Reports of Cases

OPINION OF ADVOCATE GENERAL
HOGAN
delivered on 11 September 2019[1]

Joined Cases C-13/18 and C-126/18

Sole-Mizo Zrt.
v
Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága
(Request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court of Szeged, Hungary))
and
Dalmandi Mezőgazdasági Zrt.
v
Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Request for a preliminary ruling from the Szekszárdi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court of Szekszárd, Hungary))

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Failure of a Member State to fulfil obligations — Liability of the Member States — Right to full compensation or right to an adequate compensation — Calculation of interest due to compensate for the damage caused — Principles of effectivity and equivalence — Scope of application)

1. The present two requests for a preliminary ruling, which were lodged by the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court of Szeged, Hungary) and by the Szekszárdi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court of Szekszárd, Hungary) concern the scope of the right to be compensated for a failure of a Member State to fulfil its obligations under EU law.

2. The requests have been made in proceedings between Sole-Mizo Zrt. (C-13/18), Dalmandi Mezőgazdasági Zrt. (C-126/18) and the Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Division of the National Tax and Customs Authority, Hungary). They concern the legality of a national practice established by the Hungarian Government to compensate VAT payers for the application of a condition laid down by a national law which was subsequently declared by this Court to be contrary to EU law. As I propose to explain, this national practice seems in some respects to go beyond what is required by EU Law, whereas in other respects, it does not fulfil those requirements.

3. Before considering the questions asked, it is, however, first necessary to set out the relevant provisions of EU law and national law.

1 Original language: English.

I. EU law

A. Directive 2006/112

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

'Where, for a given tax period, the amount of deductions exceeds the amount of VAT due, the Member States may, in accordance with conditions which they shall determine, either make a refund or carry the excess forward to the following period.

However, Member States may refuse to refund or carry forward if the amount of the excess is insignificant.'

B. National law

1. Rules governing the VAT recovery procedure

5. The általános forgalmi adóról szóló 2007. évi CXXVII. törvény jogharmonizációs célú módosításáról és az adó-visszaigénylés különös eljárási szabályairól szóló 2011. évi CXXIII. törvény (Law CXXIII of 2011 amending with a view to harmonisation Law CXXVII of 2007 on value added tax and laying down rules on the special procedure for claims for the refund of tax; 'the amending law') contains the following provisions:

'Paragraph 1

(1) Amounts in respect of which the taxable person was not able to claim, in the last VAT return that he was required to submit before the entry into force of this Law ('return'), his right to recovery pursuant to Paragraph 186(2) to (4) of the általános forgalmi adóról szóló 2007. évi CXXVII. törvény [(Law CXXVII of 2007 on value added tax ('the VAT Act')], repealed by this Law — only for the amount that the taxable person inscribed as tax on unpaid acquisitions — may be the subject of a request for recovery submitted to the tax authorities by the taxable person until 20 October 2011, using the form provided for that purpose; irrespective of this period, the taxable person may, in the return corresponding to the scheme to which he is subject, count the above amounts as an item reducing the amount of tax for which he is liable, or exercise his right to a refund in his return. This request is considered to be a declaration for the purposes of the provisions of the adózás rendjéről szóló 2003. évi XCII. törvény [(Law XCII of 2003, enacting the Code of Fiscal Procedure)]. The time limit for making this request cannot be extended.

(2) In his application submitted by 20 October 2011, the taxable person may only request the tax authorities to carry out a new audit of a return for a period prior to the entry into force of this Law for the purpose of reviewing the legal consequences previously established only when he has been charged, by a decision which has become final following the previous audit, a tax fine or default interest on the basis of Paragraph 186(2) to (4) of [the VAT Act], repealed by this Act, or Paragraph 48(7) of the általános forgalmi adóról szóló 1992. évi LXXIV. törvény [(Law LXXIV of 1992 on value added tax; 'the former VAT Act')]. The taxable person may make such a request even when he does not make use of the provisions of subparagraph 1 above. The time limit for making this request is a limitation period from which the taxable person cannot be relieved.

…

Paragraph 3

Paragraph 186(2) to (4) of [the VAT Act], repealed by the present Law, and Paragraph 48(7) of [the former VAT Act] are not applicable to cases pending on the date of entry into force of this Law or to those brought after that date.'

2. The Hungarian Code of Fiscal Procedure

6. Paragraph 37(4) and (6) of the adózás rendjéről szóló 2003. évi XCII. törvény (Law XCII of 2003, enacting the Code of Fiscal Procedure; 'the Code of Fiscal Procedure'), provided in its initial version, which is the one quoted by the Hungarian government in its observations and the only presented to the Court,[2] as follows :

'(4) The due date for the payment of a budget subsidy due to the taxable person shall be governed by the Annexes to this Law or a specific law. The budget grant or VAT whose refund is claimed must be paid within 30 days of receipt of the request (declaration), but not before the due date, this period being extended to 45 days where the amount of recoverable VAT exceeds 500 000 forint [(HUF)]. …

…

(6) Where the tax administration makes a late payment, it shall pay interest at a rate equivalent to that of a late payment penalty for each day of delay. …'

7. Paragraph 124/C of the Code of Fiscal Procedure, in the version quoted by the referring courts[3], provides:

'(1) Where the Alkotmánybíróság [(Constitutional Court, Hungary)], the Kúria [(Supreme Court, Hungary)] or the Court of Justice of the European Union find, with retroactive effect, that a rule of law prescribing a tax obligation is contrary to the Fundamental Law or to a mandatory act of the European Union or, in the case of a municipal regulation, to any other rule of law, and that this judicial decision gives rise to a right of reimbursement for the taxable person under the provisions of this Paragraph, the initial tax authority shall proceed with the reimbursement at the taxable person's request, in accordance with the procedures specified in the decision concerned.

(2) The taxable person may submit his request in writing to the tax authority within 180 days of the publication or notification of the decision of the Alkotmánybíróság [(Constitutional Court)], the Kúria [(Supreme Court)] or the Court of Justice of the European Union; no request for relief from the foreclosure shall be allowed at the end of the period. The tax authority shall reject the request in the event that, on the date of publication or notification of the decision, the right to claim for compensation has expired.

…

2 It seems that, despite several amendments, the content of this provision has remained essentially the same, with the exception that the 45-day period now applies if the claim for reimbursement exceeds the sum of 1 000 000 forint [(HUF)].

3 It seems that, in the version of this provision applicable until 31 December 2011, the Kúria was not referred to among the courts mentioned.

(6) If the taxable person's right to a refund is well founded, the tax authority shall pay — at the time of refund — interest on the tax to be refunded, at a rate equal to the central bank's base rate and calculated from the date of payment of the tax until the day on which the decision granting the refund became final. The refund is due on the date on which the decision granting it became final and must be made within 30 days of the date on which it became due. The provisions relating to the payment of budget subsidies shall apply *mutatis mutandis* to the reimbursement governed by this paragraph, with the exception of Paragraph 37(6).'

8. Paragraph 124/D, subparagraphs 1 to 3, of the Code of Fiscal Procedure, in the version quoted by the referring courts, reads as follows:

'(1) Unless otherwise provided for in this Paragraph, the provisions of Paragraph 124/C shall apply to refund applications based on the right to deduct VAT.

(2) The taxable person may exercise the right referred to in subparagraph 1 above by means of a declaration of regularisation — submitted within 180 days of the publication or notification of the decision of the Alkotmánybíróság [(Constitutional Court)] or the Court of Justice of the European Union — of the declaration or declarations corresponding to the tax year or tax years in which the right of deduction concerned was created. No request for a statement of foreclosure will be accepted at the end of the time limit.

(3) If the statement, as rectified in the regularisation declaration, shows that the taxable person is entitled to a refund either because of the reduction in the tax he has to pay or because of the increase in the amount recoverable — also taking into account the conditions for refunding the tax to be recorded as negative, provided for by the VAT law in force on the date on which the right to deduct arises — the tax authority shall apply to the amount to be refunded an interest rate equivalent to the central bank's base rate, calculated for the period between the date fixed for payment in the declaration or declarations concerned by the regularisation declaration, or the due date — or the date of payment of the tax if this is later — and the date on which the regularisation declaration is submitted. The reimbursement — to which the provisions relating to the payment of budgetary subsidies apply — must be made within 30 days of the date of submission of the regularisation declaration.'

9. Paragraph 135(4) of the same code, as in the version quoted by the referring courts, lays down:

'Where a decision given by the tax authority, or the determination of the tax by it on the basis of the information communicated to it, is unlawful and the taxable person is therefore entitled to a refund, the tax authority shall pay interest on the amount to be refunded at the same rate as that of a late payment penalty, unless the error in determining the tax is attributable to a cause occurring within the sphere of responsibility of the taxable person or a person subject to an obligation to provide data.'

10. Paragraph 164(1) of the Code of Fiscal Procedure, in the version quoted by the referring courts, states:

'The right to the assessment of the tax shall lapse 5 years after the last day of the calendar year in which the declaration or notification relating to that tax should have been made or, in the absence of such declaration or notification, during which the tax should have been paid. Unless otherwise provided by law, the right to request a budget subsidy and the right to reimbursement of overpayments shall lapse 5 years after the last day of the calendar year in which the right to request the subsidy or reimbursement was opened. …'

11. Paragraph 165(2) of that code, in the version quoted by the referring courts, provides:

'The late penalty rate for each calendar day is equal to 1/365th of twice the central bank's base rate in effect on the date of its application. A delay penalty cannot itself give rise to the application of a delay penalty. The central tax and customs administration does not order the payment of late penalties of less than HUF 2 000.'

II. Background to the dispute

12. Paragraph 48(7) of the former VAT Act, which was in force between 1 January 2005 and 31 December 2007, and, subsequently, Paragraph 186(2) of the VAT Act, which was in force between 1 January 2008 and 26 September 2011, made the refund of excess deductible VAT (that is, the sum which remains after the VAT due has been removed from the deductible one) conditional on the full payment of the transactions having generated the deductible VAT ('paid consideration condition'). In the absence of that payment, this excess had to be carried forward to the subsequent tax period, which means that it was deducted from the amount of VAT to be paid in the subsequent period.

13. The Court, in its judgment of 28 July 2011, *Commission* v *Hungary* (C-274/10, EU:C:2011:530), held that Paragraph 186(2) of the VAT Act was contrary to Article 183 of the VAT Directive.

14. The amending law, which was adopted by the Hungarian Parliament following that judgment, repealed, with effect from 27 September 2011, Paragraph 186(2) to (4) of the VAT Act. It now allows excess deductible VAT to be refunded without having to wait for the payment of the consideration due for the transactions in respect of which VAT is deductible. On this subject, the referring court in Case C-126/18 stated that, in accordance with that legislation, taxable persons may:

– apply for a special refund by means of a claim for payment of the retained VAT lodged within a limitation period,

– claim that payment in their tax returns, or

– use the VAT retained in their tax returns to reduce the tax due.

15. In an order of 17 July 2014, in the case *Delphi Hungary Autóalkatrész Gyártó* (C-654/13, not published, EU:C:2014:2127, paragraph 39; 'the *Delphi* order'), the Court held that Union law, and in particular Article 183 of the VAT Directive, must be interpreted as precluding the legislation and practice of a Member State which excludes the payment of interest on the amount of excess deductible VAT which was not recoverable within a reasonable period of time because of a national provision considered contrary to Union law. The Court further held, however, that in the absence of Union legislation in this field, it is for the national law to determine, in compliance with the principles of equivalence and effectiveness, the arrangements for paying such interest.

16. As a result of the *Delphi* order, the Hungarian tax administration developed an administrative practice, on which the Kúria (Supreme Court) ruled in decision n° Kfv.I.35.472/2016/5 of 24 November 2016, which in turn served as a basis for the adoption of a decision of principle (n° EBH2017.K18) entitled 'Examination (as to the rate and limitation period) of the question of interest on VAT necessarily accrued because of the payment condition' ('decision of principle of the Supreme Court No 18/2017').

17. According to the decision in principle of the Supreme Court No 18/2017, for the purpose of calculating default interest on the amount of VAT that was not duly recovered because of the previous paid consideration condition, two periods are to be distinguished:

– For the period between the day following the last day of the deadline for lodging the VAT return and the date of expiry of the deadline for lodging the next return, Paragraphs 124/C and 124/D of the Code of Fiscal Procedure, which govern the situation where the Alkotmánybíróság (Constitutional Court) or the Kúria (Supreme Court) find that a rule infringes a higher national rule, are applicable by analogy. Indeed, in both situations, the tax authority had, according to that decision, not committed an infringement of the law, but had applied the rules of domestic law then in force. According to those two legislative provisions, the interest rate applicable is equal to the simple base rate of the central bank.

– For the period beginning with the date on which the interest payable by the tax authority fell due, and ending on the date on which the competent tax authority actually paid the interest, Paragraph 37(6) of the Code of Fiscal Procedure is to be applied. Accordingly, the interest rate is equivalent to that of a late payment penalty for each day of delay, namely, twice the central bank's base rate. That interest is calculated from the date of receipt by the tax authority of the claim for a special refund or of the tax return containing the claim for a refund.

III. Facts and requests for a preliminary ruling

A. Case C-13/18

18. On 30 December 2016 Sole-Mizo submitted to the tax authority, on the basis of the *Delphi* order, a request for payment of interest on the amounts of excess deductible VAT which had not been repaid on time because of the application of the paid consideration condition. This request was in respect of various reporting periods from December 2005 to June 2011. Compound interest due to the late payment of this interest was also sought.

19. By decision of 3 March 2017, the first-instance tax authority partially granted Sole-Mizo's request and ordered the payment of interest in the amount of HUF 99 630 000 (approximately EUR 321 501), while rejecting the company's request for compound interest due to the late payment of this interest.

20. In a decision of 19 June 2017, adopted following a complaint lodged by Sole-Mizo, the second-instance tax authority amended the first decision by deciding in favour of Sole-Mizo and ordering the payment of HUF 104 165 000 (approximately EUR 338 891) in interest. This was done by applying a rate corresponding to the simple central bank's base rate. Regarding the part of the first decision rejecting the request for payment of compound interest, the second-instance tax authority annulled it and referred the calculation of that interest back to the initial tax authority.

21. Sole-Mizo brought an action before the national court against the decision of 19 June 2017 of the superior tax authority, arguing that the interest due to compensate the damage incurred because of the application of the paid consideration condition should also be determined at a rate corresponding to twice the central bank's base rate, in accordance with Paragraph 37(6) of the Code of Fiscal Procedure.

22. The national court accordingly inquires whether the interest due should be calculated by applying a rate corresponding to the simple central bank's base rate or by applying a rate corresponding to twice that rate. In particular, that court expresses doubts as to the conformity with the principle of equivalence, enshrined in Union law, of the decision of principle of the Supreme Court No 18/2017,

according to which Paragraph 37(6) of the Code of Fiscal Procedure is not applicable by analogy to the 'first period', because the tax administration had not committed any infringement, as it had simply applied the provisions of the national law then in force. According to the national court, Union law precludes such reasoning.

23. In those circumstances, the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court of Szeged, Hungary) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is a practice of a Member State pursuant to which, when the relevant [interest] provisions are examined, it is proceeded on the basis that the national tax authority has not committed an infringement (failure to act) — that is, it has not delayed payment as regards the non-recoverable part of the value added tax ('VAT') … on the taxable persons' unpaid purchases — because when the national tax authority adopted its decision, the national legislation infringing [EU] law was in force and it was not until later that the Court of Justice declared that the requirement laid down in that legislation did not comply with [EU] law, consistent with the provisions of [EU] law, with the provisions of [the VAT Directive] (having regard in particular to Article 183 thereof), and with the principles of effectiveness, direct effect and equivalence?

2. Is a practice of a Member State which, when the relevant [interest] provisions are examined, distinguishes between whether the national tax authority failed to refund the tax in compliance with the national provisions then in force — which, moreover, infringed [EU] law — or whether it failed to do so in breach of such provisions and which, as regards the amount of the interest accrued on the VAT whose refund could not be claimed within a reasonable period due to a national-law requirement declared contrary to EU law by the Court of Justice, sets out two definable periods, with the result that,

   – in the first period, taxable persons only have the right to receive [interest] at the central bank's base rate, in view of the fact that since the Hungarian legislation contrary to [EU] law was still then in force, the Hungarian tax authorities did not act unlawfully by not authorising the payment within a reasonable period of the VAT included in the invoices, whereas

   – in the second period interest double the central bank's base rate — applicable moreover in the event of delay in the legal system of the Member State in question — must be paid only for the late payment of the [interest] corresponding to the first period

consistent with [EU] law, in particular with the provisions of the VAT Directive (having regard in particular to Article 183 thereof), and with the principles of equivalence, effectiveness and proportionality?

3. Must Article 183 of the VAT Directive be interpreted as meaning that the principle of equivalence precludes a practice of a Member State pursuant to which, on the VAT not returned, the tax authority only pays interest at the central bank's base (simple) rate if EU law has been infringed, whereas it pays interest equivalent to double the central bank's base rate if there has been an infringement of national law?'

B. Case C-126/18

24. On 30 December 2016, Dalmandi submitted to the first-instance tax authority a request for payment of interest on the amounts of VAT that had not been repaid on time between 2005 and 2011 due to the application of the paid consideration condition. The sum claimed came to HUF 74 518 800 (approximately EUR 240 515). For the calculation of the interest regarding compensation for the damage directly incurred, the claim took into account the entire period between

the due date of the refund for each reporting period concerned and the due date of the refund for the reporting period during which the amending law was adopted, namely, 5 December 2011. It applied, for the purposes of this calculation, a rate of twice the central bank's base rate, in accordance with Paragraph 37(6) of the Code of Fiscal Procedure. In addition, Dalmandi requested payment of additional interest for the period from 5 December 2011 to the effective payment date, also applying the rate referred to in Paragraph 37(6) of the Code of Fiscal Procedure.

25. By a decision of 10 March 2017, the first-instance tax authority partially granted Dalmandi's request, by awarding interest of HUF 34 673 000 (approximately EUR 111 035) in respect of the excess deductible VAT amounts unlawfully withheld for the period between the fourth quarter of 2005 and September (third quarter) 2011, while rejecting the request for the remainder of the claim.

26. Its decision was based on the principles set out in the decision of principle of the Supreme Court No 18/2017. First, as regards the claim for interest, it applied Paragraphs 124/C and 124/D of the Code of Fiscal Procedure. Secondly, it held that Dalmandi's claim for the payment of compound interest was unfounded, inasmuch as it had submitted neither a claim for a special refund nor a tax return that included the claim for a refund. Thirdly, as regards the year 2005, it dismissed Dalmandi's claim for interest finding that the first three quarters of that year were time-barred.

27. By decision of 12 June 2017, the second-instance tax authority, before which Dalmandi had lodged a claim, reduced the amount of interest accrued in favour of Dalmandi to HUF 34 259 000 and upheld the first-instance tax authority's decision as to the remainder of the claim.

28. Dalmandi brought an action against this decision before the referring court. As a main point, it reiterated its previous claims brought before the tax authorities. In particular, it argued that the decision of principle of the Supreme Court No 18/2017, on which the second-instance tax authority relied in its decision of 12 June 2017, infringes the principles of equivalence, effectiveness and direct effect of Union law when (i) it held that Paragraph 37(6) of the Code of Fiscal Procedure is inapplicable on the ground that the tax authority had not committed any infringement when it applied the national law then in force; (ii) it excludes that a failure to act can be held against the tax authority if a claim for a special refund has not been made; and (iii) it fixes as the date from which the limitation period must be calculated, the date preceding the one from which the interest claim became due.

29. In those circumstances, the Szekszárdi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court of Szekszárd, Hungary) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is a judicial practice of a Member State pursuant to which, when the relevant [interest] provisions are examined, it is proceeded on the basis that the national tax authority has not committed an infringement (failure to act) — that is, it has not delayed payment as regards the non-recoverable part of the value added tax ('VAT') … on the taxable persons' unpaid purchases — because when that tax authority adopted its decision, the national legislation infringing [EU] law was in force and it was not until later that the Court of Justice declared that the requirement laid down in that legislation did not comply with [EU] law, consistent with the provisions of [EU] law, with the provisions of [the VAT Directive] (having regard in particular to Article 183 thereof), and with the principles of effectiveness, direct effect and equivalence? Accordingly, the national practice accepted that the application of that requirement laid down in the national legislation infringing EU law was quasi-compliant with the law until the point at which the national legislature formally repealed the requirement.

2. Are the legislation and practice of a Member State which, when the relevant [interest] provisions are examined, distinguish between whether the tax authority failed to refund the tax in compliance with the national provisions then in force — which, moreover, infringed [EU] law — or whether it

failed to do so in breach of such provisions and which, as regards the amount of the interest accrued on the VAT whose refund could not be claimed within a reasonable period due to a national-law requirement declared contrary to EU law by the Court of Justice, set out two definable periods, with the result that,

– in the first period, taxable persons only have the right to receive [interest] at the central bank's base rate, in view of the fact that since the Hungarian legislation contrary to [EU] law was still then in force, the Hungarian tax authorities did not act unlawfully by not authorising the payment within a reasonable period of the VAT included in the invoices, whereas

– in the second period interest double the central bank's base rate — applicable moreover in the event of delay in the legal system of the Member State in question — must be paid only for the late payment of the [interest] corresponding to the first period

consistent with [EU] law, in particular with the provisions of the VAT Directive (having regard in particular to Article 183 thereof), and with the principles of equivalence, effectiveness and proportionality?

3. Is a practice of a Member State which sets as the initial date for the calculation of … compound interest … accrued in accordance with a Member State's provisions on the delay in payment of the default interest on the tax retained contrary to EU law (interest on the VAT; in this case, the principal) not the original date of accrual of the interest on the VAT (principal), but a later point in time, consistent with [EU] law, with Article 183 of the VAT Directive and with the principle of effectiveness, taking into account in particular the fact that a claim for interest on taxes retained, or not refunded, contrary to EU law is a substantive right which flows directly from EU law itself?

4. Is a practice of a Member State pursuant to which the taxable person must submit a separate claim if it claims interest accrued because of a tax authority's default, while in other cases where default interest is claimed such a separate claim is not required because interest is granted automatically, consistent with [EU] law, with Article 183 of the VAT Directive and with the principle of effectiveness?

5. If the previous question is answered in the affirmative, is a practice of a Member State pursuant to which compound interest (interest on interest) for the delay in the payment of interest on the tax retained contrary to EU law as declared by the Court of Justice (interest on the VAT; in this case, the principal) may only be granted if the taxable person submits a special claim whereby interest is not specifically claimed, but rather the amount of the tax indebted on the unpaid purchases precisely at the time when the Member State's rule contrary to EU law which required the VAT due on account of that failure to pay to be retained was repealed under national law, although the interest on the VAT which serves as the basis for claiming the compound interest as regards the tax return periods prior to the special claim has already accrued and has still not been paid, consistent with [EU] law, with Article 183 of the VAT Directive and with the principle of effectiveness?

6. If the previous question is answered in the affirmative, is a practice of a Member State which entails the loss of the right to receive compound interest (interest on interest) for the delay in the payment of interest on the tax retained contrary to EU law as declared by the Court of Justice (interest on the VAT; in this case, the principal) in relation to claims for interest on VAT which was not the subject of the VAT return period affected by the limitation period laid down for the submission of the special claim, since such interest had accrued beforehand, consistent with [EU] law, with Article 183 of the VAT Directive and with the principle of effectiveness?

7. Is a practice of a Member State which definitively deprives the taxable person of the possibility of claiming interest on the tax retained in accordance with national legislation subsequently declared contrary to [EU] law and which prohibited claiming the VAT in respect of certain unpaid purchases, with the result that

   – [pursuant to that practice] the claim for interest was not considered well-founded at the point in time when [the refund of] the tax was demandable, on the basis that the provision subsequently declared contrary to [EU] law was in force (on the ground that there had been no delay and that the tax authority had simply applied the law in force),

   – and subsequently, when the provision declared contrary to [EU] law and which limited the right to refund had been repealed in the national legal system, on the basis of being time-barred,

consistent with [EU] law and with Article 183 of the VAT Directive (taking into account in particular the principle of effectiveness and the character of a substantive right of the claim for interest for the taxes wrongfully not returned)?

8. Is a practice of a Member State pursuant to which the possibility of claiming the [interest] which must be paid on the interest on the VAT (principal) to which the taxable person is entitled in respect of the tax not refunded when it was originally demandable, due to a national-law rule subsequently declared contrary to [EU] law, is made dependant, for the entirety of the period between 2005 and 2011, upon whether the taxable person is currently in a position to request the refund of the VAT for the tax return period during which the provision contrary to [EU] law in question was repealed in the national legal system (September 2011), although the payment of the interest on the VAT (principal) had not occurred before that point in time nor has occurred subsequently, before the claim is brought before the national court, consistent with [EU] law and with Article 183 of the VAT Directive and with the principle of effectiveness?'

IV. Analysis

A. On the admissibility of the questions referred

30. The Hungarian Government argues that the questions submitted are inadmissible, as it is not for the Court, but rather for the national court, to examine the issue raised in the main proceedings about the payment of interest. While the right to interest derives, in cases such as these, from Union law, it is settled case-law that it is for the Member States to define the method of calculating and paying such interest. Admittedly, the latitude given to Member States in this respect is governed by the need to ensure compliance with the principles of equivalence and effectiveness, but the verification of compliance with these principles is, in the first instance, at least, left solely to national courts.

31. From the outset, it must be observed that, while the Hungarian Government refers to the inadmissibility of the questions referred for a preliminary ruling, its arguments deal in fact with the Court's jurisdiction to rule on these questions on the grounds, in substance, that it is for the national courts alone to rule on whether national legislation complies with the principles of equivalence and effectiveness.

32. In this respect, it is true that Article 267 TFEU does not empower the Court to apply rules of EU law to a particular case, but only to rule on the interpretation of the Treaties and of acts adopted by the EU institutions.[4] It may be observed, however, that the questions asked concern neither the concrete application of EU law in the main proceedings, nor the precise determination of the amount of compensation due to the applicants, but rather the interpretation to be given to some provisions or principle of EU law in circumstances such as those at issue in these proceedings. In particular, the question of whether and to what extent Member States enjoy some latitude to define the method of calculating the compensation to be granted because of the application of a provision declared contrary to EU law is itself a matter of interpretation of EU law. All of this means that the Court has full jurisdiction to address this issue.

33. Accordingly, I consider that the Court does have jurisdiction to answer the questions referred for a preliminary ruling and should not rule that the questions asked are inadmissible.

B. Preliminary observations

34. Before considering the various issues raised by these two cases, it is necessary to make some preliminary remarks about the context in which they occurred.

35. In its judgment of 28 July 2011, *Commission* v *Hungary* (C-274/10, EU:C:2011:530), the Court found that by applying the paid consideration condition to claims made for VAT reimbursement of excess deductible VAT, Hungary had infringed Article 183 of the VAT Directive, as well as the principle of tax neutrality. In this regard, I do not propose to go back to the reasons that led to this judgment. However, it is important to point out that, by virtue of the primacy of EU law, this finding raised an obligation for Hungary to draw the necessary conclusions from this judgment.

36. These obligations include the repeal of the paid consideration condition by that Member State,[5] the refund of the excesses of deductible VAT which were still existing on the day of the judgment of 28 July 2011, *Commission* v *Hungary* (C-274/10, EU:C:2011:530)[6] and the compensation of taxable persons in respect of losses suffered by reason of the application of that condition.[7] The present cases deal only with that last obligation. In this regard, it should be recalled that the fact that a Member State infringed Union law is not in and of itself sufficient to hold it liable for the damage caused. The three conditions elaborated in *Francovich*[8] ('the *Francovich* conditions') have to be met for a Member State to incur liability: (i) the rule of European Union law infringed must be intended to confer rights on individuals, (ii) the breach of that rule must be sufficiently serious, and (iii) there must be a direct causal link between the breach and the loss or damage sustained by the individuals.[9] In addition, in accordance with settled case-law on the responsibility of EU institution, which is, in my opinion,

4 See, for example, judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria* (C-83/14, EU:C:2015:480, paragraph 71).

5 In accordance with the Court's settled case-law, 'the primacy of EU law means that the national courts called upon, in the exercise of their jurisdiction, to apply provisions of EU law must be under a duty to give full effect to those provisions, if necessary refusing of their own motion to apply any conflicting provision of national law, and without requesting or awaiting the prior setting aside of that provision of national law by legislative or other constitutional means' (judgment of 4 December 2018, *The Minister for Justice and Equality and Commissioner of the Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 35).

6 On this matter, this Court has been clear: as a consequence and complement to the rights conferred on individuals by provisions of European Union law prohibiting such taxes, charges or duties, taxable persons should, in principle, be refunded in full. See judgment of 28 February 2018, Nidera (C 387/16, EU:C:2018:121, paragraph 24). The situation is different, however, if it is established that the person required to pay taxes or charges has actually passed them on to other persons without its market shares or profits being affected. See judgment of 6 September 2011, Lady & Kid and Others (C 398/09, EU:C:2011:540, paragraphs 17 and 18).

7 The right that individuals derive from EU law to be compensated for any breach of EU law committed by a Member State is the consequence of the principle of the primacy of Union law. See judgments of 8 March 2001, *Metallgesellschaft and Others* (C-397/98 and C-410/98, EU:C:2001:134, paragraphs 84 and 106), and of 13 March 2007, *Test Claimants in the Thin Cap Group Litigation* (C-524/04, EU:C:2007:161, paragraph 125). According to Court's case-law, this right is inherent in the system of the treaties on which the European Union is based. See, for example, judgment of 19 June 2014, *Specht and Othe*rs (C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraph 98).

8 Judgment of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428, paragraph 40).

9 See, for example, judgment of 26 January 2010, *Transportes Urbanos y Servicios Generales* (C-118/08, EU:C:2010:39, paragraph 30).

applicable by analogy in the case of the liability of individual Member States,[10] the damage suffered must be actual and certain.[11] Since in the main proceedings the excess deductible VAT could have been reused in the following tax declaration to offset some amounts of VAT due, one might have questioned whether the damage for which compensation is sought is actual and certain.[12]

37. It should be stressed, however, that in the *Delphi* order the Court was very explicit: any taxable persons who have obtained a refund of the excess [deductible] VAT after a reasonable period of time have a right to interest for late payment under Union law.[13] In the light of this order, it is evident that Hungary has the obligation to make appropriate interest payments to compensate taxable persons who suffered financial loss as a result of the imposition of the paid consideration condition.

38. Therefore, the only questions that remain to be decided are those of the extent of the compensation to be granted and of the remedies that Hungary must provide to enable the taxable persons to exercise their right to be compensated that they derive from EU law. These are precisely the two issues which are now addressed in these joined cases. Accordingly, these cases should be seen for what they really are, namely, two cases relating to the scope of the obligation of Member States to pay for the damage they have caused as a result of their failure to properly apply EU law. Regarding the first issue, it should be recalled that when the *Francovich* conditions are met, Member States can avoid liability only in three specific instances.

39. First, the obligation to pay compensation may have become time-barred under national law. I propose presently to examine this issue in the context of the seventh question.

40. Secondly, the victim may have contributed to his own loss.[14] This exception does not, of course, apply in the main proceedings.

41. A third exception may possibly come into play when the amount of compensation at stake could have such far-reaching financial costs for the State in question that it calls the stability of its public finances into question. However and save, perhaps, in very exceptional circumstances,[15] it is for the Court *alone* to limit or suspend the effect of EU law in order to take account of the existence of exceptional circumstances.[16] Accordingly, Member States cannot rely on their own good faith or on the existence of exceptional circumstances, such as a risk of impairment of the stability of public finances, before their own national courts to ask for a reduction of the compensation otherwise

10 Given the principle of protection of legitimate expectations or the *nemo potest venire contra factum proprium* rule enshrined in EU law — see, for example, judgment of 6 November 2014, *Italy* v *Commission* (C-385/13 P, not published, EU:C:2014:2350, paragraph 67) — which correspond to the common law principle of estoppel, I believe that the case-law relating to action for damages against EU institutions is transposable to actions for damages against Member States.

11 See, for example, judgment of 14 October 2014, *Giordano* v *Commission* (C-611/12 P, EU:C:2014:2282, paragraph 36).

12 Indeed, if taxable payers have submitted a claim following the refusal to refund their excess deductible VAT, it may be presumed that they wished to obtain such refund rather than bring it forward and rely on it in their next tax declaration. By contrast, and save proof to the contrary, for taxable payers that have submitted their claim after the delivery of the judgment of 28 July 2011, Commission v Hungary (C-274/10, EU:C:2011:530), it cannot be presumed that they would have wished to obtain such refund.

13 Order of 17 July 2014, *Delphi Hungary Autóalkatrész Gyártó* (C-654/13, not published, EU:C:2014:2127, paragraph 34). As soon as someone has been deprived of a sum of money even for a short period of time, he/she shall be considered as having suffered a damage. See judgment of 28 February 2018, *Nidera* (C-387/16, EU:C:2018:121, paragraph 32).

14 See, by analogy, judgment of 3 February 1994, *Grifoni* v *Commission* (C-308/87, EU:C:1994:38, paragraph 16).

15 See Opinion of Advocate General Kokott in *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2018:972, points 201 to 205); see also judgments of 8 September 2010, *Winner Wetten* (C-409/06, EU:C:2010:503, paragraph 67); of 28 February 2012, *Inter-Environnement Wallonie and Terre Wallonne* (C-41/11, EU:C:2012:103, paragraph 63); and of 27 June 2019, *Belgisch Syndicaat van Chiropraxie and Others* (C-597/17, EU:C:2019:544, paragraph 61).

16 See, to that effect, judgments of 17 May 1990, *Barber* (C-262/88, EU:C:1990:209, paragraph 41); of 8 September 2010, *Winner Wetten* (C-409/06, EU:C:2010:503, paragraph 67); and of 28 July 2016, *Association France Nature Environnement* (C-379/15, EU:C:2016:603, paragraph 33).

due — assuming, of course, that the *Francovich* conditions are met.[17] Since, in the present case, Hungary has not raised these issues before the Court and given that it is not apparent that there are any such exceptional circumstances — such as those referred to in the Court's case-law — this exception is irrelevant for present purposes.

42. As the two last exceptions do not apply here and the Member State has been found liable for damages, the question which arises concerns only the extent of the compensation which must be granted.

43. In this regard, it may be noted that, according to some judgments, individuals are entitled to *full* compensation in respect of the damage suffered,[18] whereas according to some other judgments, in particular in tax matters where substantial amounts were at stake, Member States have the obligation to simply ensure *adequate* compensation for the damage suffered.[19]

44. For my part, I consider that these two lines of case-law are not in fact at odds with each other. In my opinion, what the Court has tried to highlight by using the word 'adequate' is that, in some particular situations, the prima facie obligation to provide *full compensation* for damage caused by the breach of Union may have to be qualified in some instances by considerations of practicability and general expediency. In other words, even when the *Francovich* conditions are met, the right to be derived for individuals from EU law to be fully compensated for any breach of that law is not absolute. I take that view for the following reasons.

45. First, in some instances, EU law itself provides for a specific rule to calculate the compensation to be granted. However, as the Court has pointed out, neither the VAT Directive nor any other Union act provides for a method of calculating the interest due in the event of a late refund of excess VAT. Consequently, that exception does not apply here.

46. Secondly, where the precise determination of the damage suffered is excessively difficult, the compensation payable may be calculated on the basis of a method which, without necessarily being exact, is intended so far as possible to provide full reparation of the damage suffered.[20]

47. Thirdly, if the compensation rules put in place by the Member States must aim at providing at least something close to full compensation for damage suffered as a result of the infringement of Union law, the practical arrangements for achieving this objective are necessarily the responsibility of the Member States, since such an objective requires taking into account some domestic economic variables. Member States are therefore entitled to specify, in the light of the existing economic indicators, which indicators or rates are to be taken into account. They may not, of course, choose a rate the application of which would not at least aim for full compensation for the actual and certain loss or damage incurred.

17 Two essential criteria must be fulfilled before such a limitation can be imposed, namely that the Members States concerned have acted in good faith and that there should be a risk of serious difficulties. See judgment of 29 September 2015, *Gmina Wrocław* (C-276/14, EU:C:2015:635, paragraph 45). It is settled case-law that the financial consequences which might ensue for a Member State from a preliminary ruling do not in themselves justify limiting the temporal effects of that ruling. See, for example, judgment of 29 July 2010, *Brouwer* (C-577/08, EU:C:2010:449, paragraph 34).

18 See, for example, judgments of 2 August 1993, *Marshall* (C-271/91, EU:C:1993:335, paragraph 26), and of 8 March 2001, *Metallgesellschaft and Others* (C-397/98 and C-410/98, EU:C:2001:134, paragraph 95).

19 See judgment of 19 July 2012, *Littlewoods Retail Ltd and Others* (C-591/10, EU:C:2012:478, paragraph 29).

20 See, to that effect, judgment of 27 January 2000, *Mulder and Others v Council and Commission* (C-104/89 and C-37/90, EU:C:2000:38, paragraph 63). The Case-law on the loss of opportunity provides a good illustration of this exception. See, in particular, judgment of the European Union Civil Service Tribunal 13 March 2013, *AK v Commission* (F-91/10, EU:F:2013:34, paragraph 92). In my opinion, this is what the Court has pointed out, when it has on occasion referred to the notion of 'adequate reparation' or held that 'in specific cases, compensation in the form of interest may be greater or less than the actual loss' 'in order to ensure compensation according to rules which are easily managed and supervised by the tax authorities'. See judgment of 28 February 2018, *Nidera* (C-387/16, EU:C:2018:121, paragraph 36). This interpretation is supported by the fact that in that same judgment, the Court stated, in paragraph 37, that the taxable person should be able to 'recover the entirety of the credit arising from the overpaid VAT without being exposed to *any financial risk*' — Italics added — which suggests that the Court did not wish to depart from the principle of a right to a full reparation.

48. Accordingly, I believe that when, in its order of 17 July 2014, Delphi Hungary Autóalkatrész Gyártó (C-654/13, not published, EU:C:2014:2127), the Court referred to its judgment of 19 July 2012, Littlewoods Retail Ltd and Others (C-591/10, EU:C:2012:478), where it was held in paragraph 27 that it is 'for the internal legal order of each Member State to lay down the conditions in which such interest must be paid, particularly the rate of that interest and its method of calculation (simple or "compound" interest)', the intention of the Court was not to depart from the principle of full reparation, but rather to refer to the fact that the precise rate to be applied — the one amounting to full compensation — depends on the situation currently prevailing in each Member State. [21]

49. Apart from these situations, once the three conditions elaborated in *Francovich* for a Member State to incur liability are met, any individual who suffers damage caused by a breach of EU law is entitled to full compensation. Indeed, the grant of something at least close to full compensation is necessary to ensure the full effectiveness of EU law as required by the principle of the primacy of that law [22] and on account of the fundamental right to effective judicial protection enshrined in the first paragraph of Article 47 of the Charter.

50. Accordingly, in the main proceedings the taxable persons concerned who suffered financial loss by reason of the application of the paid consideration condition are, in principle, entitled to a sum of money amounting to full compensation. In particular, since the Hungarian Government did not advance the case before this Court, when the *Commission* v *Hungary* case was pending, that exceptional circumstances existed justifying that the temporal application of EU law will be suspended, it can no longer make that claim. In any case, the sums in question, although significant, are not of such importance as to jeopardise the stability of the public finances of that Member State.

51. Besides, to the extent that, in situations such as those at issue, the damage occurred takes the form of the deprivation of the benefit of a certain sum of money for a limited period of time, such damage must be calculated by reference to the price that someone would have to pay to borrow the same sum of money from a credit institution. This compensation must therefore take the form of interest. However, this is not, strictly speaking, default interest in the usual sense of the Court's case-law.

52. In this respect, it should be pointed out that the different types of interest and their names vary from one Member State to another and that the Court's case-law has not always been consistent in the use of some terms. In particular, the notion of 'default interest' seems to have been sometimes used in the sense of the French notion of 'intérêt moratoire', [23] which requires the existence of an acknowledged debt, and at other times in a more general sense, designating any kind of interest related to a late payment, whether or not they are punitive or compensatory. [24] I propose, therefore, to focus on the purpose of the different kinds of interest involved rather than on their names or descriptions, which can vary according to national law and practice.

21 As the Court has held, if 'it is on the basis of the rules of national law on liability that the State must make reparation for the consequences of the loss and damage caused', this is 'subject to the right of reparation which flows directly from [EU] law where those conditions are satisfied'. See, for example, order of 23 April 2008, *Test Claimants in the CFC and Dividend Group Litigation* (C-201/05, EU:C:2008:239, paragraph 126).

22 See, to that effect, judgment of 4 December 2018, *The Minister for Justice and Equality and Commissioner of the Garda Síochána* (C-378/17, EU:C:2018:979, paragraph 39).

23 See, for example, judgment of 12 February 2015, *Commission* v *IPK International* (C-336/13 P, EU:C:2015:83, paragraph 30).

24 See judgment of 28 February 2018, *Nidera* (C-387/16, EU:C:2018:121, paragraphs 28 and 29). In principle, the interest which aims at compensating for the time that passes before the judicial assessment of the amount of damage, irrespective of any delay attributable to the debtor is referred to as 'compensatory interest' and is part of the compensation granted. See judgment of 10 January 2017, *Gascogne Sack Deutschland and Gascogne* v *European Union* (T-577/14, EU:T:2017:1, paragraph 168 and the case-law cited).

53. Concerning the second issue, namely, the method by which the compensation is to be paid by Member States, it is settled case-law that these conditions fall within the procedural autonomy of each Member State.[25] Indeed, in the absence of European Union legislation in this field, it is for the domestic legal system of each Member State to lay down the *conditions* - and not their *amount* - under which interest must be paid.[26] These conditions must nonetheless comply with the principles of equivalence and effectiveness of remedies.[27]

54. The principle of effectiveness requires that Member States establish a system of legal remedies and procedures that do not render practically impossible or excessively difficult the exercise of rights conferred by EU law.[28] Accordingly, the procedural rules governing these remedies must not be designed in such a way as to make it impossible or excessively difficult to exercise the rights conferred on individuals by the Union's legal order.[29] More broadly, this principle requires that the rights that individuals derive from Union law are effectively applied.[30]

55. As for the principle of equivalence, it requires that the national rule in question applies without distinction to actions based on infringement of EU law and those based on infringement of national law having a similar purpose and cause of action, having regard to both the purpose and the essential characteristics of allegedly similar domestic actions.[31] In order to determine whether the principle of equivalence has been complied with in the case in the main proceedings, it is therefore necessary to examine whether there exists, in addition to a limitation rule, such as that at issue in the main proceedings, applicable to actions intended to ensure that the rights derived by individuals from European Union law are safeguarded under domestic law, a limitation rule applicable to domestic actions and whether, having regard to their purpose and essential characteristics, the two limitation rules may be considered similar.[32]

56. It is in the light of those principles that the questions referred should be examined.

57. Finally, since taxable persons are entitled, in principle, to receive at least something amounting to full compensation for the damage suffered, I propose to examine together the different questions related to the compatibility of the method of calculation of the amount of compensation used by the national practice in question with EU law.

C. The three questions in Case C-13/18 and the first two questions in Case C-126/18

58. In essence, the referring court in Case C-13/18, by its three questions, and the referring court in Case C-126/18, by its first two questions, ask whether Article 183 of the VAT Directive, as well as the principles of effectiveness and equivalence of remedies, and those of direct effect and proportionality, must be interpreted, in a situation such as that at issue in the main proceeding, as precluding a national practice of calculating interest which is due by reason of the application of the paid consideration condition, by reference to the rate corresponding to that of the central bank and not to twice that rate, as provided for in the national legislation concerned in the event of late payment by the administration of a due debt.

25 See, to that effect, judgment of 6 October 2005, *MyTravel* (C-291/03, EU:C:2005:591, paragraph 17).

26 See, for example, order of 21 October 2015, *Kovozber* (C-120/15, not published, EU:C:2015:730, paragraph 30).

27 When the question arises as to whether the national procedure rules make the exercise of rights conferred on individuals by the legal order of the European Union either impossible in practice or excessively difficult, it must be analysed by reference to the role of the rules concerned in the proceedings as a whole, to the way in which the proceedings are conducted and to the special features of those rules before the various national bodies. Judgment of 6 October 2015, *Târșia* (C-69/14, EU:C:2015:662, paragraph 36).

28 Judgment of 13 March 2007, *Unibet* (C-432/05, EU:C:2007:163, paragraph 43).

29 Judgment of 12 December 2013, *Test Claimants in the Franked Investment Income Group Litigation* (C-362/12, EU:C:2013:834, paragraph 32).

30 See, for example, judgment of 20 December 2017, *Caterpillar Financial Services* (C-500/16, EU:C:2017:996, paragraph 41).

31 See, in this respect, judgment of 19 July 2012, *Littlewoods Retail Ltd and Others* (C-591/10, EU:C:2012:478, paragraph 31 and the case-law cited).

32 Judgment of 15 April 2010, *Barth* (C-542/08, EU:C:2010:193, paragraph 20).

59. As the right to something amounting to either full compensation or something close to that derives from the principle of the primacy of EU law, it is in that context that I propose to examine the three questions in Case C-13/18, as well as the first two questions in Case C-126/18.

1. The compatibility of the national practice with the right to full compensation

60. As I have already indicated, EU law requires, in principle, full compensation for the damage, assuming, of course, that the *Francovich* conditions have been met. In order to assess the compatibility of the national practice in question with Union law, it is necessary to determine, first, the damage caused by the application of the paid consideration condition and, secondly, whether the compensation provided for by the national practice aims at fully covering the loss and damage incurred.

61. As I explained earlier, the damage caused in the main proceedings consists of the undue deprivation of the right to obtain the refund of the excess deductible VAT within the time limits provided by the national legislation.[33] Since taxpayers were nevertheless entitled to use this excess in the subsequent VAT declaration to offset a VAT debt, such damage can be treated in practice as the equivalent of a late payment.[34] Therefore, as in the case of a late payment, it is necessary (i) to establish the period during which the taxable person was deprived of his rights ('the reference period') and (ii) to apply to the amount of the excess deductible VAT for which the person concerned was unable to obtain a refund, an interest rate reflecting the consequences of this deprivation in order to quantify the amount of the compensation due.

62. In the circumstances at issue in the main proceedings, the starting point for the reference period corresponds to the date on which the excess deductible VAT should have been refunded to the taxpayer if the paid consideration condition had not been applied.

63. In this regard, it should be recalled that it is for the Member States to decide the date on which the refund is to be made, provided that this date is within a reasonable period after the VAT return form has been submitted ('the reasonable refund period').[35]

64. Regarding the end date of the reasonable refund period, in the view of the damage at issue in the main proceedings, two hypotheses must be distinguished depending on whether the person concerned has finally satisfied the paid consideration condition or whether the person concerned had no other choice than to carry forward the excess of deductible VAT to the following declaration.

65. In the first situation, since the damage suffered ceased on the date on which the VAT was finally refunded, that date constitutes the end date of the reasonable refund period.

66. In the second situation, the end date of the reasonable refund period depends on whether the excess deductible VAT carried forward was fully used in the following declaration to offset any VAT debt or not. If this was the case, the damage ended on the day on which the taxable person would have had to pay that VAT debt, if the excess deductible VAT had not been set off against that VAT debt. In the situation where the excess deductible VAT has not been used fully because of the lack of sufficient VAT debt, the effects of the application of the paid consideration condition extend to the

33 Contrary to the position defended by the Commission during the hearing, I consider that the taxable persons concerned did suffer damage that is related not to a loss of profit, but to a reduction of their cash flow. In any case, I note that the Court has already ruled that a loss of profit is to be compensated. See judgment of 8 March 2001, *Metallgesellschaft and Others* (C-397/98 and C-410/98, EU:C:2001:134, paragraph 91).

34 See, for example, judgment of 6 July 2017, *Glencore Agriculture Hungary* (C-254/16, EU:C:2017:522, paragraph 22).

35 Judgments of 24 October 2013, *Rafinăria Steaua Română* (C-431/12, EU:C:2013:686, paragraph 24); of 6 July 2017, *Glencore Agriculture Hungary* (C-254/16, EU:C:2017:522, paragraph 20); and of 28 February 2018, *Nidera* (C-387/16, EU:C:2018:121, paragraph 25). In the present case, the national courts did not specify the deadline by which the Hungarian administration refunded the excess of deductible VAT when the condition of the acquisitions settled was *ab initio* fulfilled. However, Sole Mizo indicated that this period is 45 days.

subsequent VAT declaration. It follows that, in principle, for each of these subsequent tax periods, a distinction should be made between the part of excess deductible VAT that is new and the one that has been carried over from previous declarations. Indeed, for the part corresponding to the carry-over of a previous excess, no reasonable refund period should be applied, since if the taxable person had obtained the refund of the excess, he would have enjoyed the corresponding amount without interruption.

67. All of this is sufficient to demonstrate that the exact quantification of the injury suffered in the present proceedings is a relatively complex one.

68. In this context, the national practice at issue may be said to simplify the calculation which is required to be carried out. Indeed, it appears from the case file that Hungary retains the day following the deadline for submitting the VAT return as the starting point of the reasonable refund period used to calculate the damage. This means that the compensation is calculated by taking as a starting point not the date on which the refund should have been made, but rather the day following the deadline for lodging the VAT return form on which the taxable person has indicated a negative VAT amount.

69. Regarding the end date of the period used to calculate the damage, the national practice retains the deadline for the submission of the next declaration. Accordingly, for each VAT reporting period, a new amount of damage is calculated on the premiss that the damage suffered definitively accrued on the last day of the deadline for lodging the VAT return form on which the taxable person has indicated a negative VAT amount.

70. Although this method is different from the one that might be used to calculate the damage suffered with an exact accounting accuracy, it has the advantage of simplifying this calculation since it does not distinguish, for the subsequent tax periods, between the part of the excess deductible VAT that is attributable to a previous excess that has been carried forward from the new one. Indeed, since no repayment period is applied, the *raison d'être* of the subsequent excess deductible VAT makes no difference. For that reason, this method is even more advantageous for taxable persons than the one allowing full compensation, since no period corresponding to the repayment period normally applicable is applied.

71. As I have indicated, the Court accepts that, where the exact determination of the damage incurred is difficult, a method relying on a reasonable degree of approximation may be used, provided that the amount of the indemnity is not excessively affected. Since here the exact determination of the damage incurred is quite difficult to calculate precisely, I consider that Hungary was, in principle, entitled to simplify this calculation.

72. As regards the rate of interest to be applied in order to ensure full compensation, this rate should correspond to the one that a taxable person would have paid to obtain from a credit institution the amount corresponding to the excess deductible VAT. Therefore, the interest rate applicable can be presumed to be equal to the rate applied by the competent central bank for very short-term loans, provided that this rate is increased to reflect the margin normally applied by credit institutions.[36] Indeed, if a taxable person had to borrow a sum of money to resolve a cash flow problem caused by the fact that he did not get the refund of his excess deductible VAT, that person would have to pay more than the rate applied by the competent central bank, this rate being available only to credit institutions.

36 For comparison, see Article 99(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1) or Article 2(6) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ 2001 L 48, p. 1).

73. At first sight, it might seem that the method used in the main proceedings is compliant with the EU requirements. Upon closer inspection, however, the method of calculation used by the national practice at issue may be said to contain two elements which are, in my opinion, not in harmony with the principle of full compensation.

74. The first one concerns the rate applied. Indeed, this rate provided for by the national practice is the one applied by the central bank, with no increase whatsoever reflecting the margin usually applied by credit institutions. Even if it is up to the Member States to choose the interest rate applicable by reference to their economic situation,[37] the fact remains that, in order to amount to full compensation (or, at least, something approaching that sum), the rate chosen cannot be limited to the basic rate applied by the central bank.

75. The second element, more significantly, is related to monetary erosion caused by the effluxion of time. Indeed, the notion of full compensation implies when, as in the main proceedings, the damage is calculated when it definitively accrued – rather than when it was established by the tax authority or a national Court –, further interest, representing the monetary erosion that has occurred since the damage definitively accrued, must be added to the compensation paid.[38]

76. It is, in my view, the payment of that interest which the Court had in mind in paragraph 34 of order of 17 July 2014, *Delphi Hungary Autóalkatrész Gyártó* (C-654/13, not published, EU:C:2014:2127), when it held that 'taxable persons who have obtained a refund of the excess VAT later than after a reasonable period of time, which is for the national court to verify, have a right to payment of default interest under Union law'.[39]

77. In this respect, I should also point out, that this interest must be calculated on the basis not of the rate charged by credit institutions (or the central bank), but rather by reference to the rate of inflation, since the present case is at heart one concerning the erosion of monetary value of the damage suffered from the point in time when the damage have definitively accrued.

78. In the present case, it appears from the information provided by the referring courts, which was confirmed by the parties in response to a written question, that the national practice at issue does provide for the payment of compound interest, but that this interest starts to run from the day after the end of the 45-day refund period for the September 2011 VAT declaration[40] which, taking into account non-working days, was 6 December 2011.

79. However, the damage suffered by the taxable person may have occurred and ceased well before that date, since, as previously mentioned, taxable persons might have been able to satisfy the paid consideration condition before having to submit their next VAT return form or they might have used the excess deductible VAT to offset a VAT debt in their next VAT return form.[41]

37 See point 48 above.

38 See, for example, judgment of 27 January 2000, *Mulder and Others* v *Council and Commission* (C-104/89 and C-37/90, EU:C:2000:38, paragraph 51).

39 Informal translation. See also judgement of 24 October 2013, *Rafinăria Steaua Română* (C-431/12, EU:C:2013:686, paragraph 23). In this respect, it should be stressed that, in order to assure full compensation, interest to compensate for monetary erosion shall continue to run until the actual payment of compensation has been made.

40 The September 2011 VAT declaration is the one covering the period of time when the amending law was adopted.

41 From a logical point of view, given that the method of calculation used by the national practice consists in treating each reporting period independently, and therefore in considering that damage resulting from the application of the paid consideration condition definitively accrued at the end of each tax period, an interest should have been applied to compensate the monetary erosion arising from the end of each of tax period.

80. In fact, it seems that the compound interest provided for by the national practice is of a different nature since such interest is due because of the late payment of the compensation by the administration once a request for payment has been introduced, and not because of the damage incurred to taxable persons as a result of the application of the paid consideration condition.

81. Accordingly, I note that, in the main proceedings, the national practice at issue simply does not provide for the payment of any interest aiming at offsetting the monetary erosion between the date when the damage definitively accrued, which is the date on which the amount of the compensation is calculated — here, the expiration date of the deadline for the submission of the next declaration — and the date on which the amount of compensation is recognised by the administration or by a court and becomes an enforceable debt. [42]

82. Since for this reason the national practice does not, in my view, ensure adequate compensation for the damage suffered by the taxable persons in question, it must be declared to be contrary to Union law.

2. Alternative solution

83. In the event, however, that the Court considers that the compensation required does not have to approach something amounting to full compensation or otherwise disagrees with the foregoing analysis, I propose now to set out an alternative solution to the issues raised. I think it is clear that, one way or the other, the leeway for Member States to decide the applicable method of calculation is nonetheless limited by the principles of effectiveness and equivalence. The rest of this Opinion proceeds on this assumption.

84. The principle of effectiveness requires that the remedies provided for by national law enable individuals to assert their rights which they derive from EU law in a meaningful — and not simply theoretical — fashion. Accordingly, this principle should be interpreted as requiring that remedies provided for by national law guarantee individuals the right to seek compensation for the damage that they suffered as result of a breach of EU law, provided always that the *Francovich* conditions are independently satisfied.

85. Even if the compensation that Member States are required to provide under *Francovich* would not amount to full compensation, I nevertheless believe that Member States should compensate individuals for monetary erosion as regards the value of the compensation when the latter has been calculated by reference to a past event, as in the proceedings, the point of time when the damage has definitively accrued. [43]

86. Accordingly, I believe that, in the main proceedings, even if the level of compensation that Member States have to provide would be not required to approach full compensation, the national practice at issue is to be considered as not ensuring adequate compensation.

42 It is very likely that the reason for this is that Article 165(2) of the Code of Fiscal Procedure provides that 'a penalty for delay may not itself give rise to the application of a penalty for delay'. If, however, this provision were to be interpreted as precluding the interest in compensating for the monetary erosion, then I consider that this provision must be declared contrary to Union law.

43 See, by analogy, judgments of 2 August 1993, *Marshall* (C-271/91, EU:C:1993:335, paragraph 31), and of 4 December 2003, *Evans* (C-63/01, EU:C:2003:650, paragraph 68).

87. Regarding the principle of equivalence, as I have indicated already, that principle requires that all the rules applicable to actions apply without distinction to actions alleging infringement of EU law, on the one hand, and to similar actions alleging infringement of national law, on the other.[44] It is nonetheless clear, however, that this principle does not oblige a Member State to extend its most favourable rules governing recovery under national law to all actions for repayment of charges or dues levied in breach of EU law.[45]

88. The national compensation practice at issue in the main proceedings provides for the application not of Paragraph 37(6) of the Code of Fiscal Procedure — which involves the application of an interest rate equivalent to twice the rate of the Hungarian Central Bank — but rather of Paragraphs 124/C and 124/D of the Code of Fiscal Procedure providing for the application of a rate equal to the Hungarian Central Bank's base rate.

89. It is, however, clear from the wording of Paragraphs 124/C and 124/D of the Code of Fiscal Procedure that they apply not only in the event of a decision of the Court of Justice finding that a national law, such as the one applied in Hungary, is contrary to Union law, but also where the Alkotmánybíróság (Constitutional Court) or the Kúria (Supreme Court) finds that national legislation is contrary to the Hungarian Fundamental Law or, in the case of a municipal regulation, to any other rule of law.

90. In those circumstances, it seems — although it is for the national court to ascertain this — that Paragraphs 124/C and 124/D of the Code of Fiscal Procedure constitute a *lex specialis* especially intended to regulate the consequences of a judgment by which a superior court finds a national norm contrary to a superior norm which applied equally to actions based on Union law and to those grounded exclusively on national law.

91. Admittedly, the reason given by the Kúria (Supreme Court) to justify the application of Paragraphs 124/C and 124/D rather than Paragraph 37(6) of the Code of Fiscal Procedure might be deemed somewhat surprising. Indeed, according to that court, the application of those two paragraphs is explained by the fact that, in circumstances such as those at issue in the main proceedings, the tax authorities did not commit an infringement of the national legislation in force when they applied the paid consideration condition, since that condition was then in force. As so formulated, this explanation seems to amount to denying that the former paid consideration condition was contrary *ab initio* to Union law.

92. While the explanation given by the Kúria (Supreme Court) may be regarded as somewhat surprising, this does not in itself affect the compatibility of the national practice with Union law. I reach this conclusion because once the remedies made available to individuals by Member States are in line with EU law, the fact that the reasons for their application are erroneous does not render them contrary to EU law. Therefore, since Paragraphs 124/C and 124/D apply indistinctly to both remedies based on EU law, on the one hand, or exclusively on national law, on the other, no infringement of the principle of equivalence can be found.[46]

93. In view of the reasoning previously set out, I propose to answer the three questions raised in Case C-13/18 and the first two questions in Case C-126/18 as follows: the principle of the primacy of Union law must be interpreted, in a situation such as that described by the referring courts, as precluding a national practice which calculates the interest due, to compensate the damage caused by the

44 Judgment of 28 January 2015, *Starjakob* (C-417/13, EU:C:2015:38, paragraph 71).

45 Judgment of 17 November 1998, *Aprile* (C-228/96, EU:C:1998:544, paragraph 20).

46 See by analogy, judgment of 20 December 2017, *Caterpillar Financial Services* (C-500/16, EU:C:2017:996, paragraph 40). I note also that, in the context of direct actions, the Court held that, where the grounds of a judgment disclose an infringement of EU law but the operative part of the judgment is shown to be well founded for other legal reasons, the appeal must be dismissed. See, for example, judgment of 7 June 2018, *Ori Martin* v *Court of Justice of the European Union* (C-463/17 P, EU:C:2018:411, paragraph 24).

application of the paid consideration condition on the basis of a rate corresponding to the one applied by the competent central bank to the main refinancing operations, without either increasing that rate to reflect the rate that a taxable person who is not a credit institution could have obtained to borrow the same amount, or providing any interest to offset monetary erosion as regards the value of the compensation due, when the latter has been calculated from the date on which that damage definitively accrued.

D. The last six questions raised by the referring court in Case C-126/18

94. Before examining the last six questions raised by the national court in Case C-126/18, I would like to make several preliminary observations.

95. First, I note that in its questions the referring court in Case C-126/18 mentions Article 183 of the VAT Directive, which is the provision that had not been complied with by Hungary in respect of the former paid consideration condition. Since, however, this article does not mention any procedural rules, that provision does not appear to be relevant. Moreover, although the referring court only refers to the principle of effectiveness in its questions, it seems to me necessary also to examine the questions raised from the perspective of the principle of equivalence, since these two principles lay down limits to the procedural autonomy enjoyed by Member States in organising their compensatory remedies.

96. Secondly, since the national practice at issue only provides for the payment of compound interest in the case of late payment of the interest directed at compensating the application of the paid consideration condition, I believe that, when these questions refer to 'compound interest', they are really intended to refer to default interest due in respect of the late payment of the compensation. [47] In any event, in the light of my answer at points 78 to 80 of this opinion, what remains to be examined are the conditions in accordance with which such default interest must be paid.

97. Thirdly, the last six questions asked in Case C-126/18 may suggest that the conditions for obtaining interest are highly restrictive. However, the description of the facts made by the referring court suggests that the national practice at issue is not quite as restrictive as these questions seem to imply. Indeed, it seems that taxable persons who suffered from the application of the paid consideration condition were nonetheless entitled to obtain default interest, even if they did not introduce any special request, if, once their claim was submitted, the tax administration did not pay the compensation due within the time limit provided for in Paragraph 37(4) of the Hungarian Code of Fiscal Procedure. [48]

98. However, it is for the referring court in Case C-126/18 to verify that the hypotheses envisaged in the questions correspond to the actual circumstances at issue in the main proceedings.

47 In the view of the typology of the existing interests under Union law, as identified by Advocate General Bot in his opinion in *Commission* v *IPK International* (C-336/13 P, EU:C:2014:2170), I consider that the interest due, to compensate for the damage resulting from the application of the paid consideration condition, as well as the interest which should have been provided for to compensate for monetary erosion, fall within the concept of compensatory interest and that, in the context of the main proceedings, the notion of default interest should be used to refer to default interest due in case of a late payment of the compensatory interest.

48 Besides, it appears that Dalmandi received default interest because of the delay in the payment of the compensation to which that company was entitled, after it had submitted a claim to that effect.

1. The third question

99. By its third question, the national court in Case C-126/18 asks, in substance, whether the principles of effectiveness and equivalence must be interpreted as precluding a national practice which, in circumstances such as those in the main proceedings, takes as the starting date for calculating the default interest due for the late payment of the compensation neither the date on which damage occurred nor the one on which the interest paid as compensation for the main damage first became payable, but rather a later date.

100. In this regard, I would like to point out that, in my opinion, the obligation to make what in substance approaches full compensation for damage caused by the breach of Union law does not, as such, give rise to an obligation for the Member State concerned to pay default interest in case of the late payment of compensation. Indeed, the payment of such interest does not originate directly from the breach of Union law by the Member State concerned, but rather from the objective circumstance that the State in question has been late in paying a debt due.

101. In this regard, I believe that the principle of effectiveness requires Member States to provide in their legislation for the payment of default interest in the event of late payment of compensation due in respect of a breach by that State of its obligations under Union law. Otherwise Member States would not have any incentive to pay the compensation to individuals who have suffered the effects of a violation of Union law, a state of affairs which would result in their right to full compensation being deprived of any effectiveness. [49]

102. In the main proceedings, it seems that Dalmandi considers that default interest should have been applied from the date on which the paid consideration condition was repealed or, even, from the date on which the Court gave its judgment of 28 July 2011, *Commission* v *Hungary* (C-274/10, EU:C:2011:530), because the tax authority should have automatically compensated it for the application of that condition.

103. Admittedly, where the Court finds that by applying a national law a Member State has failed to fulfil its obligations under Union law, the principle of the primacy of EU law requires that that Member State immediately take the necessary action to repeal that legislation and that its national authorities immediately cease to apply it. [50]

104. However, neither the principle of the primacy of Union law nor the one of effectiveness of the remedies require that the Member States should spontaneously provide for compensation in respect of the damage that they have caused due to the breach of EU law or even interrupt the limitation periods by organising, as Hungary has done, an administrative compensation procedure.

105. It is true that if this Court finds that a legislative or administrative measure adopted by the authorities of a Member State is contrary to Union law, that State is obliged to rescind the measure in question and, subject to the application of the *Francovich* conditions, to make reparation for any unlawful consequences thereof. [51]

49 See, in this respect, judgment of 30 June 2016, *Ciup* (C-288/14, not published, EU:C:2016:495, paragraph 46). Since the obligation to pay default interest results from the principle of effectiveness and from the right to full compensation, Member States are free to set the rate of that default interest, provided that this rate creates an incentive for the administration to pay promptly the damages.

50 Judgment of 13 July 1972, *Commission* v *Italy* (48/71, EU:C:1972:65, paragraph 7). In the main proceeding, this meant that Hungary was only obliged, on its own initiative, to cease to apply the condition of the paid acquisition and to refund the excesses of deductible VAT which still remained on the day of the judgment of 28 July 2011, *Commission* v *Hungary* (C-274/10, EU:C:2011:530).

51 See, to that effect, judgment of 16 December 1960, *Humblet* v *Belgian State* (6/60-IMM, EU:C:1960:48, p. 569).

106. However, as the Court has repeatedly pointed out, the procedural rules governing the payment of compensation due for breach of EU law depend on national law, which may require that a claim is made for compensation to be paid.[52] So, the mere fact that, immediately after the delivery of the judgment of 28 July 2011, *Commission* v *Hungary* (C-274/10, EU:C:2011:530), or even after the adoption of the amending law, Hungary did not spontaneously pay any compensation to the taxable persons who have suffered from the application of the paid consideration condition does not automatically trigger the application of default interest in respect of that compensation. It is *only* if the national legislation provides that, when a piece of national legislation has been recognised by a court as violating a superior rule of law, that such interest runs, *ipso jure*, from the delivery of the judgment, that, by virtue of the principle of equivalence, the Member State concerned is required to spontaneously apply default interest.

107. As Member States are accordingly not obliged to provide compensation spontaneously in respect of the damage that they caused due to the breach of EU law, it follows in turn that a Member State may, in principle, provide that the default interest shall not accrue from the date on which the damage occurred.

108. Similarly, Members States are not obliged to provide that such interest shall be paid immediately after the concerned authority or court has established that this damage has to be compensated.

109. It is true that, in the event of late payment of a compensation due under EU law, Member States must provide for the payment of such interest. However, the administration cannot be expected to pay this compensation instantly once the damage has been recognised.[53] Therefore, the principle of effectiveness does not oblige Member States to provide for the starting date for calculating default interest as being the one where the damage incurred or on which the interest paid as compensation for the main damage first became payable, but rather as taking place within a reasonable period of time after that the damage has been recognised either by the administrative body concerned or by a Court.

110. In the main proceedings, as I understand the national practice, it provides for the payment of such interest where the administration has failed to pay interest to compensate for the damage within 30 days (45 in some cases) of the submission of a request for compensation, which seems a reasonable time for the administration to consider the merits of the request. Such a period cannot therefore be considered contrary to the principle of effectiveness.

111. As for the principle of equivalence, since the referring court in Case C-126/18 is the only one to know how this type of interest is applied in other circumstances, it is for that court to verify that, in the case at issue, no shorter time limits are applied, when the Member State concerned has to pay a compensation for a ground based exclusively on national tax law.

112. In this context, I propose that the answer to the third question should be that the principles of effectiveness and equivalence of remedies must be interpreted as not precluding a national practice which, in circumstances such as those in the main proceedings, takes as the starting date for the calculation of default interest due for the late payment of the compensation not the date on which the interest as compensation for the main damage first became due, but rather a later date, provided, on the one hand, that this date is not postponed beyond a reasonable period of time after the obligation to pay that compensation has been recognised and that, on the other hand, the same date is applied in the event of late payment of a compensation based exclusively on national law.

52 Judgment of 4 October 2018, *Kantarev* (C-571/16, EU:C:2018:807, paragraph 123). This solution is quite logical in so far as precise compensation for the damage suffered requires taking into account, in order to quantify the damage, some factual parameters that only the persons concerned are in a position to know.

53 See, by analogy, judgment of 15 March 2018, *Deichmann* (C-256/16, EU:C:2018:187, paragraph 20).

2. The fourth question

113. By its fourth question, the national court in Case C-126/18 asks, in essence, whether the principle of effectiveness and equivalence must be interpreted as precluding a national practice which requires taxable persons, in order to obtain default interest, to introduce a special claim, while in other cases, where default interest is also due, such a claim is not required, because that kind of interest is granted automatically.

114. In this respect, I believe that requiring taxable persons to introduce a particular type of claim is not, as such, contrary to the principle of effectiveness. Indeed, such a requirement does not have the effect, according to the expression used by the Court, of rendering virtually impossible or excessively difficult the exercise of rights conferred by the EU legal order.[54] However, if this requirement is to be applied retroactively to taxable persons who brought their actions before this Court had ruled on the compatibility of the paid consideration condition with EU law, this requirement would (or, at the very least, might) deprive those actions of any useful effect[55] and, therefore, should be considered as contrary to the principle of effectiveness.

115. As for the principle of equivalence, as formulated, the question thus asked implies a breach of that principle. Indeed, as previously explained, the principle of equivalence requires that the same procedural rules apply to actions based on Union law as to similar actions based on national law.[56]

116. However, in the main proceedings, certain elements contained in the case files could suggest that, contrary to the premiss on which the fourth question is based as formulated by the referring court, introducing a special claim is not only required in the circumstances such as those at issue (namely, a breach of EU law), but also in some other situations which fall exclusively under national law.

117. Consequently, I propose that the fourth question be reworded and answered such that the principles of effectiveness and equivalence must be interpreted as not precluding a national practice requiring taxable persons to introduce a special claim when claiming default interest, if that requirement equally applies irrespective of whether the damage at the origin of the debt for which payment is late arose from a breach of EU law or national law.

3. The fifth and eighth questions

118. By its fifth question, the referring court asks in essence whether the principles of effectiveness and equivalence must be interpreted as precluding a national practice pursuant to which default interest may only be granted if the taxable person has submitted a claim whereby interest is not specifically claimed, but rather the refund for their excess of deductible VAT still existing on the date when the paid consideration condition was repealed.

119. This question is close to the eighth one in which the referring court asks whether the principles of effectiveness and equivalence preclude a national practice pursuant to which default interest may only be claimed if the taxable person is in a position to claim the refund of an excess of deductible VAT for the tax return period during which the paid consideration condition was repealed.

54 Judgment of 11 April 2019, *PORR Építési Kft.* (C-691/17, EU:C:2019:327, paragraph 39).

55 In accordance with the case-law of the Court, Member States are free to apply new rules to the future effects of situations arising under previous legislation. See judgment of 29 June 1999, *Butterfly Music* (C-60/98, EU:C:1999:333, paragraph 25). However, a legislative amendment retroactively depriving a taxable person of a right he has derived from earlier legislation, is incompatible with the principle of the protection of legitimate expectations. Judgment of 12 May 2011, *Enel Maritsa Iztok 3* (C-107/10, EU:C:2011:298, paragraph 39).

56 Judgment of 28 January 2015, *Starjakob* (C-417/13, EU:C:2015:38, paragraph 71). However, this principle will not be infringed if the introduction of a special claim is required by the national legislation to obtain the payment of a default interest, whereas such a requirement does not exist for the other types of interest. Indeed, since the principle of equivalence only requires that the same procedural rules apply to actions based on Union law and to similar actions based on national law, it does not preclude the application of different procedural rules to non-similar kinds of interest.

120. I will therefore examine these two questions together, even if, as far as I understand them, there is a slight difference between the two: the fifth question is about a formal requirement, namely, a requirement that the taxable person must submit a claim which is not related to the debt for which payment is overdue, whereas the eighth question concerns a substantive condition, namely, that the taxable person is in a position to claim the refund of an excess of deductible VAT for the tax return period during which the provision contrary to Union law in question was repealed.

121. In these respects, I am bound to admit that a practice requiring a taxable person to introduce a particular kind of claim in respect of default interest, although unusual, does not have the effect, as such, of rendering virtually impossible or excessively difficult the exercise of rights conferred by the EU legal order. Therefore, such a condition is not contrary to the principle of effectiveness, provided that the following two conditions are met.

122. First, the taxable person must have been informed in a relatively clear and timely manner of the need to introduce that kind of claim in order to obtain default interest.

123. Secondly, that requirement must not conceal any substantive condition. In particular, that requirement shall not have the effect of limiting the payment of default interest to taxable persons that still have an excess of deductible VAT when the paid consideration condition was repealed. Indeed, the damage at the origin of the debt could have occurred well before the tax period preceding the one during which the paid consideration condition was repealed. In that situation, the taxable person should be entitled to claim default interest in the event of a late payment of the compensation for that damage — if not prescribed — even if he has no longer an excess of deductible VAT.

124. Therefore, I consider that the principle of effectiveness precludes Member States from limiting the payment of default interest to taxable persons that still have an excess of deductible VAT when the paid consideration condition was repealed.

125. Regarding the principle of equivalence, that principle may also be infringed if the requirements referred to in questions five and eight are applied only in the event of late payment of a compensation for breach of Union law and not in the case of a breach of a rule of national law. There is, however, insufficient information to ascertain if this is in fact the case in the main proceedings. [57]

126. Of course, this would be quite different concerning the requirement to be in a position to claim the refund of an excess of deductible VAT for the tax return period during which the provision contrary to Union law in question was repealed, if the latter applies only to claims for default interest for late payment of the compensation due in respect of the very specific period of time when an excess of deductible VAT had been stated in the VAT declaration preceding the adoption of the amending law.

127. In such a case, since the requirement in question would not impede the payment of interest for late payment of a compensation due for a damage which had occurred before that period to a taxable person who no longer had an excess of deductible VAT when the paid consideration condition was repealed, no breach of the principle of effectiveness can, in my opinion, properly be found. Indeed, this requirement would simply be equivalent to verifying the existence of any actual harm by asking the persons concerned to indicate whether they have an excess of deductible VAT for the current tax period.

57 In particular, since such a requirement would amount to introducing a specific time limit to obtain default interest, it should therefore be verified that such a requirement also applies in similar situations based exclusively on national law.

128. In the light of the foregoing, I propose that the fifth and eighth questions be answered such that the principles of effectiveness and equivalence must be interpreted as not precluding a national practice according to which default interest may be granted only if a taxable person has submitted a claim of which the content does not concern the payment of the compensation due for all the damage inflicted as a result of the application of the paid consideration condition, but the recovery, on the date of repeal of that condition, of the excess deductible VAT existing on that date, if, in order to submit such a request, the taxable person does not need to still have, at that date, an excess of deductible VAT, and that such a requirement also applies in the event of late payment of a compensation for breach of national law.

4. The sixth question

129. By its sixth question, the national court asks, in substance, whether the principles of effectiveness and equivalence must be interpreted as precluding a Member State's national practice whereby default interest is applied only in respect of the amount of financial loss which occurred during the VAT reporting period preceding the introduction of the request.

130. In this respect, it is necessary to recall that, in the main proceedings, the damage occurred when, after an excess of deductible VAT was stated in a tax return form, the tax authority did not refund it within the period provided for by national law.

131. Therefore, by providing for that default interest applied only on the amount of damage which occurred during the VAT reporting period preceding the introduction of the request, a national practice such as the one at issue in the main proceedings, on the one hand, requires the submission of a request for each tax period and, on the other hand, establishes a limitation period. This limitation period corresponds to the remaining duration of the tax period during which the financial loss occurred, increased by the duration of the following tax period. I propose now to examine these two effects of the national practice separately.

132. In so far as the national practice has the effect of obliging taxable persons to submit a claim in the particular case where they claim to have suffered loss and damage, this practice does not appear to be contrary to the principles of effectiveness or equivalence, provided that the same condition also applies in the event of late payment of a debt resulting from a breach of a rule of national law.[58]

133. In so far as this national practice has the effect of creating a limitation period, it might be contrary to the principle of effectiveness if this limitation period is too short to allow a reasonably observant and circumspect individual to submit a claim for default interest, having regard to the extent of the formal requirements required in this respect and the extent of the relevant information brought to the attention of this person.

134. This would also be the case if the national practice was applied retroactively - i.e. to periods prior to its adoption - and, in so doing, obstructed any payment of default interest for late payment of damages in relation with any period preceding the one before the introduction of the claim. In such a situation, the taxable persons could obviously not meet this limitation period, as they could not foresee that it would be adopted. These two issues are, however, matters for the referring court to assess.

135. With regard to the principle of equivalence, it is for the national court to determine whether, in at least one comparable situation, a similar period of time is applied to a debt based exclusively on national law.

58 See points 114 and 121 of this Opinion above for a more in-depth analysis.

136. Therefore, I propose that the sixth question be answered in the sense that the principle of effectiveness and equivalence must be interpreted as not precluding a national practice whereby default interest is applied only in respect of the amount of financial loss which occurred during the VAT reporting period preceding the introduction of the request, if the limitation period thus established by that national practice is not too short to allow a reasonably observant and circumspect individual to submit a claim for default interest, if such a condition is not applied retroactively and if it also applies in the event of late payment of a debt resulting from a breach of a rule of national law.

5. The seventh question

137. By its seventh question, the national court asks, in essence, whether the principles of effectiveness and equivalence must be interpreted as precluding a national practice which definitively deprives the taxable person of the possibility of claiming default interest on the grounds that, on the one hand, the paid consideration condition was in force at the time when it was applied and, on the other hand, the limitation period for making such a claim has expired.

138. With regard to the first part of the question, it should be recalled again that the payment of default interest is necessary in order to ensure the effectiveness of the right for any individual to be fully compensated for any damage caused by a breach, by a Member State, of EU law. Accordingly, I believe that the fact that the provision which was subsequently declared contrary to EU law, was in force at the time when that provision was applied, is unlikely to justify the non-application of default interest.[59]

139. Concerning the second part of the question, I would point out that the Court has already recognised the compatibility with Union law of the setting of reasonable time limits for bringing proceedings,[60] even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought.[61] However, to be compatible with EU law, the limitation periods applied to actions for damages for breach of EU law must comply with the principles of equivalence and effectiveness.

140. In the main proceedings, the national practice provides for a double limitation period.[62]

141. The first concerns the tax return period for which compensation may be claimed. According to the information contained in the file sent to the Court, the national practice provides, on the basis of Paragraph 164(1) of the Code of Fiscal Procedure, that only damage which has occurred since the last reporting period in 2005 may be compensated.

59 In the case at issue in the main proceedings, however, this ground was put forward not to justify the non-payment of default interest, but of an interest rate equal to twice the national central bank's base rate to calculate the compensation due for the application of the paid consideration condition.

60 See, for example, judgment of 19 June 2014, *Specht and Others* (C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraph 115).

61 Judgment of 20 December 2017, *Caterpillar Financial Services* (C-500/16, EU:C:2017:996, paragraph 42).

62 This double limit amounts to considering that the adoption of the amending law interrupted running periods of time limitations.

142. Such a limitation period does not appear to be contrary to the principle of effectiveness, since it does not make it impossible or excessively difficult to exercise the rights conferred on individuals by the Union's legal order.[63] Indeed, the Court has already recognised the compatibility with Union law of limitation periods of 3[64] or even 2 years.[65] In addition, that period does not appear to be contrary to the principle of equivalence, as the same 5-year limitation period seems to apply to compensatory remedies based on the violation of national law. It is, however, for the referring court to verify this point.

143. The second limitation period concerns the time limit within which taxable persons had to submit their claim for compensation.

144. On this point, it may be inferred from the description of the facts at issue in Case C-126/18, which have also been mentioned during the hearing by the Hungarian Government, that, even if taxable persons had not introduced a special claim, they had 5 years from the repeal of the paid consideration condition to introduce a claim for compensation.

145. Since the limitation period does not run from the materialisation of the damage, the national practice seems to have resulted in extending the initial limitation period provided for by Paragraph 164(1) of the Code of Fiscal Procedure.[66] If this is correct, Hungary has gone far beyond what was required by Union law, namely, to provide a sufficient limitation period in order that individuals may exercise their rights conferred on them by the Union's legal order. I do not see how, in such a context, the principle of effectiveness might be infringed.

146. With regard to the principle of equivalence, it does not appear from the file that a more advantageous time limit period is applicable when the Kúria (Supreme Court) finds that a provision is contrary to a higher national standard.

147. I therefore propose that the seventh question be answered in the sense that the principles of effectiveness and equivalence must be interpreted as precluding a national practice that definitively deprives taxable persons of the possibility of claiming default interest because the paid consideration condition was in force at the time when it was applied. These principles do not preclude, however, a national practice that definitively deprives taxable persons of the possibility of claiming default interest because the limitation period for making such a claim has expired if that limitation period is (i) not unreasonably short and (ii) applies also to late payments of debts relating to damage caused by a provision infringing national law. To avoid any possible doubt, in my view it is plain that the applicable 5-year limitation period in the present case could not in itself be regarded as unreasonably short.

63 Accordingly, where the Court finds that national legislation is contrary to Union law, the Member States concerned are not obliged to review situations which have become final after exhaustion of the available remedies or after expiry of the time limits laid down for such remedies. See, for example, judgment of 8 March 1988, *Brown* v *Court of Justice* (125/87, EU:C:1988:136, paragraph 14), and, by analogy, judgments of 30 September 2003, *Köbler* (C-224/01, EU:C:2003:513, paragraph 38); of 16 March 2006, *Kapferer* (C-234/04, EU:C:2006:178, paragraph 20); and of 10 July 2014, *Impresa Pizzarotti* (C-213/13, EU:C:2014:2067, paragraph 58).

64 Judgment of 15 April 2010, *Barth* (C-542/08, EU:C:2010:193, paragraph 28).

65 Judgment of 15 December 2011, *Banca Antoniana Popolare Veneta* (C-427/10, EU:C:2011:844, paragraph 25). In the case of Community tax paid by civil servants and agents of the institutions, the period for appeal is the period provided for by the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union. According to the General Court's case-law, the time period is 3 months from the salary slip reflecting, clearly and for the first time, a decision of a pecuniary nature. See, for example, judgment of 14 December 2017, *Campo and Others* v *EEAS* (T-577/16, not published, EU:T:2017:909, paragraph 34 to 36).

66 On the basis of that provision, Hungary could have refused to respond to claims related to damage that occurred more than 5 years after the last day of the calendar year in which the declaration or notification relating to that tax should have been made or, in the absence of such declaration or notification, during which the tax should have been paid.

V. Conclusion

148. In the light of the foregoing considerations, I propose that the Court answer the questions asked by the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court of Szeged, Hungary) and the Szekszárdi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court of Szekszárd, Hungary) as follows:

(1) The principle of the primacy of Union law must be interpreted, in a situation such as that described by those courts, as precluding a national practice from calculating the interest due to compensate the damage caused by the application of the paid consideration condition, on the basis of a rate corresponding to the one applied by the competent central bank to the main refinancing operations, without either increasing that rate to reflect the rate that a taxable person who is not a credit institution could have obtained to borrow the same amount, or providing any interest to offset monetary erosion as regards the value of the compensation due, when the latter has been calculated on the date on which that damage definitively accrued.

(2) The principles of effectiveness and equivalence of remedies must be interpreted as not precluding a national practice which, in circumstances such as those in the main proceedings, takes as the starting date for the calculation of default interest due for the late payment of the compensation not the date on which the interest as compensation for the main damage first became due, but a later date, provided, on the one hand, that this date is not postponed beyond a reasonable period of time after the obligation to pay that compensation has been recognised and that, on the other hand, the same date is applied in the event of late payment of a compensation based exclusively on national law.

(3) The principles of effectiveness and equivalence must be interpreted as not precluding a national practice requiring taxable persons to introduce a special claim when claiming default interest, if that requirement equally applies irrespective of whether the damage at the origin of the debt for which payment is late arose from a breach of EU law or national law.

(4) The principles of effectiveness and equivalence must be interpreted as not precluding a national practice according to which default interest may be granted only if a taxable person has submitted a claim of which the content does not concern the payment of the compensation due for all the damage inflicted as a result of the application of the paid consideration condition, but the recovery, on the date of repeal of that condition, of the excess deductible VAT existing on that date, if, in order to submit such a request, the taxable person does not need to still have, at that date, an excess of deductible VAT, and that such a requirement also applies in the event of late payment of a compensation for breach of national law.

(5) The principle of effectiveness and equivalence must be interpreted as not precluding a national practice whereby default interest is applied only in respect of the amount of financial loss which occurred during the VAT reporting period preceding the introduction of the request, if the limitation period thus established by that national practice is not too short to allow a reasonably observant and circumspect individual to submit a claim for default interest, if such a condition is not applied retroactively and if it also applies in the event of late payment of a debt resulting from a breach of a rule of national law.

(6) The principles of effectiveness and equivalence must be interpreted as precluding a national practice that definitively deprives taxable persons of the possibility of claiming default interest because the paid consideration condition was in force at the time when it was applied. These principles do not preclude, however, a national practice that definitively deprives taxable persons of the possibility of claiming default interest because the limitation period for making such a claim has expired, if that limitation period is (i) not unreasonably short and (ii) applies also to late payments of debts relating to damage caused by a provision infringing national law.