Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

28 April 2022*

(Reference for a preliminary ruling – Customs union – Rights to the repayment or to the payment of sums of money levied or refused by a Member State in breach of EU law – Anti-dumping duties, import duties, export refunds and financial penalties – Concept of 'breach of EU law' – Misinterpretation or misapplication of EU law – Finding of a breach of EU law by a Court of the European Union or by a national court – Right to the payment of interest – Period covered by that payment of interest)

In Joined Cases C-415/20, C-419/20 and C-427/20,

THREE REQUESTS for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), made by decisions of 20 August 2020 and 1 September 2020, received at the Court on 7, 8 and 10 September 2020, in the proceedings

Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions GmbH (C-415/20),

F. Reyher Nchfg. GmbH & Co. KG vertr. d. d. Komplementärin Verwaltungsgesellschaft F. Reyher Nchfg. mbH (C-419/20)

v

Hauptzollamt Hamburg (C-415/20 and C-419/20),

and

Flexi Montagetechnik GmbH & Co. KG

v

Hauptzollamt Kiel (C-427/20),

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, J. Passer (Rapporteur), F. Biltgen, N. Wahl and M.L. Arastey Sahún, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

* Language of the case: German.

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions GmbH, by M. Niestedt and K. Göcke, Rechtsanwälte,

– F. Reyher Nchfg. GmbH & Co. KG vertr. d. d. Komplementärin Verwaltungsgesellschaft F. Reyher Nchfg. mbH, by S. Pohl and J. Sparr, Rechtsanwälte,

– Flexi Montagetechnik GmbH & Co. KG, by H. Bleier, Rechtsanwalt,

– the Netherlands Government, initially by M.K. Bulterman, M.L. Noort and J.M. Hoogveld, and subsequently by M.K. Bulterman and J.M. Hoogveld, acting as Agents,

– the European Commission, by R. Pethke and M. Salyková, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 January 2022,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of the principles of EU law relating to the repayment of sums of money levied by Member States in breach of EU law and to the payment of the corresponding interest.

2 The requests have been made in three sets of proceedings between, first, Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions GmbH ('Gräfendorfer') and the Hauptzollamt Hamburg (Principal Customs Office, Hamburg, Germany), second, F. Reyher Nchfg. GmbH & Co. KG vertr. d. d. Komplementärin Verwaltungsgesellschaft F. Reyher Nchfg. mbH ('Reyher') and that principal customs office and, third, Flexi Montagetechnik GmbH & Co. KG ('Flexi Montagetechnik') and the Hauptzollamt Kiel (Principal Customs Office, Kiel, Germany), concerning requests for the repayment of sums of money paid by those different companies, on various legal bases, to those two principal customs offices and for the payment of the corresponding interest.

Legal context

European Union law

Customs legislation

3 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the Community Customs Code') was repealed and replaced by Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1, and corrigendum OJ 2013 L 287, p. 90) ('the Union Customs Code').

4 Article 236(1) of the Community Customs Code provided, inter alia:

'Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed …

…'

5 Article 241 of that code stated, inter alia:

'Repayment by the competent authorities of amounts of import duties or export duties or of credit interest or interest on arrears collected on payments of such duties shall not give rise to the payment of interest by those authorities. However, interest shall be paid:

– where a decision to grant a request for repayment is not implemented within three months of the date of adoption of that decision,

– where national provisions so stipulate.

…'

6 Article 116 of the Union Customs Code, which is entitled 'General provisions', is worded as follows:

'1. Subject to the conditions laid down in this Section, amounts of import or export duty shall be repaid or remitted on any of the following grounds:

(a) overcharged amounts of import or export duty;

…

(c) error by the competent authorities;

…

6. Repayment shall not give rise to the payment of interest by the customs authorities concerned.

However, interest shall be paid where a decision granting repayment is not implemented within three months of the date on which that decision was taken, unless the failure to meet the deadline was outside the control of the customs authorities.

In such cases, the interest shall be paid from the date of expiry of the three-month period until the date of repayment. …

…'

Legislation concerning export refunds on agricultural products

7 Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11), to which the national court refers, was repealed and replaced by Commission Regulation (EC) No 612/2009 of 7 July 2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 2009 L 186, p. 1).

8 Article 51(1) of Regulation No 800/1999 stated, inter alia:

'Where it is found that an exporter with a view to the grant of an export refund has applied for a refund exceeding that applicable, the refund due for the relevant exportation shall be that applicable to the products actually exported, reduced by:

(a) half the difference between the refund applied for and that applicable to the actual export;

(b) twice the difference between the refund applied for and that applicable where the exporter intentionally provides false information.

…'

9 Article 48(1) of Regulation No 612/2009 reproduces the provisions formerly set out in Article 51(1) of Regulation No 800/1999.

German law

The Tax Code

10 The Abgabenordnung (Tax Code) (BGBl. 2002 I, p. 3866), in the version applicable to the disputes in the main proceedings ('the Tax Code'), provides, in Paragraph 1 thereof, entitled 'Scope':

'1. This Code shall apply to all taxes, including the tax rebates governed by German federal law or the law of the European Union in so far as these are administered by the revenue authorities of the Federation or of the *Länder*. It may be applied only subject to the law of the European Union.

…

3. Subject to the law of the European Union, the provisions of this Code shall apply *mutatis mutandis* to ancillary tax payments …'

11 Paragraph 3 of that code, entitled 'Tax, ancillary tax payments', provides, inter alia:

'1. "Taxes" shall mean payments of money, other than payments made in consideration of the performance of a particular activity, which are collected by a public body for the purpose of raising revenue and imposed by the body on all persons to whom the characteristics on which the law bases liability for payment apply; …

…

3. Import and export duties pursuant to Article 5(20) and (21) of the Union Customs Code shall be taxes within the meaning of this Code. …

4. "Ancillary tax payments" shall mean:

…

(4) interest pursuant to Paragraphs 233 to 237 of this Code …,

…

(8) interest on import and export duties pursuant to Article 5(20) and (21) of the Union Customs Code,

…'

12 Under Paragraph 37 of the Tax Code, entitled 'Claims arising from the tax debtor-creditor relationship':

'1. Claims arising from the tax debtor-creditor relationship shall be the tax claim, the tax rebate claim, … the claim to an ancillary tax payment, the refund claim pursuant to subparagraph 2 and the tax refund claims set out in individual tax laws.

2. Where a tax, a tax rebate, … or an ancillary tax payment was paid or repaid in the absence of legal grounds, the person on whose account the payment was made shall be entitled to a refund from the recipient of the amount paid or repaid. …'

13 According to Paragraph 233 of that code, entitled 'General':

'Interest shall be charged on claims arising from the tax debtor-creditor relationship (Paragraph 37) only to the extent that this is legally prescribed. …'

14 Paragraph 236 of the Tax Code, entitled 'Interest on refund amounts ordered in legal proceedings', reads as follows:

'1. Subject to the provisions of subparagraph 3 below, where an assessed tax is reduced or a tax rebate granted by final and binding judicial ruling or as a result of such a ruling, interest shall accrue on the amount to be refunded or rebated from the date proceedings commence to the date of payment. Where the amount to be refunded is not paid until after legal proceedings have commenced, interest shall begin to accrue from the date of payment.

…’

The Law implementing the common organisation of markets and direct payments

15 The Gesetz zur Durchführung der gemeinsamen Marktorganisationen und der Direktzahlungen (Marktorganisationsgesetz) (Law implementing the common organisation of markets and direct payments) of 7 November 2017 (BGBl. 2017 I, p. 3746), in the version applicable to the dispute in the main proceedings in Case C-415/20 (‘the Law implementing the common organisation of markets and direct payments’), provides, in Paragraph 6 thereof, entitled ‘Benefits’:

‘1. The Bundesministerium für Ernährung und Landwirtschaft [(Federal Ministry of Food and Agriculture, Germany)] is empowered to adopt … by means of regulations not subject to approval by the Bundesrat [(Federal Council, Germany)], in so far as this is necessary for the implementation of

(1) provisions and acts … relating to products which are the subject of a common organisation of the market … in respect of
(a) export refunds,

…

procedural provisions and provisions specifying the conditions and the amount of those benefits, in so far as they are determined, determinable or circumscribed …

…’

16 Paragraph 14 of that law, entitled ‘Interest’, states:

‘1. Amounts due for the repayment of a benefit or the breach of any other obligation shall bear interest at the basic rate plus five percentage points from the day on which they become due. …

2. Amounts due in respect of a benefit or intervention shall bear interest from the date of referral to the court, in accordance with Paragraphs 236, 238 and 239 [of the Tax Code]. They shall not otherwise give rise to the payment of interest.’

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-415/20

17 Gräfendorfer is a company established in Germany which exports poultry carcasses to third countries.

18 The Principal Customs Office, Hamburg, refused to grant Gräfendorfer export refunds on poultry carcasses which it had exported to third countries between January and June 2012 on the ground that the poultry carcasses were not of ‘fair marketable quality’ within the meaning of the EU legislation on export refunds for agricultural products, since they had not been fully plucked and contained too many giblets. The Principal Customs Office, Hamburg, also imposed a financial

penalty on Gräfendorfer on the ground that it had applied for an export refund in excess of the refund applicable. Gräfendorfer brought an administrative appeal against that refusal, and then another against that financial penalty.

19 The Finanzgericht Hamburg (Finance Court, Hamburg, Germany) subsequently ruled, in legal proceedings brought by two companies other than Gräfendorfer, that the presence of a small number of feathers and a certain amount of giblets on poultry carcasses had to be classified, in the light of the judgment of 24 November 2011, *Gebr. Stolle and Doux Geflügel* (C-323/10 to C-326/10, EU:C:2011:774) as not precluding the grant of export refunds on those products.

20 In the light of that judgment, the Principal Customs Office, Hamburg, decided to grant Gräfendorfer the export refunds claimed by it and to repay it for the financial penalty imposed on it.

21 By letter of 16 April 2015, Gräfendorfer applied to the Principal Customs Office, Hamburg, for payment of interest both on those export refunds and on that financial penalty, for the entirety of the periods during which it had been unlawfully deprived of the possibility of having the corresponding sums of money available. The Principal Customs Office, Hamburg, rejected that application and then the administrative appeal brought by Gräfendorfer against the rejection of that application.

22 On 23 May 2018, Gräfendorfer brought an action before the referring court, in support of which it claims, in essence, that EU law confers, on any person in respect of whom the payment of any sum of money has been refused or imposed by a national authority in breach of EU law, the right to obtain, in addition to the payment or repayment of that sum of money, the payment of interest for the entire period during which that sum of money was unavailable.

23 In its order for reference, the Finanzgericht Hamburg (Finance Court, Hamburg) states, in the first place, that there is no provision of EU legislation or national law applicable to the dispute in the main proceedings which makes it possible to uphold Gräfendorfer's claim for interest and that the outcome of that aspect of the dispute depends, therefore, on whether that claim may be addressed in the light of the principles identified by the Court in its case-law relating to the repayment, by the national authorities, of sums of money the payment of which has been imposed on persons in breach of EU law.

24 In the second place, the referring court notes that it follows from that case-law that EU law confers on persons the right to obtain from the competent national authorities not only the repayment of any charge, tax, levy or duty which they have paid in breach of EU law, but also compensation, in the form of the payment of interest, for the loss constituted by the unavailability of the amount of that charge, tax, levy or duty for the entire period during which it was unavailable (judgments of 19 July 2012, *Littlewoods Retail and Others*, C-591/10, EU:C:2012:478; of 27 September 2012, *Zuckerfabrik Jülich and Others*, C-113/10, C-147/10 and C-234/10, EU:C:2012:591; and of 18 April 2013, *Irimie*, C-565/11, EU:C:2013:250). That being the case, that court notes that one of the sums of money at issue in the main proceedings does not constitute a charge, tax, levy or duty, but a financial penalty (judgment of 11 July 2002, *Käserei Champignon Hofmeister*, C-210/00, EU:C:2002:440).

25 According to that court, reasonable doubt may be raised as to whether such a financial penalty must be regarded as having been paid in breach of EU law, within the meaning of that case-law. The repayment of the corresponding amount by the national authority concerned was made not

as a result of the annulment by a national court or the invalidation by the Court of the act or acts, respectively, of domestic law or EU law on the basis of which that financial penalty was imposed, but as a result of a judgment in which the Court interpreted EU law, by means of a preliminary ruling, in a way that does not correspond to the interpretation which had previously been given by that authority and on which that authority had relied in order to impose that financial penalty. The referring court therefore considers that it is necessary to refer questions to the Court on that point, while stating that it is inclined to take the view that, where a national authority imposes a financial penalty on a person on the basis of a misinterpretation of EU law, that financial penalty must be regarded as having been imposed in breach of EU law and, consequently, that repayment of the corresponding amount must give rise to the payment of interest covering the entire period during which that amount was unavailable to that person.

26 In the third place, the Finanzgericht Hamburg (Finance Court, Hamburg) states that, in the absence of any provision of EU law laying down the detailed rules under which the late payment of export refunds and the repayment of a financial penalty such as that at issue in the main proceedings must give rise to the payment of interest, that question must be regarded as falling within the scope of the domestic law of each Member State. German law does not lay down the payment of interest as a general principle, but provides for such payment only in precisely defined cases within which the dispute in the main proceedings does not fall. The provisions of German law, in particular those of the Law implementing the common organisation of markets and direct payments, state, first, that a person is entitled to obtain the payment of interest on export refunds where that person has brought legal proceedings against the decision by which the competent national authority unlawfully refused to grant export refunds to it, but not in the case where that person has merely brought an administrative appeal against such a decision, as Gräfendorfer did. Nor is interest provided for in the case of repayment of an unjustified financial penalty. Second, and in any event, even where that person has brought legal proceedings, provision is made for payment of interest only from the date on which that action was brought and not from the date on which the decision of the competent authority was taken.

27 However, the referring court is uncertain whether those provisions, which have the effect of depriving a person to whom export refunds were granted late, after having been unlawfully refused, and on whom a financial penalty was wrongly imposed, of all or part of the compensation to which that person is entitled by reason of the unavailability of the corresponding amounts, in the form of the payment of interest, are consistent with the requirement of effectiveness which circumscribes the procedural autonomy of the Member States.

28 In those circumstances, the Finanzgericht Hamburg (Finance Court, Hamburg) decided to stay the proceedings and to refer the following two questions to the Court of Justice for a preliminary ruling:

‘(1) Does the requirement under EU law for Member States to repay, with interest, duties levied in breach of EU law also apply where the reason for the repayment is not a finding by the [Court of Justice] that a provision of EU law has been breached, but that the Court of Justice has interpreted a (sub)heading of the Combined Nomenclature [set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1)]?

(2) Do the principles relating to a claim to interest established by the [Court of Justice] also apply to the payment of export refunds refused by the Member State authority in breach of EU law?’

Case C-419/20

29 Reyher is a company established in Germany which imported into the European Union, during 2010 and 2011, fasteners from a company established in Indonesia which is the subsidiary of another company established in China.

30 The Principal Customs Office, Hamburg, took the view that those fasteners had to be regarded as originating in China and as such should be subject, when imported into the European Union, to the anti-dumping duties set out in Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ 2009 L 29, p. 1). It therefore decided to impose the payment of those anti-dumping duties on Reyher.

31 While paying those anti-dumping duties, Reyher brought an action against that decision before the Finanzgericht Hamburg (Finance Court, Hamburg).

32 In a decision of 3 April 2019, that court held that the anti-dumping duties imposed on Reyher were not legally owed, since the Principal Customs Office, Hamburg, had failed to prove that the fasteners imported into the European Union by Reyher originated in China.

33 In May 2019, that principal customs office repaid the amount of the anti-dumping duties concerned to Reyher. However, it refused to pay interest on that amount, for the period from the date of payment of those duties to the date of their repayment, and then dismissed the administrative appeal brought against that refusal by Reyher.

34 On 10 February 2020, Reyher brought an action before the Finanzgericht Hamburg (Finance Court, Hamburg), in support of which it claims, in essence, that it follows from the judgment of 18 January 2017, *Wortmann* (C-365/15, EU:C:2017:19), that the person on whom a national authority imposed anti-dumping duties in breach of EU law is entitled not only to repayment of the amount of those anti-dumping duties but also to the payment of interest on that amount, for the entire period from the date on which it was paid to the date on which it was repaid. In addition, Reyher submits that the payment of anti-dumping duties must be regarded as having been made in breach of EU law not only where the Court invalidates the regulation which established those duties, as it did in that judgment, but also where a national court finds that a national authority has misapplied that regulation by wrongly imposing anti-dumping duties on a person on the basis of that regulation, as in the present case.

35 In its order for reference, in the first place, the Finanzgericht Hamburg (Finance Court, Hamburg) states, first of all, that it follows from Paragraph 236(1) of the Tax Code that a person who has brought legal proceedings against a decision imposing the payment of anti-dumping duties is entitled, where it is established that that payment was not legally owed, to obtain the payment of interest on the amount of the duties concerned for the period from the date on which proceedings were brought before the court to the date of repayment of that amount. Next, it observes that Article 241 of the Community Customs Code, as interpreted by the Court in the judgment of 18 January 2017, *Wortmann* (C-365/15, EU:C:2017:19), does not preclude the application of that provision of the Tax Code. Lastly, it considers that Article 116 of the Union Customs Code, which replaced Article 241 of the Community Customs Code and which is worded differently from that article, is not applicable to the dispute in the main proceedings.

36 In the second place, the referring court states that no provision of EU or national law applicable to this dispute allows it to grant the request for payment of interest made by Reyher for the period from the date on which the Principal Customs Office, Hamburg, decided to impose on Reyher the payment of anti-dumping duties to the date on which it brought legal proceedings against that decision.

37 In the third and last place, the referring court is uncertain whether the case-law of the Court allows that request to be granted in respect of the period concerned. In that regard, it observes, in particular, that it appears to follow from the judgment of 19 July 2012, *Littlewoods Retail and Others* (C-591/10, EU:C:2012:478), that, where a national authority has misapplied an act or provision of EU law when imposing the payment of a duty on a person and where a national court has found that there has been such a breach of EU law, that person is entitled to obtain not only the repayment of the amount of the duty wrongly paid, but also the payment of interest on that amount, for the entire period from the date on which it was paid to the date on which it is repaid. In addition, the referring court notes that the rationale behind that judgment and the case-law of which it forms part appears to be to restore the situation in which such a person would have been in the absence of a breach of EU law, by enabling that person to recover in full the sum which would have been available if that illegality had not occurred.

38 In those circumstances, the Finanzgericht Hamburg (Finance Court, Hamburg) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is there an infringement of EU law, which is a condition for entitlement to interest under EU law as developed by the [Court of Justice], where a Member State authority imposes a duty pursuant to EU law but a Member State court subsequently finds that the factual conditions for the imposition of the duty have not been met?’

Case C-427/20

39 Flexi Montagetechnik is a company established in Germany which imported into the European Union bolt hooks which are used in the production of dog leashes.

40 The Principal Customs Office, Kiel, took the view that those bolt hooks fell under a different heading of the Combined Nomenclature set out in Annex I to Regulation No 2658/87 from that declared by Flexi Montagetechnik and that they should, on that basis, be subject to import duties of a higher amount than those paid by Flexi Montagetechnik. It therefore decided to amend, to that extent, the amount of those import duties.

41 While paying the difference between the amount of the import duties initially paid and the amount of those duties as resulting from that amendment, Flexi Montagetechnik brought legal proceedings in September 2014 which ultimately led the Bundesfinanzhof (Federal Finance Court, Germany) to deliver, on 20 June 2017, a judgment by which it held that the bolt hooks concerned fell under the heading declared by Flexi Montagetechnik and, consequently, annulled the notices by which the Principal Customs Office, Kiel, had amended the amount of the corresponding import duties.

42 The Principal Customs Office, Kiel, then repaid Flexi Montagetechnik the difference between the amount of import duties initially paid by it and the amount of those duties as subsequently amended. However, it refused to pay interest on that difference for the period from the date of payment of those duties to the date of their partial repayment, and then dismissed the administrative appeal brought against that refusal.

43 Flexi Montagetechnik brought legal proceedings against that refusal, following which the Principal Customs Office, Kiel, paid it interest for the period from the date on which it brought the legal proceedings referred to in paragraph 41 of the present judgment to the date on which that principal customs office had repaid to it the difference between the amount of import duties initially paid by it and the amount of those duties as subsequently amended.

44 In its order for reference, the Finanzgericht Hamburg (Finance Court, Hamburg), before which those legal proceedings have been brought, harbours doubts as to whether Flexi Montagetechnik may, in the absence of any provision of secondary EU law or national law in that regard, derive from the Court's case-law a right to payment of interest on the sum which the customs authorities claimed from it, in breach of EU law, for the period between the date of payment of that sum and the date on which it brought those legal proceedings.

45 The considerations which the referring court puts forward in that regard correspond, in essence, to those underlying its order for reference in Case C-419/20, as summarised in paragraphs 35 to 37 of the present judgment.

46 In those circumstances, the Finanzgericht Hamburg (Finance Court, Hamburg) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is there an infringement of EU law, which is a condition for entitlement to interest under EU law as developed by the [Court of Justice], where a Member State authority imposes a duty in breach of legally valid provisions of EU law and a Member State court makes a finding of that infringement of EU law?'

Procedure before the Court

47 By decision of the President of the Court of 9 October 2020, Cases C-415/20, C-419/20 and C-427/20 were joined for the purposes of the written part of the procedure.

48 By decision of the Court of 27 April 2021, they were also joined for the purposes of the oral part of the procedure and the judgment to be delivered.

Consideration of the questions referred

49 As is apparent from the statements made in the orders for reference which gave rise to the three joined cases, as summarised in paragraphs 23 to 27, 31 to 37 and 41 to 45 of the present judgment, the various questions referred to the Court overlap on several points and therefore call for an overall examination.

50 Having regard to the wording of those various questions and the issues underlying them, as set out in those paragraphs, the Court considers that, by those questions, the referring court asks, in essence, whether the principles of EU law relating to the rights of persons to obtain the repayment of sums of money the payment of which has been imposed on them by a Member State in breach of EU law and the payment of interest on those sums of money must be interpreted:

– first, as meaning that they apply where the sums of money in question correspond, on the one hand, to export refunds which were granted late to a person, after having been refused in breach of EU law, and, on the other hand, to a financial penalty which was imposed on that person as a result of that breach;

– second, as meaning that they apply where it follows from a decision of the Court or a decision of a national court that the payment of export refunds, a financial penalty, anti-dumping duties or import duties has, as the case may be, been refused or imposed by a national authority on the basis either of an incorrect interpretation of EU law or of an incorrect application of that law, and

– third, as precluding national legislation which provides that, where the payment of export refunds, a financial penalty, anti-dumping duties or import duties has, as the case may be, been refused or imposed in breach of EU law, the payment of interest, on the one hand, is due only if legal proceedings have been brought for the purposes of obtaining the payment or repayment of the sum of money in question and, on the other hand, may be made only in respect of the period from the date on which those proceedings were brought to the date of the decision given by the court having jurisdiction, to the exclusion of the earlier period.

51 In that regard, in the first place, it should be noted that it follows from the settled case-law of the Court, first of all, that any person on whom a national authority has imposed the payment of a tax, duty, charge or other levy in breach of EU law has the right, under EU law, to obtain the repayment from the Member State concerned of the corresponding sum of money (see, to that effect, judgments of 9 November 1983, *San Giorgio*, 199/82, EU:C:1983:318, paragraph 12; of 8 March 2001, *Metallgesellschaft and Others*, C-397/98 and C-410/98, EU:C:2001:134, paragraph 84; and of 9 September 2021, *Hauptzollamt B (Optional tax reduction)*, C-100/20, EU:C:2021:716, paragraph 26 and the case-law cited).

52 In addition, such a person has the right, also under EU law, to obtain from that Member State not only the repayment of the sum of money levied though not due, but also the payment of interest intended to compensate for the unavailability of that sum (see judgments of 19 July 2012, *Littlewoods Retail and Others*, C-591/10, EU:C:2012:478, paragraphs 24 to 26, and of 9 September 2021, *Hauptzollamt B (Optional tax reduction)*, C-100/20, EU:C:2021:716, paragraphs 26 and 27).

53 Such rights to the repayment of sums of money the payment of which has been imposed by a Member State on a person in breach of EU law and to the payment of interest on those sums constitute the expression of a general principle of recovery of sums paid but not due (see, to that effect, judgment of 6 September 2011, *Lady & Kid and Others*, C-398/09, EU:C:2011:540, paragraphs 18, 20 and 26).

54 In view of the general nature of the principle which they express, it must be considered, first, that those two rights apply in the situation where the sum of money which a Member State has imposed on a person constitutes a financial penalty wrongly imposed pursuant to an act of EU law or provisions of national law adopted by that Member State in order to implement such an act, to transpose it or to ensure compliance with it. In the same way as a tax, duty, charge or other levy paid in breach of EU law, such a financial penalty must therefore be repaid to the person concerned, to whom interest is also owed in order to compensate for the unavailability of the corresponding sum of money.

55 It follows that those rights apply, in particular, to a financial penalty such as that at issue in Case C-415/20, which is intended to enable the Member States to ensure compliance with EU legislation concerning export refunds on agricultural products, as is apparent from the case-law of the Court to which the referring court refers (see, to that effect, judgment of 11 July 2002, *Käserei Champignon Hofmeister*, C-210/00, EU:C:2002:440, paragraphs 40, 60 and 66).

56 As regards, second, the question whether the right to obtain the payment of interest must also apply in the situation where such export refunds have been paid late to the person who has applied for them, after the competent national authority has refused to grant them in breach of EU law, it should be noted that such a situation is characterised by the fact that the person concerned has been deprived, during a given period of time, of the sum of money corresponding to those export refunds, on account of that lateness, which is itself the consequence of a breach of EU law.

57 That situation is comparable to that of a person who has been deprived, during a given period of time, of the sum of money corresponding to a tax, duty, charge or other levy the payment of which has been required by a Member State, in breach of EU law, and who has the right, on that basis, to the payment of interest intended to compensate for the unavailability of that sum of money, in accordance with the case-law referred to in paragraph 52 above.

58 Therefore, it must be accepted, by analogy, that, where export refunds have been paid late to a person, in breach of EU law, that person has the right to obtain the payment of interest intended to compensate for the unavailability of the corresponding sum of money.

59 It thus follows from paragraphs 51 to 58 of the present judgment that the principles of EU law relating to the rights of persons to obtain the repayment of sums of money the payment of which has been imposed on them by a Member State in breach of EU law and the payment of interest on those sums of money must be interpreted as meaning that they apply where the sums of money in question correspond, on the one hand, to export refunds which were granted late to a person, after having been refused in breach of EU law, and, on the other hand, to a financial penalty which was imposed on that person as a result of that breach.

60 In the second place, it follows from the Court's settled case-law referred to in paragraphs 51 and 52 above that it is the fact that the payment of a tax, duty, charge or other levy has been imposed by a national authority 'in breach of EU law' which forms the basis for and justifies the right, for persons who have wrongly paid the corresponding sum of money, to obtain the repayment of that sum by the Member State which levied it and the payment of interest by that Member State.

61 In that regard, it must be observed, first of all, that such a breach may concern any rule of EU law, whether it be a provision of primary or secondary law (see judgments of 9 November 1983, *San Giorgio*, 199/82, EU:C:1983:318, paragraph 12, and of 9 September 2021, *Hauptzollamt B*

(Optional tax reduction), C-100/20, EU:C:2021:716, paragraph 26), or a general principle of EU law (see judgment of 9 September 2021, *Hauptzollamt B (Optional tax reduction)*, C-100/20, EU:C:2021:716, paragraph 28).

62 As regards, next, the nature of that breach, it follows from paragraphs 53 to 59 above that the rights to repayment and to the payment of interest which persons derive from EU law are the expression of a general principle, the application of which is not limited to certain breaches of EU law or excluded where there are other breaches.

63 It follows that those rights may be relied on not only where a national authority has imposed the payment of a sum of money, such as a levy, tax or anti-dumping duty, on a person on the basis of an EU act which proves to be vitiated by illegality (see, to that effect, judgments of 27 September 2012, *Zuckerfabrik Jülich and Others*, C-113/10, C-147/10 and C-234/10, EU:C:2012:591, paragraphs 65 and 69, and of 18 January 2017, *Wortmann*, C-365/15, EU:C:2017:19, paragraphs 34 and 37), but also in other situations.

64 Thus, they may be relied on, in particular, where the payment of a tax or charge has been imposed on a person on the basis of national legislation which proves to be contrary to a provision of primary or secondary EU law (see, to that effect, judgments of 8 March 2001, *Metallgesellschaft and Others*, C-397/98 and C-410/98, EU:C:2001:134, paragraphs 82 to 84 and 96, and of 15 October 2014, *Nicula*, C-331/13, EU:C:2014:2285, paragraphs 27 to 31), or where it is found that a national authority has misapplied, in the light of EU law, an EU act or national legislation implementing or transposing such an act when it imposed the payment of a tax on that person (see, to that effect, judgments of 19 July 2012, *Littlewoods Retail and Others*, C-591/10, EU:C:2012:478, paragraphs 10, 11 and 34, and of 9 September 2021, *Hauptzollamt B (Optional tax reduction)*, C-100/20, EU:C:2021:716, paragraphs 25 to 36).

65 It is clear from the statements made by the referring court that the three legal and factual situations in respect of which it seeks a ruling from the Court fall within the latter situation. Those statements show that, as regards Case C-415/20, the national authority concerned incorrectly applied EU law, based on a misinterpretation of EU law, when it refused to grant export refunds to a person and imposed a financial penalty on that person. Similarly, in Cases C-419/20 and C-427/20, the national authorities concerned incorrectly applied EU law, based on an error of law or an error in the assessment of the facts, when they imposed, respectively, anti-dumping and import duties on persons.

66 Lastly, it is apparent from the case-law of the Court that the existence of a breach of EU law giving rise to the right to repayment and to the payment of interest to the person concerned and at the same time requiring the Member State in question to make that repayment and that payment of interest may be established not only by the EU judicature (see, to that effect, judgment of 18 January 2017, *Wortmann*, C-365/15, EU:C:2017:19, paragraph 37), which alone has jurisdiction to annul an EU measure or to declare it invalid (judgments of 22 October 1987, *Foto-Frost*, 314/85, EU:C:1987:452, paragraphs 15 to 20, and of 6 October 2015, *Schrems*, C-362/14, EU:C:2015:650, paragraph 62), but also by a national court, whether that court is called upon to draw the appropriate conclusions from a finding of illegality or invalidity previously made by the EU judicature (see, to that effect, judgment of 18 January 2017, *Wortmann*, C-365/15, EU:C:2017:19, paragraph 38) or to find that a measure adopted by a national authority is vitiated by an incorrect implementation of EU law.

67 In that regard, it should be noted that Article 19 TEU entrusts the responsibility for ensuring the full application of EU law in all Member States and the judicial protection that persons derive from EU law not only to the EU judicature itself, but also to the national courts, whose task is thus, in collaboration with the EU judicature, to ensure that in the interpretation and application of the Treaties the law is observed, as the Advocate General noted in points 82 and 83 of her Opinion.

68 In addition, where there is doubt as to the interpretation of EU law in a given case, those national courts have, as the case may be, the power or obligation to make a request to the Court for a preliminary ruling, in accordance with Article 267 TFEU, bearing in mind that preliminary rulings on interpretation given by the Court clarify and define, where necessary, the meaning and scope of the rules of law interpreted therein as they must be or ought to have been understood and applied from the time of their coming into force (judgment of 7 August 2018, *Hochtief*, C-300/17, EU:C:2018:635, paragraph 55).

69 Consequently, it follows from paragraphs 59 to 68 above that the principles of EU law relating to the rights of persons to obtain the repayment of sums of money the payment of which has been imposed on them by a Member State in breach of EU law and the payment of interest on those sums of money must be interpreted as meaning that they apply, generally and without prejudice to the detailed rules for the exercise of those rights in a given case, where it follows from a decision of the Court or a decision of a national court that the payment of export refunds, a financial penalty, anti-dumping duties or import duties has, as the case may be, been refused or imposed by a national authority on the basis either of an incorrect interpretation of EU law or of an incorrect application of that law.

70 In the third and last place, the purpose of the right to payment of interest referred to in paragraph 52 above is, as is apparent from the case-law cited in that paragraph, to compensate for the unavailability of the sum of money of which the person concerned was wrongly deprived.

71 That compensation may be made, depending on the circumstances, in accordance with the detailed rules laid down by the applicable EU legislation or, in the absence of such legislation, in accordance with those applicable under national law.

72 In the present case, as the referring court points out, the disputes in the main proceedings in Cases C-419/20 and C-427/20 concern sums of money corresponding to customs duties not owed. The repayment of those duties is governed, to a certain extent, by legislation adopted by the EU legislature, namely that applicable in customs matters, as is apparent from paragraphs 3 to 6 of the present judgment. By contrast, the dispute in the main proceedings in Case C-415/20 concerns sums of money corresponding to export refunds on agricultural products paid late and a financial penalty wrongly imposed. The relevant provisions of the EU legislation which is applicable in that area, cited in paragraphs 7 to 9 of that judgment, do not provide for a mechanism comparable to that which was introduced for customs duties not owed.

73 In the light of that difference in situation, it must be observed, first of all, that it follows from the case-law of the Court that the repayment of customs duties not owed, as provided for in Article 236(1) of the Community Customs Code, which, according to the referring court, is applicable *ratione temporis*, must give rise to the payment of interest (see, to that effect, judgment of 18 January 2017, *Wortmann*, C-365/15, EU:C:2017:19, paragraphs 36 to 38). Furthermore, the exception to that general principle, referred to in Article 241 of that code, is not applicable where, as in the present case, the reason why those duties are not owed is that they

were levied in breach of EU law (see, to that effect, judgment of 18 January 2017, *Wortmann*, C-365/15, EU:C:2017:19, paragraphs 25 to 27). As the Advocate General observed in points 103 and 109 of her Opinion, the same is true of the exception referred to in Article 116(6) of the Union Customs Code, which now reproduces, in essence, the content of Article 241 of the Community Customs Code.

74 In those circumstances, it should be noted, next, as regards both the customs duties at issue in Cases C-419/20 and C-427/20 and the financial penalty at issue in Case C-415/20, that, as the Court has consistently held, in the absence of EU legislation, it is for the internal legal order of each Member State to lay down the detailed rules according to which interest must be paid in the event of the repayment of sums of money levied in breach of EU law. However, those detailed rules must comply with the principles of equivalence and effectiveness, a requirement whose fulfilment means, inter alia, that those rules must not be framed in such a way as to make the exercise of the right to payment of interest guaranteed by EU law excessively difficult or impossible in practice (see judgments of 19 July 2012, *Littlewoods Retail and Others*, C-591/10, EU:C:2012:478, paragraphs 27 and 28, and of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraphs 26 and 27). Similar requirements also apply in the case of late payment of a sum of money owed under EU law, such as that corresponding to the export refunds at issue in Case C-415/20.

75 In particular, such detailed rules for the payment of interest should not lead to depriving the person concerned of adequate compensation for the loss sustained, which presupposes, inter alia, that the interest paid to that person covers the entire period running, as the case may be, from the date on which the person paid or should have been paid the sum of money in question to the date on which that sum is repaid or paid to that person (see, to that effect, judgments of 18 April 2013, *Irimie*, C-565/11, EU:C:2013:250, paragraphs 26 to 28, and of 23 April 2020, *Sole-Mizo and Dalmandi Mezőgazdasági*, C-13/18 and C-126/18, EU:C:2020:292, paragraphs 43, 49 and 51).

76 It follows that EU law precludes a legal mechanism which does not fulfil that requirement and which consequently does not allow for the effective exercise of the rights to repayment and to the payment of interest guaranteed by EU law (see, to that effect, judgments of 18 April 2013, *Irimie*, C-565/11, EU:C:2013:250, paragraph 29, and of 15 October 2014, *Nicula*, C-331/13, EU:C:2014:2285, paragraphs 38 and 39).

77 Therefore, EU law precludes national legislation under which the payment of interest on sums of money the payment of which was, as the case may be, imposed on or refused to a person in breach of EU law, such as those at issue in the main proceedings, may be made only in respect of the period from the date on which the legal proceedings for the repayment or the grant of those sums of money was brought to the date of the decision given by the court having jurisdiction, to the exclusion of the earlier period, such as the national legislation at issue in the main proceedings. The person concerned must also be able to claim and obtain such interest for the period from the date on which the sum of money in question was paid to the Member State concerned or should have been granted to that person by that Member State to the date on which such proceedings are brought.

78 Lastly, in view of the referring court's questions as to whether it is permissible for a national legislature to provide that the payment of interest may, in any event, benefit only persons who have brought legal proceedings seeking the repayment or the grant of sums of money which have been imposed on them or refused to them in breach of EU law, to the exclusion of persons who have merely brought an administrative appeal or a prior administrative complaint before the competent national authority which has been rejected by an express or implied decision of that

authority, it should be made clear that the effective exercise of the rights guaranteed by EU law does not require, as a matter of principle, that the national authorities proceed of their own motion with the repayment or the payment of such sums and with such payment of interest, in the absence of any initiative to bring proceedings by the persons seeking to enforce those rights.

79 As has been stated in paragraph 74 of the present judgment, the discretion enjoyed the Member States, in the absence of EU legislation, in specifying the detailed rules for the payment of interest on sums of money wrongly paid to them or which they have improperly withheld must be exercised in compliance with the principle of effectiveness and, in that respect, in particular, must not have the effect of making the exercise of rights conferred on individuals by the EU legal order excessively difficult or impossible in practice.

80 That question must itself be analysed, in accordance with the Court's settled case-law, by reference, in each case in which it arises, to the role of the national provision or provisions concerned in the proceedings as a whole, the way in which those proceedings are conducted and the special features of those provisions, before the various national bodies (judgment of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraph 36 and the case-law cited). In that context, it is appropriate to take into consideration, inter alia, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (judgments of 14 December 1995, *Peterbroeck*, C-312/93, EU:C:1995:437, paragraph 14, and of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 63). Furthermore, it is necessary, as is apparent from paragraph 75 of the present judgment, to determine whether the rules of national law relating to interest at issue in a given case result in depriving the person concerned of adequate compensation for the loss sustained.

81 It is in the light of those considerations that it is for the national court to determine whether the national legislation at issue in the main proceedings in the present case makes the exercise of their rights excessively difficult for persons who, while not having brought legal proceedings seeking the payment of a sum of money which has been refused to them or the repayment of a sum of money which they have paid, nevertheless took the initiative of bringing an administrative appeal or an administrative complaint to that end. In the context of that analysis, it is for that court, in particular, to take into account and, where appropriate, weigh up the interests relating, respectively, to the protection of the rights of the defence, to the principle of legal certainty, to the proper conduct of proceedings and to the observance of EU law and the rights which persons derive from it.

82 As regards the specific circumstances of Case C-415/20, it should, however, be stated, in general terms and as the Advocate General stated in point 124 of her Opinion, that the order for reference and the written observations submitted to the Court do not contain any explanation capable of justifying the fact that, after such a weighing-up exercise, the person may be refused the right to payment of interest solely on the ground that that person has not brought legal proceedings to obtain payment of a sum which had been refused to that person or repayment of a sum which had been imposed on that person in the form of a financial penalty, in breach of EU law.

83 As regards, more specifically, the principle of legal certainty, account must be taken of the fact that, in a situation such as that at issue in that case, the competent national authority may, without affecting the rights of third parties, adopt a decision granting the sum of money which was initially refused or the repayment of the sum initially imposed, in such a way that the

payment of interest does not conflict with a final administrative decision, as the competent authority appears to have done in this case, by going back on the initial decisions by which it had refused to grant the export refunds requested by the person and then imposed a financial penalty on that person.

84 It thus follows from paragraphs 70 to 83 of the present judgment that the principles of EU law relating to the rights of persons to obtain the repayment of sums of money the payment of which has been imposed on them by a Member State in breach of EU law and the payment of interest on those sums of money must be interpreted as precluding national legislation which provides that, where the payment of export refunds, a financial penalty, anti-dumping duties or import duties has, as the case may be, been refused or imposed in breach of EU law, the payment of interest may be made only in respect of the period from the date on which the legal proceedings seeking the payment of a sum of money which has been refused to them or the repayment of a sum of money which they have paid were brought to the date of the decision given by the court having jurisdiction, to the exclusion of the earlier period. On the other hand, those principles do not, in themselves, preclude such legislation from providing that that payment is to be due only if such proceedings have been brought, provided that this does not have the effect of making the exercise of the rights which persons derive from EU law excessively difficult.

85 In the light of all the foregoing considerations, the answer to the questions referred is that the principles of EU law relating to the rights of persons to obtain the repayment of sums of money the payment of which has been imposed on them by a Member State in breach of EU law and the payment of interest on those sums of money must be interpreted:

– first, as meaning that they apply where the sums of money in question correspond, on the one hand, to export refunds which were granted late to a person, after having been refused in breach of EU law, and, on the other hand, to a financial penalty which was imposed on that person as a result of that breach;

– second, as meaning that they apply where it follows from a decision of the Court or a decision of a national court that the payment of export refunds, a financial penalty, anti-dumping duties or import duties has, as the case may be, been refused or imposed by a national authority on the basis either of an incorrect interpretation of EU law or of an incorrect application of that law, and

– third, as precluding national legislation which provides that, where the payment of export refunds, a financial penalty, anti-dumping duties or import duties has, as the case may be, been refused or imposed in breach of EU law, the payment of interest may be made only in respect of the period from the date on which the legal proceedings seeking the payment or repayment of the sum of money in question were brought to the date of the decision given by the court having jurisdiction, to the exclusion of the earlier period. On the other hand, those principles do not, in themselves, preclude such legislation from providing that that payment is to be due only if such proceedings have been brought, provided that this does not have the effect of making the exercise of the rights which persons derive from EU law excessively difficult.

Costs

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

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

The principles of EU law relating to the rights of persons to obtain the repayment of sums of money the payment of which has been imposed on them by a Member State in breach of EU law and the payment of interest on those sums of money must be interpreted:

– **first, as meaning that they apply where the sums of money in question correspond, on the one hand, to export refunds which were granted late to a person, after having been refused in breach of EU law, and, on the other hand, to a financial penalty which was imposed on that person as a result of that breach;**

– **second, as meaning that they apply where it follows from a decision of the Court or a decision of a national court that the payment of export refunds, a financial penalty, anti-dumping duties or import duties has, as the case may be, been refused or imposed by a national authority on the basis either of an incorrect interpretation of EU law or of an incorrect application of that law, and**

– **third, as precluding national legislation which provides that, where the payment of export refunds, a financial penalty, anti-dumping duties or import duties has, as the case may be, been refused or imposed in breach of EU law, the payment of interest may be made only in respect of the period from the date on which the legal proceedings seeking the payment or repayment of the sum of money in question were brought to the date of the decision given by the court having jurisdiction, to the exclusion of the earlier period. On the other hand, those principles do not, in themselves, preclude such legislation from providing that that payment is to be due only if such proceedings have been brought, provided that this does not have the effect of making the exercise of the rights which persons derive from EU law excessively difficult.**

[Signatures]