



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

23 March 2023*

(Reference for a preliminary ruling – Excise duties – Directive 2008/118/EC – Article 16(1) – Authorisation to operate as a tax warehouse for products subject to excise duty – Successive suspension measures – Whether criminal in nature – Articles 48 and 50 of the Charter of Fundamental Rights of the European Union – Principle of the presumption of innocence – Principle *ne bis in idem* – Proportionality)

In Case C-412/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Satu Mare (Regional Court, Satu Mare, Romania), made by decision of 9 June 2021, received at the Court on 6 July 2021, in the proceedings

Dual Prod SRL

v

Direcția Generală Regională a Finanțelor Publice Cluj-Napoca – Comisia regională pentru autorizarea operatorilor de produse supuse accizelor armonizate,

THE COURT (Fourth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, L.S. Rossi, J.-C. Bonichot, S. Rodin and O. Spineanu-Matei, Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Dual Prod SRL, by D. Pătrăuș, A. Șandru and T.D. Vidrean-Căpușan, avocați,
- the Romanian Government, by E. Gane and A. Wellman, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and G. Galluzzo, avvocato dello Stato,

* Language of the case: Romanian.

– the European Commission, by A. Armenia and J. Jokubauskaitė, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 20 October 2022,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 16(1) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12), and Article 48(1) and Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between Dual Prod SRL and the Direcția Generală Regională a Finanțelor Publice Cluj-Napoca – Comisia regională pentru autorizarea operatorilor de produse supuse accizelor armonizate (Regional Directorate-General of Public Finances of Cluj-Napoca – Regional authority for the authorisation of operators dealing in or producing goods subject to harmonised excise duty, Romania), seeking, inter alia, annulment of the decision by which the latter suspended Dual Prod's authorisation to operate as a tax warehouse for products subject to excise duty.

Legal context

European Union law

- 3 Recitals 15 and 16 of Directive 2008/118 stated:

'(15) Since checks need to be carried out in production and storage facilities in order to ensure that the tax debt is collected, it is necessary to retain a system of warehouses, subject to authorisation by the competent authorities, for the purpose of facilitating such checks.

(16) It is also necessary to lay down requirements to be complied with by authorised warehousekeepers and traders without authorised warehousekeeper status.'
- 4 Article 1(1) of that directive provided:

'This Directive lays down general arrangements in relation to excise duty which is levied directly or indirectly on the consumption of the following goods (hereinafter "excise goods"):

...

(b) alcohol and alcoholic beverages covered by [Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21)] and [Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages (OJ 1992 L 316, p. 29)];

...'

5 Article 4 of that directive provided:

‘For the purpose of this Directive as well as its implementing provisions, the following definitions shall apply:

1. “authorised warehousekeeper” means a natural or legal person authorised by the competent authorities of a Member State, in the course of his business, to produce, process, hold, receive or dispatch excise goods under a duty suspension arrangement in a tax warehouse;

...

7. “duty suspension arrangement” means a tax arrangement applied to the production, processing, holding or movement of excise goods not covered by a customs suspensive procedure or arrangement, excise duty being suspended;

...

11. “tax warehouse” means a place where excise goods are produced, processed, held, received or dispatched under duty suspension arrangements by an authorised warehousekeeper in the course of his business, subject to certain conditions laid down by the competent authorities of the Member State where the tax warehouse is located.’

6 According to Article 15 of that directive:

‘1. Each Member State shall determine its rules concerning the production, processing and holding of excise goods, subject to this Directive.

2. The production, processing and holding of excise goods, where the excise duty has not been paid, shall take place in a tax warehouse.’

7 Article 16 of Directive 2008/118 was worded as follows:

‘1. The opening and operation of a tax warehouse by an authorised warehousekeeper shall be subject to authorisation by the competent authorities of the Member State where the tax warehouse is situated.

Such authorisation shall be subject to the conditions that the authorities are entitled to lay down for the purposes of preventing any possible evasion or abuse.

2. An authorised warehousekeeper shall be required to:

...

(b) comply with the requirements laid down by the Member State within whose territory the tax warehouse is situated;

...

(d) enter into his tax warehouse and enter in his accounts at the end of their movement all excise goods moving under a duty suspension arrangement, except where Article 17(2) applies;

(e) consent to all monitoring and stock checks.

...'

Romanian law

8 Article 364(1)(d) of Legea nr. 227/2015 privind Codul fiscal (Law No 227/2015 establishing the Tax Code) of 8 September 2015 (*Monitorul Oficial al României*, Part I, No 688 of 10 September 2015; 'the Tax Code') states:

'The competent authority shall issue an authorisation to operate as a tax warehouse to an establishment only if the following conditions are met:

...

(d) in the case of a natural person who is to operate as an authorised warehousekeeper, that he or she is not unfit, that he or she has not been finally convicted of or conditionally sentenced for the following criminal offences:

...

12. the criminal offences provided for in this Code.'

9 Article 369(3) of that code states:

'On a proposal from the supervising bodies, the competent authority may suspend the authorisation to operate as a tax warehouse:

...

(b) for a period of between 1 and 12 months, where it is found that one of the acts referred to in Article 452(1)(b) to (e), (g) and (i) has been committed;

(c) until final judgment has been given in criminal proceedings, where criminal proceedings have been brought in respect of the offences referred to in Article 364(1)(d);

...'

10 Article 452 of that code provides:

'(1) The following acts constitute criminal offences:

...

(h) the holding by any person outside a tax warehouse or the marketing on the territory of Romania of products that are subject to excise duty and a marking obligation, in accordance with this Title, where those products are unmarked or improperly marked or marked with false markings, beyond the limit of 10 000 cigarettes, 400 cigars of 3 grams, 200 cigars exceed-

ing 3 grams, 1 kilogram of smoking tobacco, 40 litres of ethyl alcohol, 200 litres of spirit drinks, 300 litres of intermediate products, 300 litres of fermented beverages other than beer and wine;

- (i) the use of mobile pipes and tubes, elastic hoses or other conduits of similar nature, the use of uncalibrated tanks, and the placement before meters of conduits or taps through which quantities of alcohol or spirits may be extracted without being measured by those meters;

...

(3) After establishing the facts referred to in paragraph 1(b) to (e), (g) and (i), the competent supervisory authority shall order that the activity be stopped and that the facility be sealed in accordance with the technological procedures for closing the facility, and shall send the inspection document to the tax authority that issued the authorisation, together with the proposal to suspend the authorisation to operate as a tax warehouse.'

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

- 11 Dual Prod is a company incorporated under Romanian law that is authorised to operate in the field of the production of alcohol and alcoholic beverages subject to excise duty.
- 12 On 1 August 2018, a search was carried out at the premises of that company.
- 13 Following that search, criminal proceedings *in rem* were initiated for suspected infringements of Article 452(1)(h) and (i) of the Tax Code consisting, first, in the removal and holding outside the tax warehouse of an amount exceeding 40 litres of ethyl alcohol with an alcoholic strength of at least 96% by volume and, secondly, in the installation of a hose at the production plant.
- 14 By decision of 5 September 2018, the competent administrative authority suspended Dual Prod's authorisation to operate as a tax warehouse for products subject to excise duty, for a period of 12 months, on the basis of Article 369(3)(b) of the Tax Code. That authority interpreted that provision as allowing such a suspension to be imposed on the basis of mere evidence that criminal offences may have been committed under the legislation governing goods subject to excise duty.
- 15 On 13 December 2019, the Curtea de Apel Oradea (Court of Appeal, Oradea, Romania), before which Dual Prod brought an action against the decision of 5 September 2018, reduced the length of that suspension to eight months, after holding that the imposition of the maximum suspension period provided for in Article 369(3)(b) of the Tax Code was manifestly disproportionate. That suspension was fully enforced.
- 16 After Dual Prod was formally charged, on 21 October 2020, in the criminal proceedings, which were initiated following the search on 1 August 2018, the competent administrative authority once more suspended, under Article 369(3)(c) of the Tax Code, Dual Prod's authorisation to operate as a tax warehouse for products subject to excise duty, pending the final outcome of the criminal proceedings. Dual Prod challenged that decision before the Tribunalul Satu Mare (Regional Court, Satu Mare, Romania).

- 17 That court observes that Directive 2008/118 contains general provisions on the authorisation of tax warehouses. From that, it infers that the principle of the presumption of innocence and the principle *ne bis in idem*, as enshrined in Article 48(1) and Article 50 of the Charter, may be relevant in the present case.
- 18 In that regard, that court asks, in the first place, whether the principle of the presumption of innocence precludes an administrative authority from suspending, for an indefinite period of time, the authorisation to operate as a tax warehouse for products subject to excise duty, held by a legal person, on the sole ground that there is evidence that the latter may have committed an offence, and even before a court has given a final ruling on the guilt of that person.
- 19 That court states, first, that the suspension of the authorisation granted to Dual Prod seems to indicate that that company is considered guilty and, secondly, that the criminal proceedings have been pending for more than three years now.
- 20 As regards, in the second place, the principle *ne bis in idem*, the referring court asks whether the imposition of two penalties of the same nature on a legal person, in respect of the same facts, in tax proceedings, on the sole ground that parallel criminal proceedings have reached a certain stage, is compatible with Article 50 of the Charter.
- 21 In those circumstances, the Tribunalul Satu Mare (Regional Court, Satu Mare) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is Article 48(1) of [the Charter], which concerns the principle of presumption of innocence, read in conjunction with Article 16(1) of [Directive 2008/118], to be interpreted as precluding a legal situation, such as that at issue in the present case, in which an administrative measure suspending an authorisation to operate as a producer of alcohol may be adopted on the basis of mere presumptions which are the subject of an ongoing criminal investigation, without any final conviction in criminal proceedings having been handed down?
- (2) Is Article 50 of [the Charter], which concerns the principle *ne bis in idem*, read in conjunction with Article 16(1) of [Directive 2008/118], to be interpreted as precluding a legal situation, such as that at issue in the present case, in which two penalties of the same nature (suspension of authorisation to operate as a producer of alcohol), differing only in [the duration of their effect], are imposed on the same person in respect of the same facts?’

Consideration of the questions referred

Preliminary observations

- 22 In the first place, it should be noted that the scope of the Charter, in so far as the action of the Member States is concerned, is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing EU law. That provision confirms the Court’s settled case-law, which states that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations (judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 78 and the case-law cited).

- 23 In the present case, it is apparent from the request for a preliminary ruling that, in parallel with the initiation of criminal proceedings *in rem* following a search at Dual Prod's premises, the competent administrative authority suspended, under Article 369(3)(b) of the Tax Code, for a period of 12 months, the authorisation granted to that company to operate as a tax warehouse for products subject to excise duty. That suspension was reduced to eight months, following an action brought by Dual Prod. At the end of that suspension, that administrative authority once more suspended, pursuant to Article 369(3)(c) of the Tax Code, the same authorisation, for an indefinite period, on the ground that Dual Prod had been formally charged in the criminal proceedings brought against it following the search at its premises.
- 24 It follows that the suspension measures at issue in the main proceedings are linked to the alleged infringements of the obligations imposed, by Romanian legislation, on holders of an authorisation to operate as a tax warehouse for products subject to excise duty, in order to prevent all forms of fraud or abuse.
- 25 In that regard, it should be recalled that, within the scope of Directive 2008/118, the purpose of which is to establish a harmonised general system of excise duties, the prevention of fraud and abuse is a common objective of both EU law and the laws of the Member States. First, those Member States have a legitimate interest in taking appropriate steps to protect their financial interests and, secondly, the prevention of possible tax evasion, avoidance and abuse is an objective pursued by that directive, as recitals 15 and 16 and Article 16 thereof confirm (see, to that effect, judgment of 13 January 2022, *MONO*, C-326/20, EU:C:2022:7, paragraphs 28 and 32 and the case-law cited).
- 26 Therefore, where a Member State suspends the authorisation required to operate a tax warehouse, within the meaning of Directive 2008/118, on the basis of indications that criminal offences under the legislation governing goods subject to excise duty have been committed, it is implementing that directive and, therefore, EU law, within the meaning of Article 51(1) of the Charter and must, therefore, comply with the provisions of the Charter.
- 27 In the second place, although it is ultimately for the referring court to assess whether the two suspension measures at issue in the main proceedings may be classified as 'criminal penalties', for the purposes of Article 48(1) and Article 50 of the Charter, it must, however, be noted that three criteria are relevant in that respect. The first criterion is the legal classification of the offence under national law, the second is the intrinsic nature of the offence, and the third is the degree of severity of the penalty that the person concerned is liable to incur (see, to that effect, judgments of 5 June 2012, *Bonda*, C-489/10, EU:C:2012:319, paragraph 37, and of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 25).
- 28 As regards the first criterion, it does not appear that the suspension measures at issue in the main proceedings are classified as 'criminal' under Romanian law.
- 29 Nevertheless, it should be noted, first, that the application of the provisions of the Charter protecting the persons accused in criminal proceedings is not limited to proceedings and penalties which are classified as 'criminal' by national law, but extends regardless of such a classification under national law to proceedings and penalties which must be considered to have a criminal nature on the basis of the two other criteria referred to in paragraph 27 above (judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 30).

- 30 As regards, secondly, the criterion relating to the intrinsic nature of the offence, it must be ascertained whether the measure at issue has a punitive purpose and the mere fact that it also pursues a deterrent purpose does not mean that it cannot be characterised as a criminal penalty. It is of the very nature of criminal penalties that they seek both to punish and to deter unlawful conduct. By contrast, a measure which merely repairs the damage caused by the offence at issue is not criminal in nature (see, to that effect, judgment of 22 June 2021, *Latvijas Republikas Saeima (Penalty points)*, C-439/19, EU:C:2021:504, paragraph 89).
- 31 In the present case, it appears that the suspension measures were imposed on Dual Prod in parallel with criminal proceedings and that they are not intended to make good the harm caused by the offence.
- 32 That being said, it is appropriate to note that those suspension measures are part of the arrangement for the movement of products subject to excise duty under a suspension arrangement, established by Directive 2008/118, in which warehousekeepers play a central role (see, in that regard, judgment of 2 June 2016, *Kapnoviomichania Karelia*, C-81/15, EU:C:2016:398, paragraph 31). It is apparent from the order for reference that those measures are intended to apply only to economic operators who hold an authorisation to operate as a tax warehouse for products subject to excise duty, within the meaning of Articles 15 and 16 of that directive, temporarily depriving them of the benefits arising from such authorisation.
- 33 Therefore, suspension measures such as those at issue in the main proceedings are aimed not at the general public, but at a particular category of addressees who, because they pursue an activity specifically regulated by EU law, must satisfy the conditions required in order to obtain an authorisation, issued by the Member States and conferring specific powers on them. It is therefore for the referring court to assess whether the measures at issue in the main proceedings consist in suspending the exercise of those prerogatives on the ground that the competent administrative authority held that the conditions for granting the authorisation were no longer or might no longer be satisfied, which would support the finding that such measures do not have a punitive purpose.
- 34 Such evidence also appears to arise from the fact that Article 369(3)(b) and (c) of the Tax Code does not appear to require the competent administrative authority to order the suspension measures at issue in the main proceedings, which it is for the referring court to ascertain.
- 35 As regards, more specifically, the first suspension measure imposed on Dual Prod, it is also for the referring court to examine the reason why the competent administrative authority decided to suspend the authorisation of that company for a period of 12 months, that is to say the maximum duration authorised in Article 369(3)(b) of the Tax Code, and the reason why such a period was reduced to 8 months by the court ruling on the action brought by Dual Prod, in order to determine whether the reasons for such decisions reveal a preventive or punitive purpose.
- 36 So far as concerns the second suspension measure imposed on Dual Prod, on the basis of Article 369(3)(c) of the Tax Code, it should be noted that that measure ceases not at a predetermined time, but only at the end of the ongoing criminal proceedings, which appears to be more characteristic of a preventive or precautionary measure than of a punitive measure.
- 37 As regards, thirdly, the criterion relating to the severity of the penalty incurred, it is important to note that, although each of the two suspension measures at issue in the main proceedings is likely to have negative economic consequences for Dual Prod, they are nevertheless inherent to the

preventive or precautionary nature that such measures appear to have and do not, in principle, reach the degree of severity required for them to be classified as criminal in nature since, in particular, they do not prevent that company from pursuing, during the periods of suspension, economic activities that do not require authorisation to operate as a tax warehouse for products subject to excise duty.

The first question

- 38 As is apparent from paragraph 16 above, the referring court has before it an action challenging the legality of the second suspension measure imposed on Dual Prod, under Article 369(3)(c) of the Tax Code.
- 39 It follows that, by its first question, the referring courts asks, in essence, whether Article 48(1) of the Charter must be interpreted as precluding an authorisation to operate as a tax warehouse for products subject to excise duty from being suspended for administrative purposes, until the conclusion of criminal proceedings, on the sole ground that the holder of that authorisation has been formally charged in those criminal proceedings.
- 40 Article 48(1) of the Charter is intended to ensure that no one is declared guilty, or treated as being guilty, of an offence before his or her guilt has been established (see, to that effect, judgment of 16 July 2009, *Rubach*, C-344/08, EU:C:2009:482, paragraph 31).
- 41 Although that provision does not, in principle, preclude a penalty from being imposed by an administrative authority (see, to that effect, judgment of 18 July 2013, *Schindler Holding and Others v Commission*, C-501/11 P, EU:C:2013:522, paragraph 35), that provision is, by contrast, infringed where an administrative authority adopts a criminal penalty without first establishing that there has been an infringement of a pre-established rule of law and without having given the person concerned the opportunity to clear his or her name, since that person must be given the benefit of the doubt (see, to that effect, judgment of 14 May 2020, *NKT Verwaltung and NKT v Commission*, C-607/18 P, not published, EU:C:2020:385, paragraphs 234, 235 and 237 and the case-law cited).
- 42 Furthermore, Article 47 of the Charter requires every addressee of an administrative penalty of a criminal nature to have access to a legal remedy enabling him or her to have that penalty reviewed by a court that has unlimited jurisdiction (judgment of 18 July 2013, *Schindler Holding and Others v Commission*, C-501/11 P, EU:C:2013:522, paragraphs 32 to 35), that legal remedy making it possible, in particular, to verify that the administrative authority has not infringed the principle of the presumption of innocence.
- 43 It follows that, if the referring court were to consider that a suspension measure, such as that referred to in paragraph 39 above, constitutes a criminal penalty, for the purposes of applying Article 48(1) of the Charter, the principle of the presumption of innocence, enshrined in that provision, would preclude the adoption of such a measure, where a decision has not yet been taken on the guilt of the person thus penalised.
- 44 It follows from all the foregoing considerations that Article 48(1) of the Charter must be interpreted as precluding an authorisation to operate as a tax warehouse for products subject to excise duty from being suspended for administrative purposes, until the conclusion of criminal proceedings, on the sole ground that the holder of that authorisation has been formally charged in those criminal proceedings, if that suspension constitutes a criminal penalty.

The second question

Admissibility

- 45 In so far as the Italian Government appears to maintain that the second question is inadmissible on the ground that the referring court has not sufficiently shown how the facts that gave rise to the two suspension measures at issue in the main proceedings are identical, that argument must be rejected.
- 46 Suffice it to note that it is clear from the grounds of the order for reference and the wording of the second question that, according to that court, the two suspension measures at issue in the main proceedings were adopted on account of the same facts established during the search at Dual Prod's premises, which led to that company being suspected of having committed criminal offences under the legislation on products subject to excise duty.
- 47 The question whether such an assessment complies with the requirements stemming from Article 50 of the Charter falls within the scope of the examination of the substance of the second question referred.

Substance

- 48 By its second question, the referring court asks, in essence, whether Article 50 of the Charter must be interpreted as precluding a penalty from being imposed on a legal person who has already been subject, in respect of the same facts, to a penalty of the same nature but of a different duration.
- 49 It should be noted, at the outset, that the principle *ne bis in idem*, enshrined in Article 50 of the Charter, prohibits a duplication both of proceedings and of penalties of a criminal nature for the purposes of that article for the same acts and against the same person (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 24 and the case-law cited).
- 50 Therefore, the second question is useful for resolving the dispute in the main proceedings only in so far as each of the two suspension measures at issue in the main proceedings is criminal in nature, within the meaning of that article, which it is for the referring court to ascertain, having regard to the criteria set out in paragraphs 27 to 37 above.
- 51 Subject to that clarification, it should be noted, in the first place, that the application of the principle *ne bis in idem* is subject to a twofold condition, namely, first, that there must be a prior final decision (the '*bis*' condition) and, secondly, that the prior decision and the subsequent proceedings or decisions must concern the same facts (the '*idem*' condition) (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 28).
- 52 As regards, first, the '*idem*' condition, this requires the material facts to be identical, and not merely similar. Identity of the material facts must be understood to mean a set of concrete circumstances stemming from events that are, in essence, the same, in that they involve the same perpetrator and are inextricably linked together in time and space (see, to that effect, judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraphs 36 and 37).

- 53 In the present case, it appears, as the referring court itself states, that the two suspension measures imposed on Dual Prod are linked to identical material facts, namely those that were established during the search at that company's premises.
- 54 The fact that the second suspension measure at issue in the main proceedings was ordered on the ground that Dual Prod was formally charged in criminal proceedings is not such as to alter such a finding, since it is apparent from the file submitted to the Court that the purpose of those criminal proceedings is precisely to penalise the same facts established during that search.
- 55 As regards, secondly, the '*bis*' condition, it should be borne in mind that, in order for a decision to be regarded as having given a final ruling on the facts subject to a second set of proceedings, that decision must not only have become final but must also have been taken after a determination has been made as to the merits of the case (see, to that effect, judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 29).
- 56 In the present case, as regards, first, the definitive nature of the decision imposing the first suspension measure on Dual Prod, the referring court will have to ensure, more specifically, that the judicial decision that reduced the duration of that suspension measure to eight months had, in any event, become final on the date on which the second suspension measure in respect of Dual Prod was ordered.
- 57 As regards, secondly, the condition relating to the assessment of the merits of the case, it is clear from the case-law of the European Court of Human Rights on observance of the principle *ne bis in idem* that, where a penalty has been ordered by the competent authority as a result of the behaviour attributed to the person concerned, it can reasonably be considered that the competent authority had conducted a prior assessment of the circumstances of the case and whether or not the behaviour of the person concerned was lawful (see, to that effect, ECtHR, 8 July 2019, *Mihalache v. Romania*, CE:ECHR:2019:0708JUD005401210, § 98).
- 58 If, following an examination of the conditions recalled in paragraphs 49 to 57 above, the referring court were to consider that Article 50 of the Charter applied to the dispute in the main proceedings, the combination of the two suspension measures at issue in the main proceedings would constitute a limitation of the fundamental right guaranteed in Article 50.
- 59 However, such a limitation may be justified on the basis of Article 52(1) thereof (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 40).
- 60 In such a case, it would be, in the second place, for the referring court to examine whether all the conditions under which Article 52(1) of the Charter allows Member States to limit the fundamental right, guaranteed in Article 50 of the Charter, are complied with in the present case.
- 61 In that respect, it is important to note that, in accordance with the first sentence of Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. According to the second sentence of Article 52(1) of the Charter, subject to the principle of proportionality, limitations on those rights and freedoms may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

- 62 As regards, first, the conditions set out in the first sentence of Article 52(1) of the Charter, it should be noted that the possibility of combining the two suspension measures at issue in the main proceedings does indeed appear to be provided for by law, namely Article 369(3)(b) and (c) of the Tax Code.
- 63 Furthermore, such a possibility of a duplication of proceedings and penalties respects the essence of Article 50 of the Charter only on condition that the national legislation does not allow for proceedings and penalties in respect of the same facts on the basis of the same offence or in pursuit of the same objective, but provides only for the possibility of a duplication of proceedings and penalties under different legislation (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 43). It is apparent from the file submitted to the Court that that condition does not appear to have been met in the present case.
- 64 As regards, secondly, the conditions set out in the second sentence of Article 52(1) of the Charter, which are examined by the Court only in the event that the referring court considers that the conditions required by the first sentence of that provision are, in the present case, met, it is apparent, first of all, from the file submitted to the Court, that the national legislation at issue in the main proceedings seeks, in a general manner, to ensure the correct collection of excise duties and to combat fraud and abuse.
- 65 In the light of the importance of that objective of general interest, a duplication of criminal proceedings and penalties may be justified where those proceedings and penalties pursue, for the purpose of achieving such an objective, complementary aims relating, as the case may be, to different aspects of the same unlawful conduct at issue (judgment of 22 March 2022, *Nordzucker and Others*, C-151/20, EU:C:2022:203, paragraph 52).
- 66 As regards the principle of proportionality, it requires that the duplication of proceedings and penalties provided for by the national legislation does not exceed what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation, it being understood that, when there is a choice between several appropriate measures, recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 48).
- 67 With regard to the strict necessity of such duplication of proceedings and penalties, it is necessary to assess, more specifically, whether there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the different authorities, whether the two sets of proceedings have been conducted in a manner that is sufficiently coordinated and within a proximate time frame and whether any penalty that may have been imposed in the proceedings that were first in time was taken into account in the assessment of the second penalty, meaning that the resulting burden, for the persons concerned, of such duplication is limited to what is strictly necessary and the overall penalties imposed correspond to the seriousness of the offences committed (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 51 and the case-law cited).
- 68 In the present case, it should be noted, in particular, that the file submitted to the Court does not show that, when assessing the second suspension measure imposed on Dual Prod, the competent administrative authority took into account the seriousness of the first suspension measure that had already been imposed on that company, which is such as to affect the proportionality of that second suspension measure, within the meaning of Article 52 of the Charter.

- 69 It follows from the foregoing considerations that, although the two suspension measures at issue in the main proceedings must be regarded as criminal penalties, Article 50 of the Charter may preclude Dual Prod from being subject to the second suspension measure, the legality of which is challenged before the referring court, which it is for that court to determine.
- 70 Last, it should be added that, even if the referring court considers that at least one of the two suspension measures at issue in the main proceedings does not constitute a criminal penalty, for the purposes of Article 50 of the Charter, and that, therefore, that article cannot, in any event, preclude the duplication of those two penalties, the fact remains that, as the Commission has submitted, the imposition of the second suspension measure should comply with the principle of proportionality, as a general principle of EU law.
- 71 That principle requires Member States to employ means which, whilst enabling them effectively to attain the objective pursued by their domestic laws, must not go beyond what is necessary and are the least detrimental to the other objectives and the principles laid down by the relevant EU legislation. The case-law of the Court states in that regard that, when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (judgments of 13 November 1990, *Fedesa and Others*, C-331/88, EU:C:1990:391, paragraph 13, and of 13 January 2022, *MONO*, C-326/20, EU:C:2022:7, paragraph 35 and the case-law cited).
- 72 In that regard, the fact that a measure suspending authorisation to operate as a tax warehouse for products subject to excise duty, imposed on a legal person suspected of having infringed the rules ensuring the correct collection of excise duties, continues to have effect throughout the criminal proceedings brought against that legal person, even where those proceedings have already exceeded a reasonable period, may indicate a disproportionate infringement of the legitimate right of that legal person to pursue its entrepreneurial activity.
- 73 It follows from all the foregoing considerations that Article 50 of the Charter must be interpreted as not precluding a criminal penalty, for infringement of the rules on products subject to excise duty, from being imposed on a legal person who has already been subject, in respect of the same facts, to a criminal penalty that has become final, provided:
- that the possibility of duplicating those two penalties is provided for by law;
 - that national legislation does not allow for proceedings and penalties in respect of the same facts on the basis of the same offence or in pursuit of the same objective, but provides for only the possibility of a duplication of proceedings and penalties under different legislation;
 - that those proceedings and penalties pursue complementary aims relating, as the case may be, to different aspects of the same unlawful conduct at issue;
 - that there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the different authorities; that the two sets of proceedings have been conducted in a manner that is sufficiently coordinated and within a proximate time frame; and that any penalty that may have been imposed in the proceedings that were first in time was taken into account in the assessment of the second penalty, meaning that the resulting burden, for the persons concerned, of such duplication is limited to what is strictly necessary and the overall penalties imposed correspond to the seriousness of the offences committed.

Costs

- 74 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 (Fourth Chamber) hereby rules:

- 1. Article 48(1) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding an authorisation to operate as a tax warehouse for products subject to excise duty from being suspended for administrative purposes, until the conclusion of criminal proceedings, on the sole ground that the holder of that authorisation has been formally charged in those criminal proceedings, if that suspension constitutes a criminal penalty.**
- 2. Article 50 of the Charter of Fundamental Rights must be interpreted as not precluding a criminal penalty, for infringement of the rules on products subject to excise duty, from being imposed on a legal person who has already been subject, in respect of the same facts, to a criminal penalty that has become final, provided:**
 - that the possibility of duplicating those two penalties is provided for by law;**
 - that national legislation does not allow for proceedings and penalties in respect of the same facts on the basis of the same offence or in pursuit of the same objective, but provides for only the possibility of a duplication of proceedings and penalties under different legislation;**
 - that those proceedings and penalties pursue complementary aims relating, as the case may be, to different aspects of the same unlawful conduct at issue;**
 - that there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the different authorities; that the two sets of proceedings have been conducted in a manner that is sufficiently coordinated and within a proximate time frame; and that any penalty that may have been imposed in the proceedings that were first in time was taken into account in the assessment of the second penalty, meaning that the resulting burden, for the persons concerned, of such duplication is limited to what is strictly necessary and the overall penalties imposed correspond to the seriousness of the offences committed.**

[Signatures]