

3. Is it relevant for the answer to Question 2 whether the applicant is a company or a private individual?

(¹) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 6 December 2022 — Slovenské Energetické Strojárne A. S. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Case C-746/22)

(2023/C 63/30)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Slovenské Energetické Strojárne A. S.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

1. Is Article 23(2) of Council Directive 2008/9/EC (¹) laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State ('Directive 2008/9') to be construed as meaning that national legislation — to be specific, Paragraph 124(3) of the az adóigazgatási rendtartásról szóló 2017. évi CLI. törvény (Law CLI of 2017 governing tax administration; 'the Law on tax administration') — which, for the purposes of applications for a refund of value added tax pursuant to Council Directive 2006/112/EC (²) on the common system of value added tax ('the VAT Directive'), does not allow, at the appeal stage, new facts to be pleaded or new evidence to be relied on or produced, where the applicant was aware of that evidence before the adoption of the first-tier decision but did not present it, even though it was requested to do so by the tax authority, or did not rely on it, thereby creating a material constraint which exceeds the requirements as to form and time limits laid down by Directive 2008/9, is compatible with the requirements laid down in that Directive with regard to appeals?
2. Does an affirmative answer to the first question mean that the one-month period indicated in Article 20(2) of Directive 2008/9 is to be considered mandatory? Is the foregoing compatible with the right to an effective remedy and to a fair trial enshrined in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), with Articles 167, 169, 170 and 171(1) of the VAT Directive, and with the fundamental principles of fiscal neutrality, effectiveness and proportionality developed by the Court of Justice of the European Union?
3. Is Article 23(1) of Directive 2008/9, which relates to the refusal of a refund application in whole or in part, to be interpreted as meaning that national legislation — specifically, Paragraph 49(1) of the Law on tax administration — pursuant to which the tax authority is to bring the proceedings to a close if the applicant taxable person does not respond to a request from the tax authority or comply with its obligation of rectification, failing which it is not possible to examine the application without the proceedings continuing ex officio, is compatible with that provision?

(¹) OJ 2008 L 44, p. 23.

(²) OJ 2006 L 347, p. 1.