Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

24 February 2022 *

(Reference for a preliminary ruling – Common system of value added tax – Directive 2006/112/EC – Articles 167 and 168 – Right to deduction – Refusal – Tax evasion – Evaluation of evidence – Suspension of examination of an administrative complaint relating to a notice of assessment refusing a right to deduction, pending the outcome of criminal proceedings – Procedural autonomy of the Member States – Principle of fiscal neutrality – Right to good administration – Article 47 of the Charter of Fundamental Rights of the European Union)

In Case C-582/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), made by decision of 23 July 2020, received at the Court on 5 November 2020, in the proceedings

SC Cridar Cons SRL

v

Administrația Județeană a Finanțelor Publice Cluj,

Direcția Generală Regională a Finanțelor Publice Cluj-Napoca,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, I. Jarukaitis (Rapporteur), M. Ilešič, D. Gratsias and Z. Csehi, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– SC Cridar Cons SRL, by C.F. Costaş, S.I. Puț and A. Tomuța, lawyers,

– the Romanian Government, by E. Gane, R.I. Hațieganu and A. Rotăreanu, acting as Agents,

* Language of the case: Romanian.

– for the European Commission, by L. Lozano Palacios and A. Armenia, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) ('the VAT Directive') and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 This request was made in the course of proceedings between SC Cridar Cons SRL ('Cridar'), on the one hand, and *the Administrația Județeană a Finanțelor Publice Cluj (Departmental Administration for Public Finances, Cluj, Romania)* ('AJFP Cluj') *and the Direcția Generală Regională a Finanțelor Publice Cluj-Napoca (Regional Directorate-General for Public Finances, Cluj-Napoca, Romania)* ('DGRFP Cluj-Napoca'), *on the other, regarding a decision to suspend the examination of an administrative complaint relating to a notice of assessment refusing a right to deduct value-added tax (VAT) pending the outcome of criminal proceedings*.

Legal framework

European Union law

3 Article 167 of the VAT Directive provides:

'A right of deduction shall arise at the time the deductible tax becomes chargeable.'

4 Article 168 of that directive states:

'In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;

…'

Romanian law

The Tax Procedure Code

5 Article 118(3) of Legea nr. 207/2015 privind Codul de procedură fiscală (Law No 207/2015 establishing the Tax Procedure Code), in the version applicable to the dispute in the main proceedings ('the Tax Procedure Code'), provides that 'tax inspections are to be carried out only once for each type of tax claim and for each taxable period'.

6 Article 128 of the Tax Procedure Code, entitled 'Fresh tax inspections', provides as follows in paragraph 1 thereof:

'By derogation from Article 118(3), the head of the tax inspection authority may decide to reassess certain types of tax obligations for a given taxable period following the emergence of additional information of which that authority was unaware at the time of the tax inspection, and which affects the outcome of that inspection.'

7 Under Article 131 of that code, entitled 'Outcome of the tax inspection':

'(1) The outcome of the tax inspection shall be recorded in writing, in a tax inspection report, which describes the findings of the tax inspection authority from a factual and legal point of view and the tax implications of those findings.

…

(4) The tax inspection report shall constitute the basis for:

(a) the notice of assessment, in respect of upward or downward deviations from the principal tax obligations relating to differences in the tax base;

…'

8 Article 132 of that code, entitled 'Referral to the criminal prosecution authorities', states as follows in paragraph 1 thereof:

'The tax inspection authority shall be required to refer to the competent judicial bodies the findings made during the tax inspection which may include elements constituting an offence under the conditions laid down by criminal law.'

9 Article 268 of that code, entitled 'Possibility of lodging a complaint', states in paragraph 1 thereof:

'A complaint may be lodged, in accordance with this Title, against a notice of liability or other fiscal administrative act. Such a complaint being a means of informal administrative appeal, it does not deprive those who consider they have been harmed by a fiscal administrative act of the right to a judicial remedy.'

10 Article 277 of the Tax Procedure Code, entitled 'Suspension of administrative complaint proceedings', reads as follows:

'(1) The authority responsible for resolving a complaint may, by reasoned decision, suspend the proceedings where:

(a) the authority which carried out the inspection has notified the competent authorities of the existence of indications of an offence in relation to evidence relevant to the determination of the tax base, which, if established, could affect the outcome of the administrative proceedings;

…

(4) The final decision of the criminal court ruling on the civil action shall be enforceable against the authorities responsible for resolving complaints in respect of the sums for which the State has claimed damages as a civil party.'

11 Under Article 278 of that code, entitled 'Suspension of enforcement of fiscal administrative acts':

'(1) The lodging of an administrative complaint shall not suspend the enforcement of a fiscal administrative act.

(2) The provisions of this article do not affect the complainant's right to apply for the suspension of the enforcement of the fiscal administrative act pursuant to [Legea contenciosului administrativ nr. 554/2004 (Law No 554/2004 on administrative proceedings)] …

…'

12 Article 281 of that code, entitled 'Notification of the decision and remedy', provides in paragraph 2 thereof:

'The complainant or persons involved in complaint proceedings may challenge decisions resolving a complaint and the fiscal administrative acts to which those decisions relate before the competent administrative court …'

13 Article 350 of that code, entitled 'Cooperation with criminal prosecution authorities', provides in paragraphs 2 and 3 thereof:

'(2) In duly justified cases, once criminal proceedings have been initiated, a request may, following the opinion of the Public Prosecutor, be put to the [Agenției Naționale de Administrare Fiscală (ANAF) (National Agency for Fiscal Administration, Romania)] to carry out tax inspections in accordance with established objectives.

(3) The outcome of the inspections provided for in paragraphs 1 and 2 shall be documented in records, which constitute evidence. The records do not constitute a notice of liability for the purposes of this Code.'

14 By judgment No 72 of 29 January 2019, the Curtea Constituțională (Constitutional Court, Romania) found that the expression 'which constitute evidence' in the abovementioned Article 350(3) was unconstitutional.

The Law on Administrative Proceedings

15 Article 2(1) of Law No 554/2004 on administrative proceedings, in the version applicable to the dispute in the main proceedings ('the Law on Administrative Proceedings'), sets out the following definitions:

'For the purposes of this Law, the following definitions shall apply:

…

(ş) "imminent damage": future and foreseeable material damage or, where appropriate, foreseeable serious disruption of the functioning of a public authority or public service;

(t) "duly justified cases": the circumstances of fact and law which give rise to serious doubt as to the legality of the administrative act;

…'.

16 Article 14 of the Law on Administrative Proceedings, entitled 'Suspension of the enforcement of the act', provides in paragraph 1 thereof:

'In duly justified cases, in order to avert imminent damage, an injured party may, after notifying the public authority which issued the act or its hierarchical superior, … apply to the competent court to order the suspension of the enforcement of the unilateral administrative act pending the decision of the court ruling on the substance. If the injured party does not bring an action for the annulment of the act within 60 days, the suspension shall end automatically and without any formality.'

17 Article 15 of that law, entitled 'Application for suspension of the main action', provides:

'(1) A complainant may apply for the suspension of the enforcement of the unilateral administrative act, for the reasons set out in Article 14, by application to the competent court seeking the annulment, in part or in full, of the contested act. In such case, the court may order the suspension of the enforcement of the contested administrative act pending a final and irrevocable decision in the case. The application for suspension of enforcement may be made contemporaneously with the main action or separately, pending a decision on the merits concerning the action.

…

(4) If the action is upheld on the merits, the suspension of enforcement ordered in accordance with Article 14 shall be extended automatically pending a final and irrevocable decision in the case, even if the applicant has not applied for the suspension of the enforcement of the administrative act pursuant to paragraph 1.'

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

18 The company Cridar, which carries out construction works for roads and motorways, was the subject of a tax inspection concerning VAT relating to the period 1 January 2011 to 30 April 2014. The Administrația Județeană a Finanțelor Publice Bistrița-Năsăud (Departmental Administration for Public Finances, Bistrița-Năsăud, Romania) recognised the company's right to deduct VAT in respect of the transactions entered in its accounts.

19 In early 2015, the Parchetul de pe lângă Curtea de Apel Cluj (Public Prosecutor's Office attached to the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania); 'the Public Prosecutor's Office') opened criminal investigation file No 363/P/2015 in which accusations of tax evasion were made against a number of persons, including the company director of Cridar. On an unspecified date in 2016, the Public Prosecutor's Office requested the DGRFP Cluj-Napoca to carry out another tax inspection of Cridar, on the ground that there was evidence that, during the period from 1 January 2011 to 31 December 2015, that company had made fictitious purchases from several other companies. The DGRFP Cluj-Napoca instructed the AJFP Cluj to carry out the further tax inspection. It was carried out on 17 October 2016 and concerned only the period that had been the subject of the abovementioned previous tax inspection.

20 In its tax inspection report and notice of assessment, both dated 3 November 2016, the AJFP Cluj, contrary to the position adopted in 2014, refused to grant Cridar the right to deduct VAT in respect of all purchase transactions carried out by Cridar with five companies named by the Public Prosecutor's Office ('the purchases at issue'), and imposed additional tax liabilities on Cridar in the amount of 2 103 272 Romanian Lei (RON) (approximately EUR 425 000) in VAT and corporation tax. In accordance with Article 128 of the Tax Procedure Code, the AJFP Cluj also revoked the 2014 notice of assessment and reverted to all the results of the previous VAT inspection. The new notice of assessment was based on a series of irregularities detected upstream, concerning five of Cridar's suppliers or the suppliers to those five companies. The AJFP Cluj concluded that there were reasonable grounds to suspect that an artificial situation had been created to allow Cridar fictitiously to increase its costs and deduct the corresponding VAT in the absence of any real financial transaction.

21 Following the issue of those documents, the tax authorities submitted to the Public Prosecutor's Office the investigation file concerning tax evasion issues in relation to the transactions inspected. Furthermore, criminal proceedings relating to those issues had already been brought and were the subject of investigation file No 363/P/2015.

22 On 11 November 2016, Cridar lodged a complaint with the DGRFP Cluj-Napoca against the notice of assessment of 3 November 2016 and, on the basis of Article 14 of the Law on Administrative Proceedings, applied for a suspension of the enforcement of that notice, which was granted by the Curtea de Apel Cluj (Court of Appeal, Cluj) by a judgment delivered in 2016 ordering that enforcement of the notice of assessment be suspended pending the decision of the court ruling on the merits. That judgment became final.

23 By decision of 16 March 2017, ruling on the complaint referred to in the paragraph above, the DGRFP Cluj-Napoca rejected the objections of a procedural nature put forward by Cridar, but ordered the suspension of the decision on the substance of the tax complaint, pursuant to Article 277(1)(a) of the Tax Procedure Code, noting that the authority responsible for resolving a

complaint cannot rule on the substance of the case until the criminal proceedings have been concluded by a decision either confirming or refuting the suspicions of the inspection authorities relating to the existence of the purchases at issue.

24 On 29 June 2017, Cridar brought an action before the Curtea de Apel Cluj (Court of Appeal, Cluj) seeking, primarily, the annulment on procedural grounds of the decision of 16 March 2017 and, in the alternative, the annulment of that decision and an order requiring the DGRFP Cluj-Napoca to make a decision on the substance of its complaint. In addition, Cridar applied for the suspension of the enforcement of the notice of assessment pending final judgment in the criminal proceedings, pursuant to Article 15 of the Law on Administrative Proceedings.

25 By judgment of 29 September 2017, the Curtea de Apel Cluj (Court of Appeal, Cluj) dismissed that action. It considered, inter alia, that the DGRFP Cluj-Napoca is entitled to decide whether it is appropriate to suspend the examination of the tax complaint in order to avoid reaching contradictory decisions relating to the same legal situation. It inferred that it was lawful for that authority to decide to suspend the examination of the tax complaint until it can be determined, in the criminal proceedings, whether the purchases at issue are genuine. That court also dismissed the application for the suspension of the enforcement of the notice of assessment pending a final decision in the criminal proceedings, since the grounds relied on do not indicate that the act appears to be unlawful and it was not established that the damage was imminent. In that regard, it found that the decision, referred to in paragraph 22 of the present judgment, granting the application for suspension of the enforcement made on the basis of Article 14 of the Law on Administrative Proceedings is not *res judicata* for the purpose of making a decision on a similar application based on Article 15 of that law, owing to the difference in the temporal effects of the two sets of proceedings at issue.

26 On 11 October 2017, Cridar brought an appeal on a point of law against that judgment before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice), the referring court. In the context of that appeal, that company claims, inter alia, that, in the decision of 16 March 2017 ruling on its tax complaint, the DGRFP Cluj-Napoca stated, contrary to the findings in the second tax inspection, only indications that the purchases at issue might have been fictitious had been found, and that the issue of whether or not those purchases were fictitious would be settled only when the criminal case was finally resolved. It submits that, on account of those contradictory interpretations concerning the evidence adduced, the probative force of that evidence and the authority capable of establishing whether transactions are real or fictitious, the taxable person is captive and cannot exercise its right to deduction. Thus, the national legislation appears to have laid down an additional condition for the recognition of the right to deduct VAT – namely confirmation, in criminal proceedings, that the transactions in question are real – which is not apparent either from the applicable provisions of EU law or from the Court's case-law.

27 The referring court states that, since the dispute before it does not concern the substantive legality of the notice of assessment of 3 November 2016, it cannot determine whether the factors mentioned therein are sufficient, in the light of the Court's case-law, to justify a refusal of the right to deduct VAT.

28 Moreover, the referring court observes that for the time being Cridar is unable to obtain a judicial decision on the substance of its complaint, because, in accordance with the national case-law, a notice of assessment may be challenged before the courts, under Article 281 of the Tax Procedure Code, only if the decision on the substance of the complaint is challenged at the same time as that notice. In the present case, the tax authority which issued the decision of 16 March 2017 merely

suspended its examination of the complaint. The referring court adds that, under Article 278(1) of that code, the lodging of an administrative complaint does not entail the suspension of the enforcement of the fiscal administrative act, even for the period during which the examination of the complaint concerning that act is suspended. Furthermore, it notes that a notice of assessment always has the effect of transferring the tax burden to the taxable person.

29 In the light of those factors, the referring court is uncertain whether the fact that, first, the tax authority issues a notice of assessment which produces the immediate effect of refusing the right to deduct VAT without the tax authority being in possession, at that time, of all the objective evidence of the taxable person's involvement in VAT fraud, and, second, the fact that the examination of the complaint against that notice is suspended until such time as the facts are clarified by a criminal investigation seeking to establish the taxable person's involvement in tax evasion, are contrary to the principle of fiscal neutrality enshrined in the VAT Directive. It is also uncertain whether such a modus operandi is compatible with the right to a fair hearing guaranteed by Article 47 of the Charter, given that the notice of assessment remains enforceable for the duration of the suspension of the examination of the complaint against it, and the taxable person may not challenge it before the courts, since such an action may be brought only after a decision ruling on the substance of the complaint has been adopted. It considers that the analysis may differ depending on whether or not the taxable person has been granted a suspension of the enforcement of the contested acts, under the conditions laid down in Articles 14 and 15 of the Law on Administrative Proceedings, such as to temporarily eliminate the effects of the refusal of the right to deduct VAT.

30 In those circumstances, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must [the VAT Directive] and Article 47 of the [Charter] be interpreted as precluding national legislation pursuant to which the tax authorities, after issuing a notice of assessment refusing to grant a right to deduct input VAT, are permitted to suspend the examination of an administrative complaint [made against that notice] pending the outcome of criminal proceedings that could provide additional objective evidence of the taxable person's involvement in tax evasion?

(2) Would the answer given by the [Court] to the first question be different if, during the period for which examination of the administrative complaint is suspended, the taxable person benefits from provisional measures which suspend the effects of the refusal of the right to deduct VAT?'

The questions referred for a preliminary ruling

31 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether the VAT Directive and Article 47 of the Charter must be interpreted as precluding national legislation pursuant to which national tax authorities are permitted to suspend the examination of an administrative complaint against a notice of assessment refusing to grant a taxable person the right to deduct input VAT on account of that taxable person's involvement in tax evasion, pending the outcome of criminal proceedings that could provide

additional objective evidence of that taxable person's involvement in that tax evasion, and whether it is relevant in that regard that, during the period for which that examination is suspended, the taxable person may obtain a suspension of the enforcement of that notice.

32 In that regard, it must be observed, in the first place, that the right of taxable persons to deduct the VAT due or already paid on goods purchased and services received as inputs and used for the purposes of their taxed transactions from the VAT which they are liable to pay is a fundamental principle of the common system of VAT established by EU legislation. As the Court has consistently held, the right to deduction provided for in Article 167 et seq. of the VAT Directive is an integral part of the VAT scheme and in principle may not be limited if the material and formal requirements or conditions to which this right is subject are respected by taxable persons wishing to exercise it (judgments of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 33 and the case-law cited, and of 11 November 2021, *Ferimet*, C-281/20, EU:C:2021:910, paragraph 31).

33 That being so, the prevention of tax evasion, tax avoidance and abuse is an objective recognised and encouraged by the VAT Directive and the Court has repeatedly held that individuals cannot fraudulently or improperly avail themselves of the rules of EU law. It is therefore for national authorities and courts to refuse the right to deduction if it is established, on the basis of objective evidence, that this right is being relied on for fraudulent or abusive ends (judgments of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 34 and the case-law cited, and of 11 November 2021, *Ferimet*, C-281/20, EU:C:2021:910, paragraph 45).

34 That is the case where a VAT fraud is committed by the taxable person him or herself, but also where the taxable person knew or ought to have known that, by his or her purchase, he or she was participating in a transaction connected with such fraud. A taxable person thus cannot be refused the right to deduction unless it is established on the basis of objective factors that that taxable person – to whom the supply of goods or services, on the basis of which the right to deduction is claimed, was made – knew or should have known that, through the purchase of those goods or services, he or she was participating in a transaction connected with VAT fraud committed by the supplier or by another trader acting upstream or downstream in the chain of supply of those goods or services (judgments of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 35 and the case-law cited, and of 11 November 2021, *Ferimet*, C-281/20, EU:C:2021:910, paragraph 46).

35 Since refusal of the right to deduct is an exception to the application of the fundamental principle constituted by that right, it is incumbent on the tax authorities to establish to the requisite legal standard objective evidence on which it may be concluded that the taxable person him or herself committed VAT fraud or knew or should have known that the transaction relied on as a basis for the right to deduct was connected with such fraud (judgments of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 36 and the case-law cited, and of 11 November 2021, *Ferimet*, C-281/20, EU:C:2021:910, paragraph 50).

36 Since EU law lays down no rules relating to the procedures for taking evidence in connection with VAT fraud, that objective evidence must be established by the tax authorities in accordance with the rules of evidence laid down in national law. However, those rules must not undermine the effectiveness of EU law and must observe the rights guaranteed by EU law, especially by the Charter (see, to that effect, judgments of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 37 and the case-law cited, and of 4 June 2020, *C.F. (Tax inspection)*, C-430/19, EU:C:2020:429, paragraph 45).

37 Accordingly, and in those circumstances, the Court, in the judgment of 17 December 2015, *WebMindLicenses* (C-419/14, EU:C:2015:832), held, in paragraph 68 of that judgment, that EU law does not preclude the tax authorities from being able in the context of an administrative procedure, in order to establish the existence of an abusive practice concerning VAT, to use evidence obtained in the context of a parallel criminal procedure that has not yet been concluded, provided that the rights guaranteed by EU law, especially by the Charter, are observed. Similarly, it held, in paragraph 38 of the judgment of 16 October 2019, *Glencore Agriculture Hungary* (C-189/18, EU:C:2019:861), in essence, that, subject to that same proviso, the national tax authorities must be able to rely, for the purpose of establishing the existence of a VAT fraud, on evidence obtained in the context of criminal procedures which have not been closed and which do not involve the taxable person or obtained in related administrative procedures to which the taxable person was not a party.

38 Consequently, EU law cannot, in principle, and subject to observance of the rights guaranteed by that law, and especially by the Charter, preclude the tax authorities from being able, when examining an administrative complaint against a notice of assessment refusing the right to deduct VAT, to suspend the examination of that complaint in order to obtain additional objective evidence of the taxable person's involvement in tax evasion on which that refusal of the right to deduction is based. Since, subject to that proviso, EU law does not preclude the tax authorities from using evidence obtained in the context of a criminal procedure in order to establish, in the context of an administrative procedure, the existence of fraud or an abusive practice concerning VAT, it cannot, in principle and subject to that same proviso, preclude such an administrative procedure from being suspended, including at the stage of the examination of the complaint against the notice of assessment refusing the right to deduct VAT, in particular in order to avoid reaching contradictory decisions capable of affecting legal certainty, or, as in the case in the main proceedings, in order to allow for the gathering of any additional evidence which may then be used for the purposes of examining that complaint.

39 However, where, in such a situation, a notice of assessment refusing to grant the taxable person the right to deduct VAT has already been issued, and taking into account the fact that that right constitutes a fundamental principle of the common system of VAT, it is important to bear in mind that the principles governing the application by the Member States of the common system of VAT, in particular the principles of fiscal neutrality and legal certainty, preclude, in the event that a national tax authority merely has uncorroborated doubts about whether the economic operations giving rise to the issue of a tax invoice were actually carried out, the taxable person to which that invoice is addressed from being refused the right to deduct VAT where he is unable to produce, in addition to the invoice, other evidence that the economic operations were actually carried out (see, to that effect, judgments of 22 October 2015, *PPUH Stehcemp*, C-277/14, EU:C:2015:719, paragraph 50, and of 4 June 2020, *C.F. (Tax inspection)*, C-430/19, EU:C:2020:429, paragraphs 44 and 49). Entitlement to the right to deduction cannot, moreover, be refused by assumptions (see, to that effect, judgment of 11 November 2021, *Ferimet*, C-281/20, EU:C:2021:910, paragraph 52 and the case-law cited).

40 In the present case, the referring court expressly states, in its first question, that the suspension of the examination at issue in the main proceedings was ordered because the criminal case, pending the outcome of which that suspension was ordered, may provide 'additional' objective evidence of the taxable person's involvement in tax evasion, which was the basis for the refusal of the right to deduction established in the notice of assessment.

41 Since the questions referred are based on that factual situation, which it is nevertheless for the referring court to ascertain, and since the Court of Justice cannot call that factual situation into question on account of the clear separation of functions between the Court of Justice and the national courts in the context of the procedure provided for in Article 267 TFEU (see, to that effect, judgments of 9 October 2014, *Traum*, C-492/13, EU:C:2014:2267, paragraph 19, and of 9 September 2021, *Real Vida Seguros*, C-449/20, EU:C:2021:721, paragraph 13 and the case-law cited), that factual situation should be considered to have been established, in order to provide a full answer to the referring court.

42 In those circumstances, considering that what is at issue in the main proceedings is not only the national tax authorities' methods for taking evidence, but also a decision to suspend the examination of an administrative complaint, it is necessary, in the second place, having regard to the autonomy of the Member States with regard to the organisation of their administrative procedures, to recall that, in the absence of any EU legislation on the matter, the detailed procedural rules designed to ensure the protection of the rights which taxpayers acquire under EU law are a matter for the domestic legal order of each Member State, provided, however, that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness) (see, to that effect, judgment of 9 November 2017, *Ispas*, C-298/16, EU:C:2017:843, paragraphs 28 and 29 and the case-law cited).

43 In the present case, as regards the principle of equivalence, there is nothing in the documents before the Court to suggest that Article 277(1)(a) of the Tax Procedure Code, pursuant to which the suspension of the examination at issue in the main proceedings was ordered, is specific to inspections of VAT obligations, so that, subject to the verifications to be carried out by the referring court, a breach of that principle can be excluded (see, by analogy, judgment of 9 November 2017, *Ispas*, C-298/16, EU:C:2017:843, paragraph 30).

44 As regards the principle of effectiveness, there is nothing to indicate that a suspension of the examination of an administrative complaint against a notice of assessment refusing a right to deduct VAT would, in itself, make it impossible or excessively difficult, at an administrative level, to exercise the rights conferred on individuals by the EU legal order.

45 In the third place, it is nevertheless appropriate, in the light of the considerations set out in paragraph 38 of the present judgment, to recall, first, that the requirements pertaining to the right to good administration, which reflects a general principle of EU law, and in particular the right of every person to have his or her affairs handled impartially and within a reasonable period of time, are applicable in a tax inspection procedure by which a Member State implements EU law (see, to that effect, judgments of 14 May 2020, *Agrobet CZ*, C-446/18, EU:C:2020:369, paragraphs 43 and 44 and the case-law cited, and of 21 October 2021, *CHEP Equipment Pooling*, C-396/20, EU:C:2021:867, paragraph 48).

46 Since a dispute such as that at issue in the main proceedings ultimately concerns the exercise by the tax authorities of their powers of inspection in order to comply with the Member States' obligation, arising from the application of EU law, to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on its territory and for preventing fraud, the procedure for examining an administrative complaint against a notice of assessment refusing a right to deduct VAT constitutes implementation of EU law by the Member State

concerned, so that that procedure must be carried out in compliance with the right to good administration (see, by analogy, judgment of 9 November 2017, *Ispas*, C-298/16, EU:C:2017:843, paragraph 27 and the case-law cited).

47 Therefore, if EU law is not to preclude a suspension of the examination of an administrative complaint such as that at issue in the main proceedings, such a suspension must not infringe the right to good administration and, in particular, must not have the effect of delaying the outcome of that administrative complaint procedure beyond a reasonable period.

48 On the other hand, the fundamental rights guaranteed by the Charter are also applicable to a case such as that in the main proceedings, since the suspension challenged before the referring court is part of an administrative procedure refusing to grant a taxable person the right to deduct input VAT because of his or her involvement in tax evasion in breach of the principles governing the common system of VAT established by the EU legislature, and therefore constitutes implementation of EU law for the purposes of Article 51(1) of the Charter (see, by analogy, judgment of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 59 and the case-law cited).

49 In that regard, it must be observed that the referring court is uncertain as to the interpretation to be given to Article 47 of the Charter, according to which everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article, because, for as long as that suspension continues, Cridar is unable to bring a legal action against the notice of assessment refusing it the right to deduct VAT, since under the applicable national law, such an action may be brought only if a decision ruling on the substance of the complaint has been adopted.

50 It is true that the Court has already held that the principle of effective judicial protection laid down in that provision comprises various elements including, in particular, the right of access to a court (judgment of 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci*, C-205/15, EU:C:2016:499, paragraph 42 and the case-law cited). However, it is also clear from the case-law of the Court that the right of access to a court is not an absolute right and that, consequently, it may involve proportionate restrictions that pursue a legitimate aim and do not adversely affect the very essence of that right (judgment of 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci*, C-205/15, EU:C:2016:499, paragraph 44 and the case-law cited).

51 In the present case, it is sufficient to note that although, for the duration of that suspension, Cridar is in fact deprived of the opportunity to bring a legal action against a notice of assessment refusing it a right to deduct VAT, it nevertheless follows from the considerations set out in paragraph 38 of the present judgment that such a suspension pursues a legitimate aim, and from the consideration set out in paragraphs 45 to 47 of the present judgment, that Cridar cannot be deprived of that opportunity beyond a reasonable period of time. Furthermore, it is apparent from the documents before the Court that it is not disputed in the main proceedings that that company will be able to bring a legal action against the decision on the substance of its complaint. In those circumstances, it cannot be held that such a suspension of the examination of an administrative complaint disproportionately impedes, for a taxable person such as Cridar, the right of access to a court, as guaranteed by Article 47 of the Charter.

52 Furthermore, according to the Court's settled case-law, if the judicial review guaranteed by Article 47 of the Charter is to be effective, the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him or her is based, either by reading the decision itself or by requesting and obtaining notification of those reasons, without prejudice to the power of the court with jurisdiction to require the authority concerned to provide that information, so as to make it possible for him or her to defend his or her rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in applying to the court with jurisdiction, and in order to put the latter fully in a position in which it may carry out the review of the lawfulness of the national decision in question (judgment of 24 November 2020, *Minister van Buitenlandse Zaken*, C-225/19 and C-226/19, EU:C:2020:951, paragraph 43 and the case-law cited).

53 Therefore, in order for a suspension of the examination of an administrative complaint relating to a notice of assessment refusing a right to deduct VAT to comply with Article 47 of the Charter, it is also necessary for the decision ordering that suspension to include reasons both in law and in fact, not only to enable the taxable person to ascertain the reasons why that suspension is deemed necessary in order to decide effectively on his complaint and to enable him to defend his rights in the best possible conditions, but also to put the court hearing an action against the decision to suspend examination of that complaint fully in a position in which it may carry out the review of the lawfulness of that decision.

54 Furthermore, the right to good administration encompasses the obligation of the administration, when implementing EU law, to give reasons for its decision (see, to that effect, judgment of 24 November 2020, *Minister van Buitenlandse Zaken*, C-225/19 and C-226/19, EU:C:2020:951, paragraph 34 and the case-law cited).

55 In the fourth place, since it cannot be ruled out that, ultimately, it will transpire that the taxable person was denied the right to deduction in breach of EU law, it is also important to recall that the right to a refund of charges levied in a Member State in breach of the rules of EU law is the consequence and complement of the rights conferred on individuals by provisions of EU law as interpreted by the Court. Member States are therefore required, in principle, to repay charges levied in breach of EU law. The claim for repayment of overpaid VAT concerns the right to recovery of sums paid but not due which, according to settled case-law, helps to offset the consequences of the tax's incompatibility with EU law by neutralising the economic burden which that tax has wrongly imposed on the trader who, in fact, has ultimately borne it (judgments of 14 June 2017, *Compass Contract Services*, C-38/16, EU:C:2017:454, paragraphs 29 and 30 and the case-law cited, and of 2 July 2020, *Terracult*, C-835/18, EU:C:2020:520, paragraph 24).

56 In that context, it must be observed that the deduction system is intended to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures neutrality of taxation of all economic activities, whatever the purpose or results of those activities, provided that they are themselves subject in principle to VAT (judgments of 14 February 1985, *Rompelman*, 268/83, EU:C:1985:74, paragraph 19, and of 11 November 2021, *Ferimet*, C-281/20, EU:C:2021:910, paragraph 30 and the case-law cited).

57 In that regard, the Court has already held that, while the Member States have a certain freedom in determining the conditions for the refund of excess VAT, those conditions cannot undermine the principle of fiscal neutrality by making the taxable person bear the burden of the VAT in whole or

in part. In particular, such conditions must enable the taxable person, in appropriate circumstances, to recover the entirety of the credit arising from that excess VAT. This implies that the refund is made within a reasonable period of time by a payment in liquid funds or equivalent means, and that, in any event, the method of refund adopted must not entail any financial risk for the taxable person (judgments of 6 July 2017, *Glencore Agriculture Hungary*, C-254/16, EU:C:2017:522, paragraph 20 and the case-law cited, and of 12 May 2021, *technoRent International and Others*, C-844/19, EU:C:2021:378, paragraphs 37 and 38).

58 Where the refund of the overpaid VAT to the taxable person is not made within a reasonable period, the principle of fiscal neutrality of the VAT system requires that the financial losses incurred by the taxable person owing to the unavailability of the sums of money at issue should be compensated through the payment of default interest (see, to that effect, judgments of 6 July 2017, *Glencore Agriculture Hungary*, C-254/16, EU:C:2017:522, paragraph 22 and the case-law cited, and of 12 May 2021, *technoRent International and Others*, C-844/19, EU:C:2021:378, paragraph 40 and the case-law cited).

59 Those considerations are also applicable, by analogy, in a situation such as that at issue in the main proceedings, in so far as an unlawful refusal of the right to deduct input VAT, established by an immediately enforceable notice of assessment, also has the effect of immobilising, to the detriment of the taxable person, the sum of money corresponding to the amount of VAT in respect of which the right of deduction has, by definition, been refused in breach of EU law.

60 It follows that it is also necessary, in order for a suspension of the examination of an administrative complaint against a notice of assessment refusing a right to deduct VAT, such as that at issue in the main proceedings, to comply with EU law, that the applicable national legislation make provision, should it ultimately transpire that that refusal is contrary to EU law, for the taxable person to be able to obtain a refund of the sum of money in question within a reasonable period, plus, where appropriate, default interest.

61 In the fifth and last place, provided that the conditions arising from the foregoing considerations are met, there is no requirement that, in the period during which the examination of the complaint is suspended, the taxable person should in any event enjoy a suspension of the enforcement of the notice of assessment which is the subject of that complaint. It is sufficient that the applicable national legislation provides for the possibility of granting such a suspension, as an interim measure, in the event of serious doubts as to the legality of the notice of assessment, where such a suspension needs to be granted in order to avoid serious and irreparable harm to the taxable person's interests.

62 In the light of all of the foregoing considerations, the answer to the questions referred is that the VAT Directive and Article 47 of the Charter must be interpreted as not precluding national legislation which permits national tax authorities to suspend the examination of an administrative complaint against a notice of assessment refusing a taxable person the right to deduct input VAT on account of the involvement of that taxable person in tax evasion, with a view to securing additional objective evidence concerning that involvement, provided that, first, such suspension does not delay the outcome of that administrative complaint procedure beyond a reasonable time, second, that the decision ordering that suspension includes reasons both in law and in fact and may be subject to judicial review and, third, that, if it ultimately transpires that the right to deduction was refused in breach of EU law, that taxable person may secure the repayment of the corresponding amount within a reasonable time as well as, where relevant, the corresponding late payment interest. In those circumstances, it is not necessary that, during that

suspension, that taxable person enjoy a suspension of enforcement of that notice, except, in case of serious doubt as to the lawfulness of that notice, if granting the suspension of enforcement of the same notice is required to avoid serious and irreparable harm to the interests of the taxable person.

Costs

63 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 (Fifth Chamber) hereby rules:

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Article 47 of the Charter of Fundamental Rights of the European Union

must be interpreted as not precluding national legislation which permits national tax authorities to suspend the examination of an administrative complaint against a notice of assessment refusing a taxable person the right to deduct input value added tax on account of the involvement of that taxable person in tax evasion, with a view to securing additional objective evidence concerning that involvement, provided, first, that such suspension does not delay the outcome of that administrative complaint procedure beyond a reasonable time, second, that the decision ordering that suspension includes reasons both in law and in fact and may be subject to judicial review and, third, that, if it ultimately transpires that the right to deduction was refused in breach of EU law, that taxable person may secure the repayment of the corresponding amount within a reasonable time as well as, where relevant, the corresponding late payment interest. In those circumstances, it is not necessary that, during that suspension, that taxable person enjoy a suspension of enforcement of that notice, except, in case of serious doubt as to the lawfulness of that notice, if granting the suspension of enforcement of the same notice is required to avoid serious and irreparable harm to the interests of the taxable person.

[Signatures]