013'), was in force from 15 March 2013 to 31 January 2017.

4 Article 4 of OUG No 9/2013 provided:

'[Environmental] stamp duty [in respect of motor vehicles] shall be payable only once, as below:

(a) upon the registration with the competent authority, in accordance with statute, of the acquisition of ownership of a motor vehicle, by its first owner in Romania and upon the issue of a registration certificate and registration number;

…'

OUG No 52/2017

5 Ordonanța de urgență a Guvernului nr. 52/2017 privind restituirea sumelor reprezentând taxa specială pentru autoturisme și autovehicule, taxa pe poluare pentru autovehicule, taxa pentru emisiile poluante provenite de la autovehicule și timbrul de mediu pentru autovehicule (Government Emergency Order No 52/2017 concerning the reimbursement of sums paid by way of the special tax for passenger cars and motor vehicles, the pollution tax on motor vehicles, the tax on pollutant emissions from motor vehicles and the environmental stamp duty on motor vehicles), of 4 August 2017 (*Monitorul Oficial al României*, Part I, No 644 of 7 August 2017; 'OUG No 52/2017'), entered into force on 7 August 2017.

6 In accordance with Article 1 of OUG No 52/2017:

'(1) Taxable persons who have paid the special tax for passenger cars and motor vehicles, provided for in Articles 214^1 – 214^3 of Law No 571/2003 on the Tax Code, as subsequently amended and supplemented, the pollution tax for motor vehicles, laid down by Government Emergency Order No 50/2008 establishing the pollution tax on motor vehicles, approved by Law No 140/2011, the tax on pollutant emissions from motor vehicles, laid down by Law No 9/2012 establishing the tax on pollutant emissions from motor vehicles, as subsequently amended and supplemented, or the environmental stamp duty on motor vehicles, laid down by [OUG] No 9/2013 establishing the environmental stamp duty on motor vehicles, approved, amended and supplemented by Law No 37/2014, as subsequently amended and supplemented, and who have not been reimbursed prior to the entry into force of this Emergency Order may request reimbursement, together with the interest due for the period between the date of levying and the date of reimbursement, by making an application to the competent central tax authority. The rate of interest shall be that laid down in Article 174(5) of Law No 207/2015 on the Tax Procedure Code, as subsequently amended and supplemented.

(2) The right of taxable persons provided for in paragraph 1 to apply for reimbursement shall arise on the date of entry into force of this Emergency Order, irrespective of the date on which the tax was levied, and by way of derogation from the provisions of Article 219 of Law No 207/2015 [on the Tax Procedure Code], as subsequently amended and supplemented, applications for reimbursement shall be lodged no later than 31 August 2018, failing which they shall be time-barred.

…'

The Tax Procedure Code

7 Article 168 of legea nr. 207/2015 privind Codul de procedură fiscală (Law No 207/2015 on the Tax Procedure Code), of 20 July 2015 (*Monitorul Oficial al României*, Part I, No 547 of 23 July 2015; the 'Tax Procedure Code'), provides:

'(1) Any sum paid or levied when not due shall be reimbursed to the taxable person/payer on application.

…'

8 Under Article 219 of the Tax Procedure Code:

'The limitation period for the right of the taxable person/payer to apply for reimbursement of tax debts shall be five years running from 1 January of the year following the year in which the right to reimbursement arose.'

The dispute in the main proceedings and the question referred for a preliminary ruling

9 On 25 August 2014, Valoris, a company incorporated under Romanian law, paid, in order to register a second-hand motor vehicle from the Netherlands for the first time in Romania, a tax of 2 451 Romanian lei (RON) (approximately EUR 510) in respect of the 'environmental stamp duty on motor vehicles', in accordance with Article 4(a) of OUG No 9/2013.

10 On 7 August 2017, OUG No 52/2017 entered into force. It is apparent from its preamble that that legislative measure was adopted following the delivery of the judgments of 9 June 2016, *Budiļan* (C-586/14, EU:C:2016:421), of 30 June 2016, *Câmpean* (C-200/14, EU:C:2016:494), and of 30 June 2016, *Ciup* (C-288/14, not published, EU:C:2016:495), by which the Court held that several pollution taxes applicable to motor vehicles that had been introduced by Romania, including the tax levied in respect of that environmental stamp duty, were contrary to the provisions of EU law, in particular those of Article 110 TFEU.

11 OUG No 52/2017 gave taxable persons, pursuant to Article 1(1) thereof, the right to request reimbursement of the sums which they had paid in respect of the four taxes mentioned in the title of that legislative measure which had been held to be contrary to EU law (together, the 'Romanian pollution taxes'), as well as payment of the statutory interest due for the period between the date of levying and the date of reimbursement. However, under Article 1(2) thereof, by way of derogation from the provisions of Article 219 of the Tax Procedure Code, such requests had to be lodged with the competent tax authority by 31 August 2018 at the latest, failing which they were time-barred.

12 On 6 December 2018, Valoris lodged an application for reimbursement of the amount it had paid in respect of the environmental stamp duty for motor vehicles to the Provincial Public Finance Administration, Vâlcea, which, by letter of 7 January 2019, rejected the application on the grounds that it had been lodged out of time.

13 On 30 January 2019, Valoris brought an action before the referring court, the Tribunalul Vâlcea

(Regional Court, Vâlcea, Romania), seeking an order that the Romanian authorities reimburse the tax at issue, together with default interest at the statutory rate, even though it had not complied with the time limit laid down in Article 1(2) of OUG No 52/2017. In support of its action, it claimed, first, that that ad hoc time limit infringed EU law in that it limited the right of taxable persons to obtain reimbursement of taxes held to be contrary to EU law, and, secondly, that time limits of between three and five years had been regarded as reasonable in the Court's case-law for the exercise of such a right.

14 In that regard, the referring court notes that the special time limit laid down for the reimbursement of the taxes covered by OUG No 52/2017 was approximately one year, namely from 7 August 2017, the date on which that measure entered into force, to 31 August 2018, the date on which that time limit expired, whereas the general limitation period laid down for the reimbursement of tax debts was, under Article 219 of the Tax Procedure Code, five years running from 1 January of the year following the year in which the right to reimbursement had arisen.

15 That court is uncertain, in the first place, whether the time limit laid down in Article 1(2) of OUG No 52/2017 for the reimbursement of taxes levied in breach of EU law, while there is no similar time limit for the reimbursement of sums levied in breach of national law, is compatible with the principle of sincere cooperation stemming from Article 4(3) TEU, as interpreted in the case-law of the Court, and with the principle of equivalence, as defined by the Court.

16 In the second place, it refers to the principle of effectiveness, as defined by the Court, pointing out that the one-year time limit laid down in Article 1(2) of OUG No 52/2017 is shorter than the time limits for bringing proceedings which the Court has regarded as reasonable and declared compatible with that principle.

17 In those circumstances the Tribunalul Vâlcea (Regional Court, Vâlcea) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Are the principles of sincere cooperation, equivalence and effectiveness to be interpreted as precluding a provision of national law, such as Article 1(2) of [OUG No 52/2017], which has laid down a time limit of approximately 1 year for the lodging of applications for the reimbursement of certain taxes levied in breach of EU law, while domestic legislation lays down no similar time limit for the exercise of the right to reimbursement of sums levied in breach of domestic law?'

Consideration of the question referred

18 By its question, the referring court asks, in essence, whether:

– first, the principle of effectiveness, read in conjunction with the principle of sincere cooperation, must be interpreted as precluding legislation of a Member State from setting a time limit of approximately one year running from the entry into force of that legislation, which aims to remedy the infringement of EU law, in which applications for the reimbursement of taxes held to be incompatible with EU law must be lodged, failing which such applications will be time-barred, and

– second, the principle of equivalence, read in conjunction with the principle of sincere cooperation, must be interpreted as precluding legislation of a Member State from setting a time limit of approximately one year in which applications for reimbursement of taxes held to be incompatible with EU law must be lodged, failing which such applications will be time-barred, while no such time limit has been laid down by that Member State in respect of similar applications for reimbursement based on an infringement of national law.

19 It is important to note that although the dispute in the main proceedings relates, specifically, to the reimbursement of a sum paid in respect of the 'environmental stamp duty on motor vehicles',

introduced in Romania by OUG No 9/2013, the question referred by the referring court nonetheless mentions, more generally, the reimbursement of 'taxes levied in breach of EU law'. That generalisation is justified by the fact that the time limit laid down by the provision referred to in that question is also applicable to the reimbursement of the three other Romanian pollution taxes on motor vehicles falling under OUG No 52/2017, which are similar in nature to that environmental stamp duty and have also been declared contrary to EU law by the Court. As stated in paragraphs 10 and 11 of the present judgment, OUG No 52/2017 was adopted precisely in order to put an end to the infringement of EU law resulting from the imposition of each of those taxes.

20 In support of its request for a preliminary ruling, the referring court highlights the fact that, in Romanian law, the 'generally applicable' limitation period laid down in Article 219 of the Tax Procedure Code is 'significantly longer' than the 'ad hoc' time limit laid down in Article 1(2) of OUG No 52/2017. Therefore, it has doubts as to the compatibility of that national legislation with the principles of sincere cooperation, equivalence and effectiveness, as defined by the Court.

21 In that regard, it should be borne in mind that, according to settled case-law, under the principle of sincere cooperation laid down in Article 4(3) TEU, Member States are required to nullify the unlawful consequences of an infringement of EU law and to lay down detailed procedural rules, in respect of actions for safeguarding rights which individuals derive from EU law, which are no less favourable than those governing similar domestic actions (principle of equivalence) and do not render impossible in practice or excessively difficult the exercise of rights conferred by the European Union legal order (principle of effectiveness) (see, to that effect, judgments of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraphs 170 and 171, and of 11 September 2019, *Călin*, C-676/17, EU:C:2019:700, paragraph 30). More specifically, in the absence of EU rules on the recovery of national taxes levied though not due, it is for each Member State to lay down the detailed procedural rules governing actions for safeguarding rights derived from EU law, provided, however, that those rules comply with both the principle of equivalence and the principle of effectiveness (see, to that effect, judgments of 15 September 1998, *Edis*, C-231/96, EU:C:1998:401, paragraph 19, and of 11 April 2019, *PORR Építési Kft.*, C-691/17, EU:C:2019:327, paragraph 39), inter alia as regards the setting of time limits or limitation periods applicable to such actions (see, to that effect, judgments of 20 December 2017, *Caterpillar Financial Services*, C-500/16, EU:C:2017:996, paragraph 37, and of 19 December 2019, *Cargill Deutschland*, C-360/18, EU:C:2019:1124, paragraph 46).

22 The Court has stated that the observance of those requirements must be analysed by reference to the role of the rules concerned in the procedure viewed as a whole, to the conduct of that procedure and to the special features of those rules before the various national courts (see, inter alia, judgments of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 24; of 11 September 2019, *Călin*, C-676/17, EU:C:2019:700, paragraph 31, and of 9 July 2020, *Vueling Airlines*, C-86/19, EU:C:2020:538, paragraph 40).

23 Moreover, the Court has repeatedly held that it follows from the principle of sincere cooperation that a Member State may not adopt provisions making reimbursement of a tax held to be contrary to EU law by a judgment of the Court, or whose incompatibility with EU law is apparent from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those which would otherwise be applied to that reimbursement of the tax (see, to that effect, judgments of 9 February 1999, *Dilexport*, C-343/96, EU:C:1999:59, paragraph 39; of 30 June 2016, *Câmpean*, C-200/14, EU:C:2016:494, paragraph 40, and of 30 June 2016, *Ciup*, C-288/14, not published, EU:C:2016:495, paragraph 27).

The principle of effectiveness

24 It is settled case-law that, in the absence of harmonised rules governing the reimbursement of taxes imposed in breach of EU law, the Member States retain the right to apply procedural rules provided

for under their national legal system, in particular concerning limitation periods or time limits, provided, however, that, in accordance with the principle of effectiveness, those rules are not arranged in such a way as to make the exercise of rights conferred by EU law practically impossible or excessively difficult. With regard to the latter point, it is necessary to take into consideration not only the general assessment criteria referred to in paragraph 22 of the present judgment, but also, where relevant, the principle of protection of the rights of the defence, the principle of legal certainty and the proper conduct of the procedure (see, to that effect, judgment of 19 December 2019, *Cargill Deutschland*, C-360/18, EU:C:2019:1124, paragraphs 46, 47 and 51 and the case-law cited).

25 As regards, specifically, limitation periods or time limits, the Court has held that the setting of reasonable time limits in principle satisfies the requirement of effectiveness since it constitutes an application of the fundamental principle of legal certainty which protects both the person and the administration concerned, even though the passing of such time limits is, by its nature, liable to prevent the persons concerned from asserting their rights in whole or in part (see, to that effect, judgments of 20 December 2017, *Caterpillar Financial Services*, C-500/16, EU:C:2017:996, paragraph 42; of 11 September 2019, *Călin*, C-676/17, EU:C:2019:700, paragraph 43, and of 19 December 2019, *Cargill Deutschland*, C-360/18, EU:C:2019:1124, paragraph 52).

26 In the present case, the referring court states that the time limit of approximately one year laid down in Article 1(2) of OUG No 52/2017 is ‘shorter than other time limits [held to be] compatible’ with the principle of effectiveness which it has identified in the Court’s case-law. The order for reference refers, in particular, to the judgments of 15 September 1998, *Edis* (C-231/96, EU:C:1998:401, paragraph 35), and of 17 November 1998, *Aprile* (C-228/96, EU:C:1998:544, paragraph 19 and the case-law cited), in which national time limits of three years running from the date of the contested payment were considered reasonable.

27 However, the Court has already held that, depending on the cases examined, a time limit of one year imposed for lodging applications or bringing actions based on an infringement of EU law does not in itself appear unreasonable, provided, however, that the starting point of that time limit is not fixed in such a way as to make it impossible in practice or excessively difficult for the person concerned to exercise rights conferred by EU law. Thus, a time limit of one year for bringing an action for compensation of damage sustained as a result of the belated transposition of a directive has been regarded as compatible with the principle of effectiveness (see, to that effect, judgment of 16 July 2009, *Visciano*, C-69/08, EU:C:2009:468, paragraphs 45 to 50).

28 In the present case, it must be held that the principle of effectiveness, read in conjunction with the principle of sincere cooperation, does not preclude legislation of a Member State from setting a time limit of approximately one year running from the entry into force of that legislation, which aims to remedy the infringement of EU law, in which applications for the reimbursement of taxes held to be incompatible with EU law must be lodged, failing which such applications will be time-barred.

The principle of equivalence

29 According to settled case-law, compliance with the principle of equivalence implies that Member States are not to provide less favourable procedural rules for claims for reimbursement of a tax based on an infringement of EU law than the rules applicable to similar actions for infringement of domestic law, given their purpose, their cause of action and their essential characteristics. It is solely for the national court, which has direct knowledge of the procedural rules intended to ensure that the rights derived by individuals from EU law are safeguarded under domestic law, to verify that those rules comply with the principle of equivalence. However, the Court may, for the purposes of the assessment which the national court will carry out, provide certain information to it relating to the interpretation of EU law (see judgments of 30 June 2016, *Câmpean*, C-200/14, EU:C:2016:494, paragraphs 45 and 46; of 31 May 2018, *Sziber*, C-483/16, EU:C:2018:367, paragraphs 35, 41 and 42, and of 9 July 2020, *Raiffeisen Bank and BRD Groupe Société Générale*, C-698/18 and

C-699/18, EU:C:2020:537, paragraphs 76 and 77).

30 In the present case, the referring court itself makes the comparison between, on the one hand, the time limit of approximately one year, which that court describes as a ‘special time limit’, laid down in Article 1(2) of OUG No 52/2017, for applications for reimbursement of sums paid but not due in respect of the Romanian pollution taxes held to be incompatible with EU law and, on the other hand, the limitation period of five years, which it describes as a ‘significantly longer’ and ‘generally applicable limitation period’, laid down in Article 219 of the Tax Procedure Code, for the reimbursement of tax debts.

31 The Romanian Government, although challenging the correctness of that comparison, states that the purpose of adopting that ‘special time limit’ was precisely to prevent Romania’s budget from being burdened by the payment of interest the total amount of which risked being too high, had the applications for reimbursement of taxes under OUG No 52/2017 been subject not to a special time limit of one year, such as that introduced by that legislative measure, but to the general time limit of five years laid down by the Tax Procedure Code.

32 Moreover, Article 1(2) of OUG No 52/2017 expressly states that the time limit laid down therein applies to applications for reimbursement under that legislative measure ‘by way of derogation from the provisions of Article 219 [of the Tax Procedure Code]’, which concerns applications for the ‘reimbursement of tax debts’ of any kind. As the European Commission rightly points out in its written observations, even though Romanian law does not provide for a time limit, but a limitation period, which may be interrupted or suspended under certain conditions, for the reimbursement of sums levied in breach of national law, the purpose of an application under Article 1 of OUG No 52/2017 is to seek reimbursement of a tax, which also appears to be the objective of Article 219 of the Tax Procedure Code. It therefore appears that applications made pursuant to the first of those provisions and applications made pursuant to the latter have a similar purpose and cause of action. However, only the referring court is in a position to verify this.

33 Therefore, provided that the similarity of the applications concerned is established, it is necessary to examine whether the detailed procedural rules for actions which, like the action in the main proceedings, are based on OUG No 52/2017, which aims to remedy an infringement of the rules of EU law, are less favourable than those for actions which are based exclusively on the infringement of rules of national law.

34 In that regard, it is sufficient to note that, as stated, in essence, both by the referring court in its decision and by the Commission in its written observations, applications for reimbursement of the taxes covered by OUG No 52/2017, based on an infringement of EU law, are subject to a procedural time limit of approximately one year, which is considerably shorter and therefore less advantageous than the five-year time limit which applies to applications for the reimbursement of tax debts based on an infringement of national law.

35 That finding cannot validly be called into question by the Romanian Government’s arguments that, first, OUG No 52/2017 granted a new time limit to taxable persons for whom, under the earlier legislation, the five-year limitation period applicable to their right to tax reimbursement had expired or was about to expire and, second, the system put in place by that order in respect of the Romanian pollution taxes is capable of applying also to the reimbursement of those taxes, in so far as they are contrary to national law.

36 Even though the adoption of OUG No 52/2017, imposing 31 August 2018 as the deadline for applying for reimbursement of the Romanian pollution taxes unduly paid in the light of EU law, had the beneficial effect of extending the time limit for reimbursement applicable to some of the taxable persons who had paid those taxes, it is common ground that the adoption of that order also had the disadvantageous effect of reducing the time limit for reimbursement applicable to other taxable persons, who lost the full benefit of the five-year period laid down by Article 219 of the Tax

Procedure Code, a provision which, however, remained fully operative in respect of tax debts unduly paid under national law. However, the principle of equivalence does not allow a disadvantage suffered by one group of taxable persons to be offset by an advantage granted to another group in a similar situation.

37 In those circumstances, it must be held that the principle of equivalence, read in conjunction with the principle of sincere cooperation, precludes legislation of a Member State from setting a time limit of approximately one year in which applications for reimbursement of taxes held to be incompatible with EU law must be lodged, failing which such applications will be time-barred, while no such time limit has been laid down by that Member State in respect of similar applications for reimbursement based on an infringement of national law.

38 In the light of all the foregoing considerations, the answer to the question referred is that:

– The principle of effectiveness, read in conjunction with the principle of sincere cooperation, must be interpreted as not precluding legislation of a Member State from setting a time limit of approximately one year running from the entry into force of that legislation, which aims to remedy the infringement of EU law, in which applications for the reimbursement of taxes held to be incompatible with EU law must be lodged, failing which such applications will be time-barred.

– The principle of equivalence, read in conjunction with the principle of sincere cooperation, must be interpreted as precluding legislation of a Member State from setting a time limit of approximately one year in which applications for reimbursement of taxes held to be incompatible with EU law must be lodged, failing which such applications will be time-barred, while no such time limit has been laid down by that Member State in respect of similar applications for reimbursement based on an infringement of national law.

Costs

39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

The principle of effectiveness, read in conjunction with the principle of sincere cooperation, must be interpreted as not precluding legislation of a Member State from setting a time limit of approximately one year running from the entry into force of that legislation, which aims to remedy the infringement of EU law, in which applications for the reimbursement of taxes held to be incompatible with EU law must be lodged, failing which such applications will be time-barred.

The principle of equivalence, read in conjunction with the principle of sincere cooperation, must be interpreted as precluding legislation of a Member State from setting a time limit of approximately one year in which applications for reimbursement of taxes held to be incompatible with EU law must be lodged, failing which such applications will be time-barred, while no such time limit has been laid down by that Member State in respect of similar applications for reimbursement based on an infringement of national law.

[Signatures]

* Language of the case: Romanian.