Reports of Cases

OPINION OF ADVOCATE GENERAL
RANTOS
delivered on 13 November 2025 [1]

Case C-544/24

BUAB 'Nekilnojamojo turto valdymas'
v
Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos

(Request for a preliminary ruling from the Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės (Tax Disputes Commission under the Government of the Republic of Lithuania))

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 273 – Charter of Fundamental Rights of the European Union – Article 49(3) – Obligations deemed necessary to ensure the correct collection of VAT and to prevent evasion – National legislation providing for a procedure for applying late payment interest on VAT arrears which, irrespective of the nature and severity of the infringement, includes a set fixed penalty part with no possibility for the tax authority to reduce the amount of that penalty part – Principle of proportionality)

I. Introduction

1. This request for a preliminary ruling, made by the Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės (Tax Disputes Commission under the Government of the Republic of Lithuania) concerns, in essence, the interpretation of Article 325 TFEU and Article 273 of Council Directive 2006/112/EC [2] of 28 November 2006 on the common system of value added tax ('the VAT Directive'), read in the light of Articles 49 and 50 of the Charter of Fundamental Rights of the European Union ('the Charter').

2. The request arises from a dispute between BUAB 'Nekilnojamojo turto valdymas' ('the applicant'), a limited liability company governed by Lithuanian law, and the Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos (State Tax Inspectorate attached to the Ministry of Finance of the Republic of Lithuania) ('the tax authority') concerning the latter's decision to refuse the applicant the exemption it had sought as regards the payment of late payment interest relating to VAT and a fine imposed on it for tax evasion.

3. In accordance with a request by the Court, the present Opinion will focus on the analysis of the second question referred for a preliminary ruling, which concerns the interpretation of the abovementioned provisions of EU law, read in conjunction with Article 49(3) of the Charter. More

[1] Original language: French.

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

specifically, the referring court is, in essence, asking whether national legislation providing for the payment of late payment interest relating to VAT arrears which, irrespective of the nature and severity of the infringement, sets a fixed penalty part without making it possible to reduce the amount of that part, namely by applying a rate of interest lower than the rate provided for by the law or waiving the penalty part of that late payment interest, is compatible with those provisions.

II. Legal framework

A. European Union law

4. Under Article 273 of the VAT Directive:

'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

…'

B. Lithuanian law

1. The Law on VAT

5. Article 123 of Lietuvos Respublikos pridėtinės vertės mokesčio įstatymas (Law of the Republic of Lithuania on Value Added Tax) of 5 March 2002,[3] in the version applicable to the dispute in the main proceedings ('the Law on VAT'), entitled 'Failure to comply with the procedure for the payment of VAT', states, in paragraph 1, that persons who infringe the provisions of that law are required to pay late payment interest in accordance with the procedure established by the Law on Tax Administration.

2. The Law on Tax Administration

6. Article 95 of Lietuvos Respublikos mokesčių administravimo įstatymas (Law of the Republic of Lithuania on Tax Administration) of 13 April 2004,[4] in the version applicable to the facts in the main proceedings ('the Law on Tax Administration'), entitled 'Methods of enforcing tax obligations', mentions among those instruments, in paragraph 1(1) thereof, late payment interest.

7. Article 96 of that law, entitled 'Late payment interest', states in paragraph 1(2):

'Late payment interest shall be calculated in respect of the taxpayer for:

…

[3] Žin., 2002, No 35-1271.

[4] Žin., 2004, No 63-2243.

(2) taxes not declared and not calculated, which were not paid or not paid on time, … as determined by the tax authority in the course of a tax inspection;

…’

8. Article 97(2) of that law, entitled ‘Commencement of calculation of late payment interest’ is worded as follows:

‘In the case specified in Article 96(1)(2) of this Law, late payment interest shall be calculated beginning with the day following the day on which the tax had to be paid to the Treasury in compliance with the tax legislation in force at that time until the day on which the inspection report was completed and, in the case of failure to pay the tax within the time limit laid down in Article 81(2) of this Law, … late payment interest shall continue to be calculated from the day following the expiry of the said time limit.’

9. Article 99 of that law, entitled ‘Amount of late payment interest’, as amended, with effect from 1 May 2023, by Law No XIV-1658 of 13 December 2022, provides in paragraph 1:

‘The rate of late payment interest, which in all cases may not be less than zero, and the procedure for calculating it shall be determined by the Minister of Finance, taking into account the yield on the secondary market, as on the last business day of the previous calendar quarter, of the government security, the redemption period of which is closest to a 12 month period (e.g. in Q2 2024 the yield on a government security was 3.708%). The rate of late payment interest shall be determined by increasing the above rate by seven percentage points.’

10. Article 100(1)(3) of the Law on Tax Administration, entitled ‘Exemption from late payment interest’, is worded as follows:

‘The taxpayer may be exempted from late payment interest, calculated but not paid (recovered), or a part thereof, provided that:

…

(3) there is a basis provided for in Article 141(1) of this Law;

…’

11. Article 141 of that law, entitled ‘Exemption from fines’, provides, in paragraph 1:

‘The grounds for the exemption of fines imposed under Articles 139 and 140 of this Law shall be the following:

(1) if the taxpayer proves the absence of his fault with regard to the infringement;

(2) if the tax law was infringed on account of circumstances beyond the taxpayer’s control and which he could not and did not foresee. The actions or failure to act by the taxpayer or his employees and the taxpayer’s insolvency shall not be treated as such circumstances;

(3) where a separate act of the taxpayer, though contrary to the provisions of a tax law, causes no damage to the budget;

(4) where the taxpayer infringed the law on account of an erroneous summarised explanation of the said tax law having been given or erroneous tax advice having been provided by the tax administration in writing or by telephone if the advice provided was recorded in accordance with the procedure set out by the central tax administration and it is possible to identify the person who called – the taxpayer (or his representative).'

III. The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

12. The tax authority carried out an inspection of the accuracy of the applicant's calculation, declaration and payment of VAT for the period from 1 December 2012 to 31 December 2016. Following that inspection, it found that the applicant had infringed the Law on VAT in so far as it had deducted VAT from invoices which were not legally valid and had engaged in transactions involving VAT fraud.

13. By decision of 4 September 2018, approving the abovementioned inspection report, the tax authority set the amount of VAT at EUR 6 517 901.36 and late payment interest on the VAT payable by the applicant at EUR 2 431 505.31. It also imposed a tax fine of EUR 1 862 257 on the applicant.

14. At the conclusion of the tax dispute which followed, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), by judgment of 9 September 2020, confirmed the findings of the abovementioned tax inspection.

15. On 18 January 2021, the applicant submitted to the tax authority a request for exemption from the payment of late payment interest and of the fine imposed on it.

16. By decision of 16 March 2021, the tax authority refused to exempt the applicant from the payment of VAT late payment interest in the amount of EUR 2 835 125.75. It found that the applicant did not satisfy any of the conditions laid down in Article 141(1) of the Law on Tax Administration and that it had also failed to establish exceptional circumstances justifying the application of the criteria of reasonableness and fairness.

17. Since the applicant failed to fulfil the additional obligations imposed on it in the field of VAT, the total amount of late payment interest referred to in the tax authority's decision of 4 September 2018 and accruing during the tax dispute, namely between 26 January 2013 and 4 April 2021, was set at EUR 3 150 660.79 and the fine at EUR 1 838 812.44.

18. The applicant submitted a new request for exemption from payment of late payment interest and of the fine. In that regard, it requested exemption from payment of the 'penalty part' of that VAT late payment interest, which represents two-thirds of the total amount of the late payment interest calculated in relation to it.

19. By decision of 13 May 2024, the tax authority refused to grant that new request, claiming, in essence, that the late payment interest had been determined in accordance with the requirements set out in the Law on Tax Administration. That law does not provide for any possibility of exempting the applicant from paying late payment interest on grounds other than those provided for in Article 100(1) thereof. The detailed rules for calculating the rate of late payment interest are laid down in mandatory terms by that law and the tax authority may take a decision on late

payment interest only within the limits laid down by that law. Moreover, according to settled national case-law, late payment interest is a method of ensuring compliance with a tax obligation and cannot be regarded as a penalty of a criminal nature. Furthermore, if the tax authority were to grant the applicant's request by opting to apply to it a different rate of interest from that provided for by the Law on Tax Administration, that authority would infringe the principle of equality of taxpayers before the law.

20. On 4 June 2024, the applicant brought an action before the Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės (Tax Disputes Commission under the Government of the Republic of Lithuania), the referring court, seeking annulment of the decision of the tax authority of 13 May 2024.

21. The referring court notes that the primary function of late payment interest is to ensure fulfilment of a tax obligation, and that it is primarily intended to compensate the State for its costs rather than to punish the person concerned. [5] However, that late payment interest also has a penalty element, since it is calculated by increasing the compensatory part related to the State's borrowing costs, which is determined by taking into account the yield of the government security on the secondary securities market, by seven percentage points. That court refers, in that regard, to the settled case-law of the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), according to which the inherent nature of late payment interest, as a means of enforcing a tax obligation, is that its application or the possibility to apply it encourages voluntary and proper performance of the tax obligation, while in the case of non-compliance or inadequate compliance it ensures that debt to the budget and the State's financial losses are covered. [6] According to that case-law, the requirement to pay late payment interest for late compliance with a tax obligation is not a penalty of a criminal nature.

22. Consequently, in such circumstances, the referring court questions, in particular, whether Articles 96 to 99 of the Law on Tax Administration are compatible with Article 325 TFEU and Article 273 of the VAT Directive, read in the light of Article 49(3) and Article 50 of the Charter, in so far as those national provisions do not ensure the coordination of the procedures for administrative imposition of late payment interest with those for criminal prosecution, so as to reduce to what is strictly necessary the additional disadvantage resulting from the duplication of those measures and does not ensure that the severity of all penalties imposed corresponds with the seriousness of the offence concerned, and in so far as there are no restrictions, for the purposes of imposing criminal penalties, on the application of the penalty part of the late payment interest when the actions on the basis of which that interest is determined also give rise to criminal proceedings.

[5] That court mentions, in that regard, the judgment of the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) of 10 March 2020 in Case A-3247-575/2020.

[6] The same court cites, to that effect, the judgment of the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) of 18 November 2011 in Case A-143-2619/2011.

23. In those circumstances, the Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės (Tax Disputes Commission under the Government of the Republic of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are Article 325 TFEU, Article 273 of the VAT Directive and Article 50 of the Charter to be interpreted as precluding national legislation which makes it possible to impose interest on late payment of tax, a part of which has the effect of a penalty in respect of the same tax infringements which are the subject of a criminal prosecution, without laying down any rules ensuring coordination which limits to what is strictly necessary the additional disadvantage which results, for the persons concerned, from a duplication of proceedings or making it possible to ensure that the severity of all of the penalties imposed is limited to what is strictly necessary in relation to the seriousness of the offence concerned?

(2) Are Article 325 TFEU, Article 273 of the VAT Directive and Article 49(3) of the Charter to be interpreted as precluding a procedure for applying interest on late payment of taxes which, irrespective of the nature and severity of the infringements, sets a fixed penalty part of interest on late payment of taxes, without making it possible to reduce that penalty part, that is to say, to impose a rate of late payment interest which is lower than the rate provided for by the law or to waive the penalty part of late payment interest?'

24. Written observations were submitted to the Court by the applicant, the Lithuanian and Polish Governments and the European Commission.

IV. Analysis

A. Admissibility of the request for a preliminary ruling

25. Before analysing the second question referred for a preliminary ruling, on which the Court has requested that the present Opinion be focused, it is necessary to rule on the objection of inadmissibility raised by the Lithuanian Government. The latter submits, in its written observations, that the request for a preliminary ruling is inadmissible in its entirety on the ground that the questions referred by the national court have no bearing on the dispute in the main proceedings.

26. In that regard, that government observes that the payment of late payment interest and the tax fine imposed on the applicant by the decision of the tax authority of 4 September 2018 was confirmed by a final judgment of the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) delivered on 9 September 2020. Accordingly, the applicant's tax liability was established by a final decision, which cannot form the subject of an appeal. Therefore, the subject matter of the dispute pending before the referring court relates only to the conditions for granting an exemption from payment of late payment interest in accordance with the applicable national law.

27. As a preliminary point, I note that, according to the settled case-law of the Court, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU

law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.[7]

28. In the present case, as set out in point 18 of the present Opinion, the applicant has brought an action before the referring court against the decision of the tax authority of 13 May 2024, by which the tax authority rejected the applicant's request seeking exemption from payment of the late payment interest relating to VAT and the fine imposed on it. That is the context in which that court asks, in essence, whether the mechanism for charging late payment interest provided for by the Law on Tax Administration is compatible with Article 325 TFEU and Article 273 of the VAT Directive.

29. I note, first, that a mechanism for the payment of late payment interest relating to VAT arrears, such as that established by Articles 95 to 99 of the Law on Tax Administration, constitutes an implementation of the provisions of the VAT Directive and, more specifically, Article 273 thereof, since it is intended to ensure the collection of amounts of VAT which have not been paid in accordance with the other provisions of that directive. Second, it is not obvious from the material in the documents submitted to the Court that the interpretation of Article 273 of that directive which is sought bears no relation to the actual facts of the main action or its purpose or even that the problem is hypothetical. Since the second question referred for a preliminary ruling concerns, in essence, compliance with the principle of proportionality in the context of the calculation of the late payment interest at issue, that appears to be relevant for the purposes of resolving the dispute in the main proceedings.

30. In those circumstances, and in so far as the Court has before it all the factual and legal material necessary to give a useful answer to the questions referred to it, it must be held that the present request for a preliminary ruling is admissible.

B. The second question referred for a preliminary ruling

31. By its second question referred for a preliminary ruling, which the Court has requested be the focus of the present Opinion, the referring court is, in essence, asking whether Article 325 TFEU and Article 273 of the VAT Directive, read in the light of Article 49(3) of the Charter, must be interpreted as precluding national legislation providing for the payment of late payment interest relating to VAT arrears which, irrespective of the nature and severity of the infringement, sets a fixed penalty part with no possibility to impose a rate of interest lower than the rate provided for by the law or to waive the penalty part of that late payment interest. The referring court therefore asks the Court to determine, first, the extent to which the late payment interest relating to VAT arrears which the applicant was required to pay following an administrative tax inspection is criminal in nature for the purpose of Article 49(3) of the Charter and, second, whether such national legislation complies with the principle of proportionality as interpreted and assessed in the context of the interpretation and application of Article 325 TFEU and Article 273 of the VAT Directive.

[7] See, to that effect, judgment of 11 September 2025, *Fira* (C-215/24, EU:C:2025:695, paragraph 36 and the case-law cited).

1. The applicability of Article 49(3) of the Charter

32. As a preliminary point, I would point out that Article 49(3) of the Charter, which provides that the severity of penalties must not be disproportionate to the offence, refers to penalties of a criminal nature.

33. According to the Court's settled case-law on the interpretation of Article 50 of the Charter and transposed into Article 49(3) thereof, three criteria ('the Engel criteria') [8] are relevant for assessing the criminal nature of a penalty, namely (i) the legal classification of the offence under national law, (ii) the intrinsic nature of the offence, and (iii) the degree of severity of the penalty which the person concerned is liable to incur. [9] In addition, even for offences which are not classified as 'criminal' by national law, the intrinsic nature of the offence in question and the degree of severity of the penalties to which it is liable to give rise may nevertheless result in its being criminal in nature. [10]

34. With regard to the first criterion, concerning the classification of the offence under national law, it follows both from the wording of Article 95(1) of the Law on Tax Administration and from the national case-law referred to in the order for reference, in particular that of the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) referred to in point 21 of the present Opinion that, under Lithuanian law, the charging of late payment interest on tax arrears in the event of non-payment or late payment of a tax due is not regarded as a penalty of a criminal nature. [11]

35. As regards the second criterion relating to the nature of the offence itself, that involves checking whether the penalty at issue has, inter alia, a punitive purpose. It follows that a penalty with a punitive purpose is criminal in nature and the sole fact that it also pursues a deterrent purpose does not mean that it cannot be characterised as a criminal penalty. By contrast, a measure which merely repairs the damage caused by the offence at issue is not criminal in nature. [12]

36. It must be pointed out, in that regard, that although, in the context of its case-law on tax disputes, the European Court of Human Rights was able to find that proceedings following which tax penalties had been imposed were criminal in nature even where those proceedings could not be regarded as criminal in nature under national law, such classification was not adopted in respect of measures similar to those at issue in the present case. More specifically, the European Court of Human Rights has held that 'late payment interest is not essentially intended to punish taxpayers in order to deter them from re-offending, but is primarily intended to provide financial compensation for damage, namely financial damage linked to the passage of time and the delay in payment of the tax'. [13] Therefore, in accordance with that case-law, tax reminder procedures or tax

[8] European Court of Human Rights (ECtHR), 8 June 1976, *Engel and Others v. the Netherlands*, CE:EHCR:1976:0608JUD000510071, § 82.

[9] See, to that effect, judgment of 4 May 2023, *Agenția Națională de Integritate* (C-40/21, EU:C:2023:367, paragraph 34 and the case-law cited).

[10] See judgment of 22 June 2021, *Latvijas Republikas Saeima (Penalty points)* (C-439/19, EU:C:2021:504, paragraph 88 and the case-law cited).

[11] It is also apparent from the documents before the Court that that measure was imposed in the context of an administrative procedure.

[12] See judgment of 4 May 2023, *MV – 98* (C-97/21, EU:C:2023:371, paragraph 42 and the case-law cited).

[13] ECtHR, 6 October 2009, *Poniatowski v. France*, CE:ECHR:2009:1006DEC002949408. Similarly, mere interest for late payment, which means that it is accepted that the taxpayer was acting in good faith, does not constitute a criminal charge, within the meaning of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (signed in Rome on 4 November 1950) (see, in that regard, ECtHR, 14 September 1999, *J.B. v. France*, CE:ECHR:1999:0914DEC003363496). See, also, to that effect, Opinion of Advocate General Campos Sánchez-Bordona in *Menci* (C-524/15, EU:C:2017:667, point 50).

adjustment procedures aimed purely at recovering the full amount of tax, without that adjustment being accompanied by any increase, and proceedings relating to late payment interest, irrespective of its amount do not have a criminal-law aspect. [14]

37. In addition, it should be noted that the non-punitive nature of late payment interest has also been emphasised in the Court's case-law on VAT in cases similar to that at issue in the main proceedings. Although the latter did not directly concern the question whether late payment interest relating to VAT arrears was criminal in nature within the meaning of Article 49(3) of the Charter, the Court nevertheless held that the charging of late payment interest was, first, preventive in nature, by encouraging the taxpayer to fulfil the tax obligation as soon as possible after those time limits expire [15] and, second, compensatory in nature (or a compensatory function), in that such interest is intended to offset the financial losses suffered by the State as a result of the non-payment or late payment of a tax. [16]

38. Moreover, in accordance with the case-law of the Court, a measure which merely repairs the damage caused by the offence at issue is not criminal in nature. [17] Consequently, late payment interest, which is intended to offset the financial losses suffered by the Member State as a result of the non-payment or late payment of a tax, cannot be regarded as constituting a punitive measure.

39. I should point out, in that regard, that the fact that the referring court identifies a 'fixed penalty part' cannot confer any criminal-law aspect to the late payment interest at issue in the case in the main proceedings. [18] Although the use of the expression 'penalty part' by that court in its order for reference may, to a certain extent, give rise to confusion, and beyond the fact that late payment interest (including that 'part') could be perceived by the taxpayer as a form of penalty or sanction, the fact remains that its objective is to encourage the debtor to pay the amount due to the creditor within the prescribed time limit, failing which that amount will be increased. Therefore, the analysis carried out by the referring court in order to determine which part of the rate of late payment interest has a compensatory function and which other has a punitive function is, in the present case, irrelevant.

40. As regards the third criterion relating to the degree of severity of the penalty, there is nothing in the documents before the Court to suggest that the late payment interest in the present case is of such significance that it should be regarded as criminal in nature. [19] In any event, as is apparent from the case-law of the European Court of Human Rights set out in point 36 of the present

[14] ECtHR, 3 December 2002, *Mieg de Boofzheim v. France*, CE:ECHR:2002:1203DEC005293899, and ECtHR, 17 May 2016, *Société Oxygène Plus v. France*, CE:ECHR:2016:0517DEC007695911, § 50.

[15] See judgment of 13 October 2022, *Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika'* (C-1/21, 'the judgment in *Direktor na Direktsia*', EU:C:2022:788, paragraph 89 and the case-law cited).

[16] See the judgment in *Direktor na Direktsia* (paragraph 91 and the case-law cited). A similar finding regarding the compensatory function of interest for late payment is apparent from the case-law of the Court in cases relating to EU customs legislation in which it has been established that interest on arrears is intended to offset the consequences arising as a result of payment not having been made by a set deadline and to compensate for the advantages which the trader unduly derives from the delay in paying a tax debt, and not to penalise such a delay. See, to that effect, judgment of 5 December 2024, *Network One Distribution* (C-506/23, EU:C:2024:1003, paragraph 32).

[17] See judgment of 20 March 2018, *Menci* (C-524/15, EU:C:2018:197, paragraph 31 and the case-law cited).

[18] In that regard, it should be noted that the national legislation at issue in the main proceedings provides that the rate of late payment interest relating to VAT arrears is determined by adding seven percentage points to the rate of interest on debts owed to the Treasury. The referring court considers that those seven percentage points make late payment interest *punitive in nature*.

[19] As the Commission pointed out in its written pleadings, it must be noted that the rate of late payment interest at issue in *Poniatowski v. France* (0.75% per month, therefore 9% per annum), in which the ECtHR did not recognise a criminal-law aspect, was close to the rate applicable in the present case (0.03% per day, therefore 10.708% per annum) (see ECtHR, 6 October 2009, *Poniatowski v. France*, CE:ECHR:2009:1006DEC002949408).

Opinion, it must be borne in mind that, irrespective of their amount, measures similar to those in the main proceedings were not regarded as sufficiently serious to confer a criminal nature on them. [20]

41. In the light of the foregoing, I consider that none of the three Engel criteria for determining that the late payment interest at issue in the main proceedings is criminal in nature is satisfied and, therefore, Article 49(3) of the Charter is not relevant for the purpose of answering the second question referred for a preliminary ruling.

2. The application of the principle of proportionality in the interpretation of Article 325 TFEU and Article 273 of the VAT Directive

42. As a preliminary point, I would point out that, in accordance with the Court's settled case-law, it follows from the first paragraph of Article 273, Article 2 and Article 250(1) of the VAT Directive and from Article 4(3) TEU that each Member State is required to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on its territory and for preventing evasion. [21]

43. In that regard, the Court has already held that, outside the limits laid down therein, Article 273 of the VAT Directive does not specify either the conditions or the obligations which the Member States may impose and therefore gives the Member States a margin of discretion with regard to the means of ensuring collection of all the VAT due on their territory and for combating fraud. [22]

44. Moreover, Article 325(1) and (2) TFEU obliges the Member States to counter illegal activities affecting the financial interests of the European Union through effective deterrent measures and, in particular, requires them to take the same measures to counter fraud affecting the financial interests of the European Union as they take to counter fraud affecting their own interests. [23] The Court has specified that Article 325 TFEU obliges the Member States to provide, in their national legislation, for effective proceedings for the recovery of assistance wrongly received from the budget of the European Union. [24] In that regard, Member States are subject to a precise obligation as to the result to be achieved which is not subject to any condition regarding the application of the rule laid down in Article 325(1) and (2) TFEU. [25]

45. In accordance with the settled case-law of the Court, while the choice of penalties remains within their discretion, Member States must ensure that infringements of EU law, including the harmonised rules deriving from the VAT Directive, are penalised under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive. [26]

[20] See ECtHR, 6 October 2009, *Poniatowski v. France*, CE:ECHR:2009:1006DEC002949408, and ECtHR, 17 May 2016, *Société Oxygène Plus v. France*, CE:ECHR:2016:0517DEC007695911, § 50.

[21] See the judgment in *Direktor na Direktsia* (paragraph 60 and the case-law cited).

[22] See the judgment in *Direktor na Direktsia* (paragraph 69 and the case-law cited).

[23] See, to that effect, judgment of 1 October 2020, *Úrad špeciálnej prokuratúry* (C-603/19, 'the judgment in *Úrad špeciálnej prokuratúry*', EU:C:2020:774, paragraph 48 and the case-law cited).

[24] See, to that effect, the judgment in *Úrad špeciálnej prokuratúry* (paragraphs 60 and 62).

[25] See, to that effect, the judgment in *Úrad špeciálnej prokuratúry* (paragraph 50 and the case-law cited).

[26] See judgment of 2 May 2018, *Scialdone* (C-574/15, EU:C:2018:295, paragraph 28 and the case-law cited).

46. Accordingly, it follows from the Court's case-law that while the Member States remain free to determine the amount and the detailed rules for the charging of late payment interest applied to VAT arrears in the event of non-payment or late payment of that tax under their national law in the context of their procedural autonomy, the measures adopted by those Member States must, however, comply with the general principles of law, which include the principle of proportionality.

47. I note, in the first place, that, in so far as it is intended to ensure the correct collection of VAT and to prevent evasion, the national legislation at issue in the main proceedings pursues a legitimate objective recognised by EU law.[27] The Court has already acknowledged that charging default interest helps to combat failures to pay declared amounts of VAT within the prescribed time limits, in accordance with the obligation on the Member States, in particular under Article 273 of the VAT Directive and Article 325(1) TFEU, to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on their territory and for preventing evasion.[28] As recalled in point 37 of the present Opinion, the late payment interest provided for by the Law on Tax Administration has a dual function consisting in, first, enforcing tax obligations and ensuring the collection of tax which is due by encouraging the taxpayer to fulfil that obligation punctually and, second, covering the costs incurred by the tax authorities as a result of the taxpayer's failure to fulfil tax obligations in good time, thereby compensating the loss caused to the public exchequer by the unavailability of the amounts corresponding to the tax due.[29]

48. In the second place, a measure imposing late payment interest, such as that at issue in the main proceedings, is undoubtedly an appropriate means of achieving the objective referred to above. In the absence of measures such as late payment interest, taxpayers would have no particular incentive to fulfil their tax obligations within the prescribed time limits and might give preference to other commercial transactions. Moreover, given the fluctuating value of money, taxpayers could even be encouraged to favour those other transactions instead of paying their tax debts within the time limits laid down. Late payment interest is charged specifically in order to encourage taxpayers to fulfil their tax obligations as a matter of priority, in order not to risk seeing the amount of their tax debt increase in proportion to the length of time they have been in arrears. The absence of late payment interest would also favour those who do not meet their tax obligations within the prescribed time limit. The latter would benefit, inter alia, from additional liquidity and an economic advantage corresponding to the reduction, over time, of the real nominal value of the amount of the tax debt. Consequently, late payment interest is an appropriate and necessary measure for attaining the objectives pursued by the national legislation at issue in the main proceedings.

49. While it has been established that a measure such as that at issue is appropriate and necessary to attain the objective of ensuring the correct collection of VAT and preventing evasion, in accordance with Article 325 TFEU and Article 273 of the VAT Directive, it remains to be examined, in the third and final place, whether the national legislation concerned goes beyond what is necessary to attain that objective.

[27] It must be added that both the European Union and the Member States have a financial interest in the full and timely payment of taxes. As the Lithuanian Government has pointed out, referring to a judgment of the Lietuvos Respublikos Konstitucinis Teismas (Constitutional Court of the Republic of Lithuania), in the event of non-payment or late payment of taxes, the Treasury does not collect any revenue, with the result that the budget deficit increases and the State's ability to perform its tasks of vital importance for its nationals and that State are limited.

[28] See the judgment in *Direktor na Direktsia* (paragraphs 88, 89 and 92 and the case-law cited).

[29] These include, for example, costs associated with monitoring taxpayers' compliance with tax obligations and the adoption of appropriate measures in that regard to recover unpaid amounts.

50. In that regard, first, while it is conceivable that late payment interest set in an arbitrary or discretionary manner may be disproportionate, that does not appear to be so in the present case. The provisions of national law on the calculation of late payment interest apply to all taxpayers in the event of non-payment or late payment, as determined in the course of a tax inspection, of tax subject to declaration and not declared or not subject to declaration and not calculated.[30] Moreover, I would point out that, first, the rate in the present case is established a priori in a clear and transparent manner in accordance with objective criteria and on the basis of a calculation methodology described in the Law on Tax Administration[31] and, secondly, the decision-making power of the tax authority with regard to setting late payment interest is circumscribed by that law.[32] The amount of interest thereby laid down allows creditors and debtors to predict precisely the extent of their future financial rights or, where appropriate, obligations, so as to also guarantee legal certainty.[33]

51. Second, it must be acknowledged that, in so far as late payment interest is linked to the enforcement or extinguishing of the tax obligation, it is the actions of the taxpayer which will determine the total amount of late payment interest for which the taxpayer will be liable. In other words, the application of late payment interest imposes on the person who has failed to discharge his or her tax obligations within the prescribed time limit a financial burden which is proportionate to the period of non-payment of the debt which triggered the calculation of interest.[34] Consequently, the use of late payment interest as a means of ensuring that tax obligations are enforced does not, in principle, constitute a solution which places an excessive burden on taxpayers.[35]

52. Third, as established in points 36 and 37 of the present Opinion, since interest for late payment does not have a punitive purpose, factors such as the nature and severity of the established infringement which are, as a general rule, relevant in order to assess whether a penalty such as a tax fine is consistent with the principle of proportionality[36] are not necessarily relevant in the case of late payment interest. Such late payment interest is due because of non-payment or late payment of tax and not because of tax evasion.[37] I would like to point out, in that regard, that late payment interest is not applicable solely in the event of evasion, but is used more generally in the field of taxation to ensure the collection of all types of tax.

30 See point 7 of the present Opinion.

31 See point 9 of the present Opinion.

32 See points 10 and 11 of the present Opinion.

33 See, by analogy, Opinion of Advocate General Szpunar in *Nidera* (C-387/16, EU:C:2017:740, point 29).

34 That charge corresponds to the flat-rate remuneration of the tax creditor for unlawful use of the amount of the tax debt, during the period in which the taxable person did not fulfil his or her obligations. The amount of interest is, moreover, intended to cover the costs incurred by the tax authority as a result of the taxpayer's failure to meet his or her tax obligations within the prescribed time limits.

35 It is important to point out in that regard that the fact that the amount of interest may equal, or even exceed, the amount of the tax due because a long period has elapsed during which the taxable person has not fulfilled his or her obligations is merely a result of applying compensation at a flat rate and cannot call into question the proportionality of the national measure providing for interest for late payment. See, by analogy, judgment of 28 February 2018, *Nidera* (C-387/16, EU:C:2018:121, paragraph 36).

36 See judgment of 17 May 2023, *Cezam* (C-418/22, EU:C:2023:418, paragraph 30 and the case-law cited).

37 That does not, of course, rule out a situation where, as in the case in the main proceedings, late payment interest is charged following a finding of tax evasion. In any event, even if the fine imposed on the applicant for tax evasion were to be regarded as linked to the imposition of VAT late payment interest, there seems to me to be no doubt that the infringement committed by the applicant is of a serious nature in the light, inter alia, of the importance of combating VAT fraud, as recalled in point 42 of the present Opinion. Therefore, in the light of the severity of the harm to the public interest resulting from acts of evasion, the mechanism for the payment of late payment interest relating to VAT arrears provided for by the national legislation at issue in the main proceedings does not, in principle, appear to be disproportionate to the infringement which it seeks to penalise. The late payment interest charged to the applicant corresponds to a tiny fraction of the tax arrears (namely 0.03%) and the amount of late payment interest will ultimately depend on the duration of the non-payment or late payment of tax.

53. Fourth, although it is for the referring court to assess whether the amount of late payment interest applied in the case in the main proceedings does not go beyond what is necessary to ensure the efficient collection of VAT and to combat evasion, nothing in the documents submitted to the Court appears to indicate that the rate of late payment interest provided for by the national legislation in the present case is disproportionate in relation to the objectives which it pursues. [38]

54. I therefore note that, in so far as the national court is, in essence asking whether it is possible to grant the applicant's request to be exempted from paying the 'penalty part' of the VAT late payment interest, being two-thirds of the total amount of the VAT late payment interest calculated in relation to it, such a decision would in fact amount to reducing that interest to a particularly low amount by limiting it to a single component, namely the average interest rate for government bonds. [39] Such a possibility would risk undermining the objective of ensuring the timely recovery of VAT since taxpayers would no longer have any incentive to fulfil their tax obligations as a matter of priority, thereby giving priority to other commercial transactions instead. [40]

55. Moreover, the fact that the amount of the late payment interest is fixed at a flat rate and is not coupled with any possibility of adjustment does not, in itself, support the conclusion that that measure is disproportionate. The fact that the national legislation at issue in the main proceedings determines the amount of late payment interest, which the tax authority cannot adjust, except in a few cases expressly defined by the applicable tax legislation, [41] protects taxable persons against any arbitrary decision by that authority while ensuring equal treatment between those taxable persons. The absence of a framework for the discretion of the tax authorities could lead to an unjustified difference in treatment between taxable persons who are in a comparable tax situation and, therefore, a situation which cannot be tolerated for tax purposes.

56. In the light of the foregoing, I propose that the answer to the second question referred for a preliminary ruling should be that Article 325 TFEU and Article 273 of the VAT Directive, read in the light of Article 49(3) of the Charter, must be interpreted as not precluding national legislation which, irrespective of the nature and severity of the infringement found by the tax authority, sets the amount of late payment interest without that authority being able to reduce one of the parts of that amount and thereby apply a rate of interest which is lower than the rate provided for by that legislation or waive a part of that amount and which provides that the taxpayer may be exempted from paying late payment interest only in the cases expressly defined by that legislation.

[38] So far as is relevant, I would like to emphasise that there appears to be a wide divergence in the rates of interest for late payment between the various Member States. While five of them (namely Denmark, the Czech Republic, Slovakia, Latvia and Estonia) have interest rates which are higher, or even significantly higher than those laid down by the Lithuanian legislation at issue in the main proceedings (almost 25% in the case of Estonia), four other Member States (namely Belgium, Ireland, Bulgaria and Greece) are more or less at the same level as the level set by Lithuania. See, in that regard, the report of the European Commission's Directorate-General for Taxation and Customs Union (DG TAXUD), *EU VAT Forum Subgroup 7.2. – 'Administrative Sanctions and Interests' Final Report*, in particular p. 33, available only in English at the following address: https://op.europa.eu/en/publication-detail/-/publication/f3c5fca5-96e1-11ed-b508-01aa75ed71a1/. Moreover, as the Commission stated in its written submissions, the interest rate applicable in the case in the main proceedings (that is to say 10.708% per annum) does not appear excessive by comparison with the interest rates applied to certain bank loans or with the interest rates for late payment established in accordance with the relevant provisions of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ 2011 L 48, p. 1), which are generally higher than 10%. See, in that regard, Article 2(6) and (7) of that directive.

[39] As financial instruments which are considered to be particularly safe, government bonds usually have rates (significantly) lower than the average bank loan rates.

[40] That would be the case, in particular, if the interest rate applied for non-payment of VAT within the prescribed time limit were significantly lower than that payable for non-payment of commercial debts.

[41] See points 10 and 11 of the present Opinion.

V. Conclusion

57. In the light of the foregoing considerations, I propose that the Court should answer the second question referred for a preliminary ruling by the Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės (Tax Disputes Commission under the Government of the Republic of Lithuania) as follows:

Article 325 TFEU and Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in the light of Article 49(3) of the Charter of Fundamental Rights of the European Union,

must be interpreted as not precluding national legislation which, irrespective of the nature and severity of the infringement found by the tax authority, sets the amount of late payment interest without that authority being able to reduce one of the parts of that amount and thereby apply a rate of interest which is lower than the rate provided for by that legislation or waive a part of that amount and which provides that the taxpayer may be exempted from paying late payment interest only in the cases expressly defined by that legislation.