Pleas in law and main arguments

The appellant relies on two grounds in support of its appeal:

First, the appellant submits that in the order under appeal it is wrongly assumed that the independence of the lawyer representing a party, which is to be examined in the context of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, is manifestly impaired where the represented party is a legal person whose managing director is the owner of the law firm with which the lawyer representing that party is employed.

It is wrongly assumed in the order under appeal that the independence of the lawyer representing a party, which is to be examined in the context of the third paragraph of Article 19(3) of the Statute of the Court of Justice of the European Union, is also manifestly impaired where the client is indeed a legal person whose managing director is the proprietor of the law firm at which the lawyer is employed, but the subject matter of the dispute relates to an *actio popularis* the pursuit of which is in the public interest.

The order under appeal fails to take into consideration that the pursuit of an *actio popularis* constitutes a factor which, in the opinion of the Court of Justice — alone or in conjunction with other factors — is suitable for classifying situations and permits a view to be taken as to whether the independence of the representative is manifestly impaired.

Second, the appellant submits that the order under appeal is based on a failure to comply with the obligation, arising from Article 47(1) of the Charter of Fundamental Rights of the European Union, to give a party who, in the opinion of the General Court or the Court of Justice, is not properly represented by a lawyer for the purpose of Article 51(1) of the Rules of Procedure of the General Court in conjunction with Article 19(3) and (4) of the Statute of the Court of Justice of the European Union, notice of that fact before the adoption of a decision dismissing the action or appeal and to afford that party the opportunity to be properly represented.

Appeal allowed to proceed

By order of the Court (Chamber determining whether appeals may proceed) of 30 January 2023 the appeal was granted in its entirety.

Request for a preliminary ruling from the Curtea de Apel Cluj (Romania) lodged on 8 November 2022 — C SPRL v AJFP Cluj and DGRFP Cluj-Napoca

(Case C-696/22)

(2023/C 94/12)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Appellant: C SPRL

Respondents: Administrația Județeană a Finanțelor Publice (AJFP) Cluj and Direcția Generală Regională a Finanțelor Publice (DGRFP) Cluj-Napoca

Questions referred

1. Do Articles 63, 64 and 66 of Council Directive 2006/112/EC on the common system of value added tax [1] preclude an administrative practice of a tax authority — such as the one in the present case, which imposed additional payment obligations on the taxable person, a professional limited liability company (SPRL) through which administrators of insolvency proceedings may exercise their profession — consisting in defining the chargeable event and the chargeability as being at the time at which the services were provided in the context of insolvency proceedings, where the insolvency administrator's fee was determined by the insolvency court or the assembly of creditors, with the result that the taxable person is obliged to issue invoices no later than the fifteenth day of the month following the month in which the chargeable event occurred?

2. Do Articles 63, 64 and 66 of Council Directive 2006/112/EC on the common system of value added tax preclude an administrative practice of a tax authority, such as the one in the present case, consisting in imposing additional payment obligations on the taxable person — a professional limited liability company (SPRL) through which administrators of insolvency proceedings may exercise their profession — in so far as that taxable person issued invoices and collected VAT only on the date on which payments were received for services provided in the context of insolvency proceedings, even though the general assembly of creditors established that the payment of the insolvency administrator's fee is subject to the availability of liquid assets in the debtors' accounts?

3. In the case of a co-branding agreement between a law firm and the taxable person, is it sufficient, for the purpose of granting the right to deduct, that the taxable person, when proving the existence of a direct and immediate link between the purchases made by the upstream taxable person and the downstream transactions, demonstrate, after the agreement, an increase in the turnover/value of the taxable transactions, without further supporting documentation? If so, what are the criteria to be taken into account in order to determine the actual scope of the right to deduct?

4. Is the general EU-law principle of respect for the rights of the defence to be interpreted as meaning that, where, in the course of a national administrative procedure for ruling on a complaint against a notice of assessment that has established the payment of additional VAT, new factual and legal arguments are accepted as compared with those contained in the tax audit report on the basis of which the notice of assessment was issued, and the taxable person has been granted interim judicial protection measures, pending the decision of the court dealing with the substance of the case, by suspending the debt, the court hearing the action may take the view that there has been no breach of that principle without examining whether the outcome of that procedure might have been different, had it not been for such an irregularity?

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

Request for a preliminary ruling from the Curtea de Apel Cluj (Romania) lodged on 15 November 2022 — SC AA SRL v MFE

(Case C-701/22)

(2023/C 94/13)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Applicant: SC AA SRL

Defendant: MFE

Questions referred

1. Must the principle of sound financial management be interpreted, in conjunction with the principle of equivalence, as precluding a legal person, which operates a profit-making undertaking and is the recipient of non-repayable financing from the ERDF, from obtaining from the public authority of a Member State default interest (penalty interest) in relation to the late payment of eligible expenditure for a period in which an administrative act was in force that excluded reimbursement and which was subsequently annulled by a judicial decision?

2. If the answer to the first question is in the negative, is the fault of the recipient of the financing established by that decision relevant to the quantification of the amount of default interest, having regard to the fact that the same public authority responsible for the management of the European funds declared, ultimately, after the adoption of that decision, all the expenditure eligible?