Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 21 January 2021 [1]

Case C-844/19

CS,
Finanzamt Graz-Stadt
Interveners:
Finanzamt Judenburg Liezen,
technoRent International GmbH

(Request for a preliminary ruling
from the Verwaltungsgerichtshof (Supreme Administrative Court, Austria))

(Request for a preliminary ruling – Taxation – VAT – Directive 2006/112/EC – Article 183 – Refund of excess VAT – Payment of interest in the case of a subsequent increase of excess VAT or a subsequent reduction of tax liability – No national implementing measures – Direct effect of a directive – Application by analogy of a non-relevant directive – Refund Directive (Directive 2008/9/EC) – Article 27 – Interpretation of national law in conformity with EU law)

I. Introduction

1. The present case raises the question whether the VAT Directive grants the taxable person a direct entitlement to interest on excess value added tax (VAT) paid out only subsequently or on an entitlement to a tax refund paid out only subsequently. According to the referring court, the Republic of Austria has not provided for any such rule on interest in respect of VAT. The existing rules on interest for other forms of taxation could not be interpreted in conformity with EU law and applied to VAT.

2. However, another directive (the Refund Directive) provides for a directly applicable entitlement to interest on excess VAT subsequently refunded to taxable persons established in another Member State who have not carried out any domestic transactions. The question is whether that directive may be applied by analogy in this case.

3. Even if that is not so, and a directly applicable entitlement to interest cannot be inferred from the VAT Directive, the Court can possibly still provide further useful guidance which is helpful in achieving a resolution of the dispute in conformity with EU law.

[1] Original language: German.

II. Legal framework

A. EU law

4. Article 90 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [2] ('the VAT Directive') concerns the reduction of the taxable amount and provides:

'1. In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.

2. In the case of total or partial non-payment, Member States may derogate from paragraph 1.'

5. Article 183 of the VAT Directive states:

'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.'

6. Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC [3] ('the Refund Directive'), concerns the arrangements for the refund of input tax to taxable persons not established in the Member State of refund who have not carried out any transactions there.

7. Article 27 of the Refund Directive concerns payment of interest in respect of the abovementioned entitlement to a refund and provides:

'1. Interest shall be calculated from the day following the last day for payment of the refund pursuant to Article 22(1) until the day the refund is actually paid.

2. Interest rates shall be equal to the interest rate applicable with respect to refunds of VAT to taxable persons established in the Member State of refund under the national law of that Member State.

If no interest is payable under national law in respect of refunds to established taxable persons, the interest payable shall be equal to the interest or equivalent charge which is applied by the Member State of refund in respect of late payments of VAT by taxable persons.'

[2] OJ 2006 L 347, p. 1.

[3] OJ 2008 L 44, p. 23.

B. Austrian law

8. In Austria, the taxable person's entitlement to interest is governed by the Bundesgesetz über allgemeine Bestimmungen und das Verfahren für die von den Abgabenbehörden des Bundes, der Länder und Gemeinden verwalteten Abgaben (Federal Law laying down general provisions and the procedure for the taxes administered by the federal, regional and municipal tax authorities, Bundesabgabenordnung (Federal Tax Code), BAO).

9. Paragraph 205 of the BAO concerns the taxable person's entitlement to interest in respect of entitlements to refunds in income tax and corporation tax:

'(1) Differences in income tax and corporation tax arising from tax notices in disregard of initial payments (subparagraph 3), after comparison with advance payments or with the previously fixed tax, shall bear interest for the period from 1 October of the year following the year in which the tax became chargeable until the date of publication of those notices (interest on tax deferral). This shall apply *mutatis mutandis* to differences arising from

(a) cancellations of tax notices, …

(2) Annual interest on tax deferral shall amount to 2% above the base interest rate. Interest on tax deferral which is less than the sum of EUR 50 shall not be applied. Interest on tax deferral shall be applied for a maximum period of 48 months. …'

10. Paragraph 205a of the BAO has, since 1 January 2012, covered the taxable person's entitlement to interest on overpaid taxes where, following an appeal, they are subsequently lower than the amount originally fixed and states:

'(1) Where a previously paid tax liability the amount of which depends directly or indirectly on the resolution of an appeal against a notice is reduced, interest shall be applied, at the request of the person liable for tax, for the period from payment until publication of the notice or decision reducing the tax (appeal interest). …

(4) Annual interest shall amount to 2% above the base interest rate. Interest which is less than the sum of EUR 50 shall not be applied.'

III. Main proceedings

11. The request for a preliminary ruling is based on two different appeals on a point of law before the referring court.

– *The first appeal on a point of law (Ro 2017/15/0035)*

12. In his turnover tax return for August 2007, CS, the applicant in the first case ('applicant 1'), claimed excess VAT of EUR 60 689.28. However, the tax office determined that excess only in the amount of EUR 14 689.28. Applicant 1 successfully challenged that decision before the courts. The excess VAT was 'paid out' to him in full on 22 May 2013.

13. On 30 May 2013, applicant 1 applied for the interest payable on that excess VAT, pursuant to Paragraph 205a of the BAO, for the period from the entry into force of that provision (1 January 2012) until performance on 22 May 2013. The tax office rejected that application. Applicant 1 unsuccessfully brought an action against that decision at the Bundesfinanzgericht (Federal Finance Court, Austria).

14. The Bundesfinanzgericht based the rejection on the ground that Paragraph 205a of the BAO does not cover the case of excess VAT successfully recovered through an action, but only a successful judicial challenge of a tax liability that has been fixed and paid in too high an amount. Applicant 1 has brought an appeal on a point of law against that decision.

– ***The second appeal on a point of law (Ro 2018/15/0026)***

15. The applicant in the second case (technoRent International, 'applicant 2') is an undertaking established in Germany. It sold machines in Austria in 2003 and 2004 and paid turnover tax on those transactions in Austria. In 2005, in its turnover tax return for the month of May 2005, applicant 2 claimed a turnover tax credit in the amount of EUR 367 081.58. This was against the background of a subsequent reduction of the consideration in accordance with Article 90 of the VAT Directive, in all likelihood because some of the machines were not paid for or were not paid for in full.

16. That reduction of the taxable amount was assessed by the authorities (from July 2006 to June 2008). The credit was initially 'paid out' to applicant 2 on 10 March 2008. However, at the end of the assessment, the tax office took the view that the reduction of the taxable amount should not be made. By notice of 13 October 2008, the tax office therefore fixed an additional assessment in the amount of EUR 367 081.58. The action brought against that turnover tax notice was successful.

17. In October 2013, applicant 2 claimed interest on the sum of EUR 367 081.58 for the period from July 2005 to May 2013. In respect of that claim, the tax office decided that an entitlement to interest (in the amount of EUR 10 021.32) arose only for the period from 1 January 2012 to 8 April 2013 pursuant to Paragraph 205a of the BAO. An appeal brought against that decision was upheld in part by the court on 29 May 2017, in so far as it also awarded applicant 2 default interest for the period from 2 September 2005 to 9 March 2008. The appeal on a point of law brought by the tax office against that decision is directed exclusively against the award of default interest for the period from 2 September 2005 to 9 March 2008.

IV. Request for a preliminary and procedure before the Court

18. The Verwaltungsgerichtshof (Supreme Administrative Court, Austria), which has jurisdiction to hear both appeals on a point of law, considers that it is unable to interpret the rules on interest contained in Paragraphs 205 and 205a of the BAO in conformity with EU law and, by order of 24 October 2018, has thereupon referred the following questions to the Court for a preliminary ruling:

'(1) Is there a rule with direct effect under EU law that grants a taxpayer to whom the tax office, in circumstances such as those in the main proceedings, has not refunded a turnover tax credit in good time entitlement to interest for late payment, with the result that he can claim that entitlement before the tax office or before the administrative courts, even though national law does not provide for such a rule on interest?

If Question 1 is answered in the affirmative:

(2) Is it permissible also in the case of a turnover tax claim made by the taxable person as a result of a subsequent reduction of consideration under Article 90(1) of Directive 2006/112 that interest begins to accrue only after expiry of a reasonable period for the tax office to assess the lawfulness of the entitlement claimed by the taxable person?

(3) Does the fact that the national law of a Member State does not provide for any rule on interest in respect of the late crediting of turnover tax credits mean that the national courts must, when calculating interest, apply the legal consequence laid down by the second subparagraph of Article 27(2) of Directive 2008/9 laying down detailed rules for the refund of value added tax, provided for in Directive [2006/112], to taxable persons not established in the Member State of refund but established in another Member State, even though the main proceedings do not fall within the scope of that directive?'

19. In the proceedings before the Court, the Republic of Austria and the European Commission submitted written observations.

V. Legal assessment

A. The questions referred for a preliminary ruling

20. All three questions referred for a preliminary ruling essentially ask whether, and if so to what extent, it is necessary under EU law to apply interest to excess VAT or to an entitlement to a VAT refund (often also referred to as a VAT credit). Since the second and third questions are conditional on the first question being answered in the affirmative, I will begin by addressing the first question.

21. The referring court appears to base that question on the premiss that Austrian law does not provide for payment of interest on excess VAT or on an entitlement to a VAT refund or that such provision is made only for very specific circumstances. It is not possible to apply Paragraph 205 of the BAO, which covers income taxation in general, by analogy. In addition, since 1 January 2012, Paragraph 205a of the BAO has covered only the case where VAT is reduced subsequently on the basis of a notice, but the input tax deduction is not increased. That is why the court asks about a rule with direct effect 'under EU law'.

22. The present case concerns payment of interest on excess VAT or on an entitlement to a VAT refund. As relevant EU law, consideration must therefore be given primarily to the VAT Directive, and above all Article 183 and Article 90 thereof.

23. In order to answer the first question, the scope of an entitlement to interest under Article 183 and Article 90 of the VAT Directive (see B.1) and its direct effect must thus be clarified (see B.2). Subsequently, a direct application by analogy of the inherently non-relevant provision in Article 27 of the Refund Directive (see B.3) and the possibilities of an interpretation of Paragraphs 205 and 205a of the BAO in conformity with EU law should be examined (see C).

B. Interest on excess VAT and on an entitlement to a VAT refund

1. Content and scope of Article 183 and Article 90 of the VAT Directive

(a) Interest on excess VAT

24. It must be clarified, first of all, whether the individual is entitled to interest under the VAT Directive. The VAT Directive does not contain a specific rule on interest. Furthermore, Article 183 of the VAT Directive states only that the Member States may, in accordance with conditions which they shall determine, either make a refund or carry the excess resulting from the positive difference between the deduction and the tax liability forward to the following period.

25. On the basis of its wording, that provision does not lay down any obligation to pay interest on a refund of excess VAT or the date from which such interest is payable. [4]

26. Article 183 of the VAT Directive must nevertheless be seen in connection with Article 179. Under Article 179 of the VAT Directive, the taxable person must make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which the right of deduction has arisen. In essence, Article 179 of the VAT Directive arranges a compulsory set-off with the amount of VAT due for the given tax period. If the amount of VAT due exceeds the deduction, a (lower) amount of tax is still payable. If, on the other hand, the amount of VAT due is less than the deduction, excess VAT remains, which is the subject of Article 183 of the VAT Directive.

27. This connection between Article 183 of the VAT Directive and the taxable person's right of deduction in the light of the principle of neutrality is the basis for the Court's settled case-law according to which the right to deduct is an integral part of the VAT scheme, which as a general rule may not be limited. In particular, that right is exercisable *immediately* in respect of all the taxes charged on transactions relating to inputs. [5]

28. Furthermore, it must be observed that the existence of the right to deduct is covered by Articles 167 to 172 of the VAT Directive in the Chapter headed 'Origin and scope of right of deduction', whereas Articles 178 to 183 of the directive relate only to the conditions for the exercise of that right. [6] The Court has made it clear that the conditions determined by the Member States for the exercise of that right cannot undermine the principle of fiscal neutrality of the VAT system by making the taxable person bear the burden of the VAT in whole or in part. [7] As a result, when the refund to the taxable person of the excess VAT is not made within a reasonable

4 See judgments of 24 October 2013, *Rafinăria Steaua Română* (C-431/12, EU:C:2013:686, paragraph 19), and of 12 May 2011, *Enel Maritsa Iztok 3* (C-107/10, EU:C:2011:298, paragraph 27).

5 Judgments of 24 October 2013, *Rafinăria Steaua Română* (C-431/12, EU:C:2013:686, paragraph 21); of 28 July 2011, *Commission* v *Hungary* (C-274/10, EU:C:2011:530, paragraph 43); of 12 May 2011, *Enel Maritsa Iztok 3* (C-107/10, EU:C:2011:298, paragraph 32); of 30 September 2010, *Uszodaépítő* (C-392/09, EU:C:2010:569, paragraph 34); and of 15 July 2010, *Pannon Gép Centrum* (C-368/09, EU:C:2010:441, paragraph 37 and the case-law cited).

6 Judgment of 28 July 2011, *Commission* v *Hungary* (C-274/10, EU:C:2011:530, paragraph 44); see, to that effect, judgment of 29 April 2004, *Terra Baubedarf-Handel* (C-152/02, EU:C:2004:268, paragraph 30), and judgment of 8 November 2001, *Commission* v *Netherlands* (C-338/98, EU:C:2001:596, paragraph 71).

7 See expressly judgments of 24 October 2013, *Rafinăria Steaua Română* (C-431/12, EU:C:2013:686, paragraph 22); of 28 July 2011, *Commission* v *Hungary* (C-274/10, EU:C:2011:530, paragraph 45); and of 12 May 2011, *Enel Maritsa Iztok 3* (C-107/10, EU:C:2011:298, paragraph 33).

period, the principle of fiscal neutrality of the VAT system requires that the financial losses incurred by the taxable person owing to the unavailability of the sums of money at issue are compensated through the payment of default interest. [8]

29. In this respect, under Article 183 of the VAT Directive in conjunction with the principle of neutrality the taxable person – like applicant 1 in this case – is entitled to payment of interest on his unpaid excess VAT.

(b) Interest on an entitlement to a VAT refund

30. The same applies, as the Commission asserts, in the case of a taxable person who, like applicant 2 in this case, has initially duly paid the VAT and, on the basis of a reduction of the taxable amount under Article 90 of the VAT Directive, is now – since the reduction was made – entitled to a refund (VAT credit) against the tax creditor.

31. In both cases a taxable person is charged too much VAT, which he has paid either indirectly through his suppliers or directly to the State. Having regard to the principle of neutrality, the liability in the case of late consideration of the reduction of the taxable amount under Article 90 of the VAT Directive is therefore no different from the late payment of excess VAT under Article 183. For this reason, the Court has also ruled, in a case of reduction of the taxable amount, [9] that 'the principle of the obligation of Member States to repay with interest amounts of tax levied in breach of EU law follows from that law'. [10]

32. Consequently, VAT amounts which were initially correctly levied and are to be repaid on the basis of a subsequent reduction of the taxable amount, because there is no longer any legal basis for payment, are, from that date, also to be refunded together with interest.

(c) Payment of interest excluded by Article 27 of the Refund Directive?

33. Contrary to the suggestion made in the request for a preliminary ruling and also to the view taken by the Republic of Austria, it cannot, on the other hand, be inferred from the wording of the second sentence of Article 27(2) of the Refund Directive that the Member States could refrain entirely from applying interest to such entitlements. That provision states: 'If no interest is payable under national law in respect of refunds to established taxable persons, the interest payable shall be equal to the interest or equivalent charge which is applied by the Member State of refund in respect of late payments of VAT by taxable persons.'

34. The words 'if no interest is payable under national law' do not mean that the legislature considered that it was possible not to lay down any rules on interest on VAT refunds to taxable persons in national law.

[8] See expressly judgments of 24 October 2013, *Rafinăria Steaua Română* (C-431/12, EU:C:2013:686, paragraphs 23 and 24), and of 12 May 2011, *Enel Maritsa Iztok 3* (C-107/10, EU:C:2011:298, paragraph 51). See also, to that effect, judgment of 23 April 2020, *Sole-Mizo and Dalmandi Mezőgazdasági* (C-13/18 and C-126/18, EU:C:2020:292, paragraph 36).

[9] Judgment of 19 July 2012, *Littlewoods Retail Ltd and Others* (C-591/10, EU:C:2012:478, paragraph 25).

[10] See also, albeit with regard of Article 183 of the VAT Directive, judgment of 23 April 2020, *Sole-Mizo and Dalmandi Mezőgazdasági* (C-13/18 and C-126/18, EU:C:2020:292, paragraph 36).

35. As is clear from recitals 1 and 2 of the Refund Directive, before that directive was introduced in its present form there was a considerable deficit with regard to the implementation and harmonisation of the laws of the Member States on the refund of VAT to taxable persons not established in the territory of the country. In order to counter that deficit, according to recital 3 of the Refund Directive, the position of businesses was enhanced. A specific catch-all clause that is binding on all Member States was therefore introduced in the second sentence of Article 27(2) of the Refund Directive. According to that provision, if there is no rule on interest on entitlements to refunds of non-established taxable persons, the rules on late payments to the State are applicable.

36. However, that catch-all clause governing a specific case (second sentence of Article 27(2) of the Refund Directive) certainly does not preclude the application of interest in all other cases, especially since the principle of neutrality (see above, point 28) requires interest to be paid in all other cases.

(d) Interim conclusion

37. Article 183 and Article 90 of the VAT Directive in conjunction with the principle of neutrality therefore oblige the Member State to apply interest to excess VAT and to entitlements to tax refunds on the basis of a reduction of the taxable amount.

2. Directly applicable entitlement to interest under Article 183 or Article 90 of the VAT Directive in conjunction with the principle of neutrality?

38. The next point to be examined is whether Article 183 and Article 90 of the VAT Directive in conjunction with the principle of neutrality grant a directly applicable entitlement to interest. As the Republic of Austria maintains, that is not the case. It is clear from Article 183 and Article 90 of the VAT Directive in conjunction with the principle of neutrality that interest must be applied in principle. However, EU law does not stipulate the precise details, such as the interest rate or the date from which interest becomes payable.

39. Rather, Member States enjoy freedom of implementation when determining the application of interest.[11] The same holds for payment of interest on the entitlement to a refund under Article 90 of the VAT Directive.[12]

40. The Court has confirmed this freedom of implementation on a number of occasions. It has held, for example, that legislation stipulating payment of excess VAT within a period of 45 days from the declaration of the tax to the date on which interest starts to be accrued is consistent with Article 183 of the VAT Directive.[13]

41. It is therefore for the Member States to lay down the detailed rules relating to the application of interest in their national law. In the light of the different monetary areas existing within the European Union, with differing inflation and interest rates, this conceptual openness of the VAT

[11] Judgments of 23 April 2020, *Sole-Mizo and Dalmandi Mezőgazdasági* (C-13/18 and C-126/18, EU:C:2020:292, paragraph 37); of 24 October 2013, *Rafinăria Steaua Română* (C-431/12, EU:C:2013:686, paragraph 20 – autonomy); of 28 July 2011, *Commission* v *Hungary* (C-274/10, EU:C:2011:530, paragraph 39); of 12 May 2011, *Enel Maritsa Iztok 3* (C-107/10, EU:C:2011:298, paragraphs 33 and 64); and of 10 July 2008, *Sosnowska* (C-25/07, EU:C:2008:395, paragraph 17).

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

[13] Judgment of 12 May 2011, *Enel Maritsa Iztok 3* (C-107/10, EU:C:2011:298, paragraphs 50 and 61).

Directive is understandable. A direct effect of Article 183 or Article 90 of the VAT Directive in conjunction with the principle of neutrality in establishing a specific entitlement to interest for the taxable person is thus excluded.

3. Can Article 27 of the Refund Directive be applied by analogy?

42. As the Republic of Austria maintains, an application by analogy of Article 27 of the Refund Directive – as the referring court clearly contemplates in its third question – is also ruled out in this case. That article is sufficiently specific and precise and would thus have direct effect in itself. However, it requires the Member State to adopt a certain rule on interest only for cases of a taxable person not established in the Member State without domestic transactions.

43. Consequently, by failing to introduce such a rule on interest for the case of a taxable person established in the Member State (or a taxable person with domestic transactions), Austria has not infringed Article 27 of the Refund Directive. The spirit and purpose of the direct effect of a directive is not therefore applicable here. It is not necessary to prevent the State from taking advantage of its own failure to comply with EU law, nor is it possible to do so. [14]

44. Nor is there an unintended gap in the law, as a condition for an application by analogy. As has already been explained above (points 35 and 36), before the Refund Directive was introduced in its present form, there was a considerable deficit in the arrangements for the refund of VAT to taxable persons not established in the territory of the country. It would appear, however, that the legislature considered there to be no such deficit for taxable persons established in the territory of the country, otherwise it would have not just laid down rules for this one specific case.

45. Aside from that, an application by analogy of a non-relevant directive would represent a disregard for the assessment made by the EU legislature which is apparent from the VAT Directive. By the wording of Article 183 and Article 90 of the VAT Directive, it left it to the Member States to implement and apply interest to excess VAT and to the entitlement to a refund. The Court points out the freedom enjoyed by Member States. [15] That freedom would be circumvented by an application by analogy of Article 27 of the Refund Directive.

4. Interim conclusion

46. There is no rule on interest with direct effect under Article 183 and Article 90 of the VAT Directive in conjunction with the principle of neutrality in favour of the taxable person. There is insufficient precision with regard to the interest rate and the date from which interest becomes payable. This does not alter the fact that Article 183 and Article 90 of the VAT Directive in conjunction with the principle of neutrality require a rule on interest. An application by analogy of Article 27 of the Refund Directive is likewise ruled out.

[14] See expressly, to that effect, judgments of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33, paragraph 38); of 14 July 1994, *Faccini Dori* (C-91/92, EU:C:1994:292, paragraphs 22 and 23); and of 26 February 1986, *Marshall* (152/84, EU:C:1986:84, paragraph 49).

[15] Judgments of 28 July 2011, *Commission* v *Hungary* (C-274/10, EU:C:2011:530, paragraph 39); of 12 May 2011, *Enel Maritsa Iztok 3* (C-107/10, EU:C:2011:298, paragraphs 33 and 64); of 10 July 2008, *Sosnowska* (C-25/07, EU:C:2008:395, paragraph 17); and of 25 October 2001, *Commission* v *Italy* (C-78/00, EU:C:2001:579, paragraph 32).

C. Limits of the freedom of implementation enjoyed by the Member States: principles of equivalence and effectiveness

47. Because the VAT Directive does not therefore contain a rule on interest with direct effect, the arrangements governing entitlement to interest fall, in principle, within the competence of the Member States. As the Court has ruled, they have freedom in this regard [16] and may determine the detailed rules for the entitlement to interest.

48. However, the detailed rules for the refund must not be less favourable than those governing similar domestic situations (principle of equivalence) nor may they be framed in such a way as to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law (principle of effectiveness). [17]

49. These principles have repercussions on the application and interpretation of national law by national courts. As the Court has ruled, it is for the national court to ensure that EU law is given full effect, in the present case the VAT Directive, and if necessary to disapply, on its own authority, the previous interpretation if that interpretation is not compatible with EU law. [18] The national court is required to consider the whole body of national law in order to assess to what extent it may be applied so as not to produce a result contrary to EU law. [19]

50. However, that possibility must first be open to the national court. In the view of the referring court, the wording of Paragraphs 205 and 205a of the BAO and their objective and general scheme exclude their application 'to late turnover tax refunds'. However, an interpretation in conformity with EU law or an application by analogy of those rules could be possible. If there is no rule governing overpayment of VAT, an unintended gap in the law might exist. That gap could be closed for applicant 2, for example, through the application by analogy of the rules on interest governing other forms of tax (such as Paragraph 205 of the BAO) in accordance with the principles of equivalence and effectiveness.

51. As regards applicant 1, it is not crucial to the resulting excess VAT (the balance pursuant to Article 183 of the VAT Directive) whether the tax liability is reduced or the input tax deduction is increased following a legal remedy. A broad interpretation of Paragraph 205a of the BAO in conformity with EU law could therefore be conceivable here in accordance with the principles of equivalence and effectiveness.

[16] Judgments of 23 April 2020, *Sole-Mizo and Dalmandi Mezőgazdasági* (C-13/18 and C-126/18, EU:C:2020:292, paragraph 37); of 24 October 2013, *Rafinăria Steaua Română* (C-431/12, EU:C:2013:686, paragraph 20 – autonomy); of 28 July 2011, *Commission* v *Hungary* (C-274/10, EU:C:2011:530, paragraph 39); and of 12 May 2011, *Enel Maritsa Iztok 3* (C-107/10, EU:C:2011:298, paragraph 29).

[17] Judgments of 16 July 2020, *UR (VAT liability of lawyers)* (C-424/19, EU:C:2020:581, paragraph 25); of 4 March 2020, *Telecom Italia* (C-34/19, EU:C:2020:148, paragraph 58); of 10 July 2014, *Impresa Pizzarotti* (C-213/13, EU:C:2014:2067, paragraph 54); of 24 October 2013, *Rafinăria Steaua Română* (C-431/12, EU:C:2013:686, paragraph 20); of 21 January 2010, *Alstom Power Hydro* (C-472/08, EU:C:2010:32, paragraph 17); and of 3 September 2009, *Fallimento Olimpiclub* (C-2/08, EU:C:2009:506, paragraph 24).

[18] See expressly judgment of 16 July 2020, *UR (VAT liability of lawyers)* (C-424/19, EU:C:2020:581, paragraph 30); see, by analogy, judgments of 4 March 2020, *Telecom Italia* (C-34/19, EU:C:2020:148, paragraph 61), and of 5 March 2020, *OPR-Finance* (C-679/18, EU:C:2020:167, paragraph 44). See also, to that effect, judgments of 10 July 2014, *Impresa Pizzarotti* (C-213/13, EU:C:2014:2067, paragraph 54); of 24 October 2013, *Rafinăria Steaua Română* (C-431/12, EU:C:2013:686, paragraph 20); and of 21 January 2010, *Alstom Power Hydro* (C-472/08, EU:C:2010:32, paragraph 17).

[19] Similarly, judgments of 4 March 2020, *Telecom Italia* (C-34/19, EU:C:2020:148, paragraph 59), and of 8 November 2016, *Ognyanov* (C-554/14, EU:C:2016:835, paragraphs 59 and 66).

52. Since not all national law can be interpreted in conformity with EU law, however, as is clear inter alia from the obligation of Member States to pay damages for infringements of EU law,[20] this can ultimately be determined only by the referring court.

53. Because the first question was answered in the negative, there is no longer any need for a separate answer to the second and third questions.

VI. Conclusion

54. I therefore propose that the Court answer the first question referred for a preliminary ruling by the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) as follows:

Under EU law – in this instance Article 183 and Article 90 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the VAT Directive') in conjunction with the principle of neutrality – interest is to be paid, in principle, on excess VAT under Article 183, just as on an entitlement to a refund resulting from the adjustment of the taxable amount under Article 90 of the VAT Directive, when the refund is not made within a reasonable period. However, there is no rule of the directive with direct effect concerning the specific application of interest to such entitlements. The referring court is therefore obliged to do everything within its power to produce a result in conformity with EU law, for example by means of an application by analogy or a broad interpretation of national law in conformity with EU law.

[20] See, to that effect, judgments of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33, paragraphs 42 and 43); of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443, paragraph 112); and of 14 July 1994, *Faccini Dori* (C-91/92, EU:C:1994:292, paragraph 27).