

Provisional text

JUDGMENT OF THE COURT (Seventh Chamber)

13 October 2022 (*)

(Reference for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Article 273 – Measures to ensure the correct collection of VAT – Article 325(1) TFEU – Obligation to counter illegal activities affecting the financial interests of the European Union – VAT debts of a taxable legal person – National legislation which provides for the joint and several liability of the non-taxable manager of the legal person – Transfers made in bad faith by the manager – Depletion of the legal person's assets leading to insolvency – Failure to pay the amounts of VAT payable by the legal person within the prescribed time limits – Default interest – Proportionality)

In Case C-1/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Veliko Tarnovo (Administrative Court, Veliko Tarnovo, Bulgaria), made by decision of 18 November 2020, received at the Court on 4 January 2021, in the proceedings

MC

v

Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Veliko Tarnovo pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite,

THE COURT (Seventh Chamber),

composed of A. Prechal (Rapporteur), President of the Second Chamber, acting as President of the Seventh Chamber, J. Passer and N. Wahl, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- MC, by himself,
- the Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Veliko Tarnovo pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite, by B. Nikolov,
- the Spanish Government, by M.J. Ruiz Sánchez, acting as Agent,
- the European Commission, by N. Nikolova and V. Uher, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 June 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 9 of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995 (OJ 1995 C 316, p. 48; 'the PFI Convention'), of Article 273 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 of the principle of proportionality.

2 The request has been made in proceedings between MC and the Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Veliko Tarnovo pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite (Director of the Appeals and Tax and Social Security Practice Directorate of Veliko Tarnovo within the National Revenue Agency; 'the Director') concerning an adjustment notice by which MC was made jointly and severally liable for certain tax debts, including value added tax (VAT) debts, of a commercial company of which he was the manager.

Legal context

European Union law

The PFI Convention

3 As set out in the preamble to the PFI Convention, the contracting parties to that convention, 'desiring to ensure that their criminal laws contribute effectively to the protection of the financial interests of the European Communities', are convinced, first, that 'protection of the European Communities' financial interests calls for the criminal prosecution of fraudulent conduct injuring those interests' and, secondly, 'of the need to make such conduct punishable with effective, proportionate and dissuasive criminal penalties, without prejudice to the possibility of applying other penalties in appropriate cases, and of the need, at least in serious cases, to make such conduct punishable with deprivation of liberty'.

4 Article 1(1) of the PFI Convention defines the concept of 'fraud affecting the European Communities' financial interests'. Under Article 1(2) of that convention, each Member State is to take the necessary and appropriate measures to transpose Article 1(1) of the convention into their national criminal law in such a way that the conduct referred to therein constitutes criminal offences.

5 Article 2(1) of the PFI Convention provides that each Member State is to take the necessary measures to ensure that the conduct referred to in Article 1 of that convention, and participating in, instigating, or attempting the conduct referred to in Article 1(1) thereof, are punishable by effective, proportionate and dissuasive criminal penalties.

The VAT Directive

6 Article 205 of the VAT Directive states:

'In the situations referred to in Articles 193 to 200 and Articles 202, 203 and 204, Member States may provide that a person other than the person liable for payment of VAT is to be held jointly and severally liable for payment of VAT.'

7 The first paragraph of Article 273 of that directive is worded as follows:

‘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.’

Bulgarian law

8 Article 19(2) of the Danachno – osiguritelen protsetsualen kodeks (Tax and Social Security Code of Procedure; ‘the DOPK’) provides:

‘A manager or member of an executive body who, in bad faith, makes payments in kind or in cash from the assets of a legal entity which is a debtor pursuant to Article 14(1) and (2) constituting a hidden distribution of profits or dividends, or transfers assets of the debtor free of charge or at prices significantly lower than market prices, with the result that the assets of the debtor are reduced and therefore taxes or statutory social security contributions are not paid, shall be liable for the debt up to the amount of the payments made or the amount of the reduction in the assets.’

9 Article 20 of the DOPK states:

‘In the cases provided for in Article 19, protective measures and enforcement shall be directed first against the assets of the debtor for whose tax or social security debt the liability is incurred.’

10 Article 21(3) of the DOPK provides that the liability of third parties is to lapse when the debt for which that liability had been established by a final act is extinguished.

11 Article 1 of the Zakon za lihvite varhu danatsi, taksi i drugi podobni darzhavni vzemania (Law on interest on taxes, charges and other similar debts owed to the State) (DV No 91 of 12 November 1957), in the version applicable to the dispute in the main proceedings, provides:

‘Taxes, charges, deductions from profits, contributions to the budget and other similar debts owed to the State which have not been paid within the prescribed period for voluntary payment, have not been withheld or have been withheld but have not been paid on time shall be collected together with interest at the statutory rate.’

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

12 Between 14 April 2011 and 30 April 2015, MC was the manager of a commercial company.

13 In 2015, enforcement proceedings for recovery of debts owed to the State were brought against that company, relating in particular to amounts of unpaid VAT and default interest payable on those amounts.

14 On 28 August 2018, those proceedings enabled only 287 935.35 Bulgarian leva (BGN) (approximately EUR 148 115) to be recovered. The total amount of the debts still owed by that company to the State was BGN 3 799 590.92 (approximately EUR 1 954 522).

15 Determining that those debts would be difficult to recover from that company, the enforcement officer referred the matter to the competent regional directorate of the Natsionalnata agentsia za prihodite (National Revenue Agency) ('the Directorate') with a view to establishing MC's joint and several personal liability, pursuant to Article 19(2) of the DOPK.

16 In that procedure, MC was the subject of an inspection which established the following facts.

17 MC performed executive management functions at the commercial company referred to above between 14 April 2011 and 30 April 2015. According to the explanations provided by MC, the remuneration he received in that capacity was set out in a management agreement concluded with that company. However, neither MC nor the company could produce that agreement.

18 MC claimed that his gross monthly remuneration had been increased with effect from 1 March 2014 from BGN 3 000 (approximately EUR 1 543) to BGN 20 000 (approximately EUR 10 288). He submitted that that increase was justified by the increase in the company's net revenue and turnover following the conclusion of new contracts.

19 The Directorate took the view that the amount corresponding to the increase in MC's net remuneration, that is BGN 15 300 (approximately EUR 7 800) per month, constituted a hidden distribution of profits or dividends within the meaning of Article 19(2) of the DOPK for September, October, November and December 2014 and January 2015, corresponding to a total amount of BGN 76 500 (approximately EUR 39 352). It also considered that MC had acted in bad faith.

20 In particular, the Directorate noted that three payments had been made, on 18 and 23 December 2014, into the bank account of MC's wife for a cumulative amount of BGN 53 164.08 (approximately EUR 27 348). In addition, the judicial investigation, during which banking secrecy was lifted, established that those payments had been made online from the 'client account' of the lawyer representing the commercial company of which MC was the manager.

21 The Directorate considered that that cumulative amount of BGN 53 164.08, transferred into the account of MC's wife, exceeded MC's normal net remuneration, calculated over a period of three months, by BGN 45 900 (approximately EUR 23 611).

22 Pursuant to Article 19(2) of the DOPK, the Directorate issued an adjustment notice by which it declared MC jointly and severally liable for the debts owed by that commercial company to the State amounting to BGN 45 008.25 (approximately EUR 23 152). The debts to the State at issue in the main proceedings covered personal tax, social security contributions and VAT, including inter alia the sum of BGN 12 837.50 (approximately EUR 6 604) representing interest payable on the VAT relating to December 2014.

23 MC brought an administrative appeal against that adjustment notice before the Director, who dismissed his appeal.

24 MC therefore brought an action before the referring court, arguing that the conditions for the application of Article 19(2) of the DOPK had not been satisfied.

25 Before the referring court, the Director contended, first, that MC had a bank mandate on his wife's account and, secondly, that he had instructed the chief accountant of the company at issue in the main proceedings to make the transfers.

26 The referring court considers that those conditions are satisfied and, therefore, that MC's conduct is caught by the system of joint and several liability established in that provision. According to that court, it has been proved that MC instructed a third party to transfer a sum

belonging to the company of which he was the manager to a natural person associated with him, or at least that he was aware of that transfer and therefore acted in bad faith within the meaning of Article 19(2) of the DOPK. That court also states that it was due to the reduction in that company's assets by the amount indicated in the adjustment notice that the interest payable on the VAT for December 2014 was not paid.

27 As regards the system of joint and several liability provided for in Article 19(2) of the DOPK, the referring court provided the following details.

28 In the first place, the joint and several liability provided for in that provision refers exclusively to a person who is a manager or member of an executive body of a taxable person with legal personality.

29 In the second place, the referring court clarifies that that person must have made, in bad faith, payments from the assets of the legal person which are capable of being characterised as a hidden distribution of profits or dividends, or must have transferred those assets free of charge or at a price significantly lower than the market price. By contrast, that system is not connected with the existence of fraud or an abusive practice on the part of the legal person itself.

30 In the third place, the referring court states that the acts carried out in bad faith must have the effect of rendering the legal person unable to pay taxes (including VAT) or compulsory social security contributions. In other words, recourse to that system requires a causal link between, on the one hand, the acts carried out in bad faith and, on the other, the impossibility of recovering debts to the State from that legal person.

31 In the fourth place, the system of liability for a third party's debts provided for in Article 19(2) of the DOPK does not extend to all of the legal person's debts to the State, but is limited to the amount by which the legal person's assets have been depleted as a result of the acts carried out in bad faith.

32 In the fifth place, the liability provided for is alternative in that enforcement measures should, as a priority, be directed against the legal person's assets, in accordance with Article 20 of the DOPK. Moreover, that liability lapses when the relevant debts to the State are extinguished, in accordance with Article 21(3) of the DOPK.

33 The referring court questions whether that system of joint and several liability is compatible with EU law.

34 First, it asks whether the VAT Directive, and in particular Article 273 thereof, allows a Member State to impose joint and several liability for a VAT debt on a person who is not a taxable person for VAT purposes, on the understanding that such a system contributes to the protection of the financial interests of the European Union.

35 Secondly, should the Court answer that question in the affirmative, the referring court asks whether it is possible to include in that system interest for late payment of VAT, in particular in the light of the principle of proportionality. It refers, in that regard, to conflicting national case-law on Article 19(2) of the DOPK.

36 Thirdly, should the Court also answer that question in the affirmative, the referring court asks whether the inclusion of interest for late payment of the tax remains justified, in particular in the light of the principle of proportionality, where the failure to pay within the prescribed period is attributable not to the bad faith conduct of the person rendered jointly and severally liable, but to the conduct of a third party or to the occurrence of objective circumstances.

37 In those circumstances, the Administrativen sad Veliko Tarnovo (Administrative Court, Veliko Tarnovo, Bulgaria) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 9 of the [PFI Convention], read in conjunction with Article 273 of [the VAT Directive], to be interpreted as meaning that it does not preclude, in the harmonised field of [VAT], a national legal instrument such as that provided for in Article 19(2) of the DOPK, the application of which has the effect of triggering *post factum* the joint and several liability of a non-taxable natural person who is not liable for payment of VAT but whose conduct in bad faith led to non-payment of VAT by the taxable legal person which is liable for that payment?’

(2) Do the interpretation of those provisions and the application of the principle of proportionality preclude the national legal instrument provided for in Article 19(2) of the DOPK also in respect of interest on VAT not paid in due time by the taxable person liable for that payment?’

(3) Is the national legal instrument provided for in Article 19(2) of the DOPK contrary to the principle of proportionality in a case where the late payment of VAT, which led to interest being charged on the VAT debt, is attributable not to the conduct of the non-taxable natural person, but to the conduct of another person or to the manifestation of objective circumstances?’

Consideration of the questions referred

Preliminary observations

38 The Director disputed the admissibility of the request for a preliminary ruling in its entirety calling into question the applicability, in the circumstances of the case in the main proceedings, of the provisions of EU law referred to in the questions submitted.

39 The Director argued, in particular, that the VAT Directive is not intended to apply to a system of joint and several liability covering all categories of tax and social security contributions, such as that provided for in Article 19(2) of the DOPK.

40 In that regard, it should be pointed out that the fact that the relevant national legislation has not been adopted to transpose the VAT Directive cannot call into question the applicability of that directive, since the application of that legislation is designed to ensure compliance with the provisions of that directive and is intended, inter alia, to implement the obligation incumbent on the Member States under Article 325(1) TFEU to take effective action against conduct prejudicial to the financial interests of the European Union (see, to that effect, judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 28).

41 That said, it is necessary to identify the provisions of EU law which are applicable in situations such as that in the main proceedings.

42 In the first place, as regards Article 9 of the PFI Convention, it should be borne in mind that that convention was replaced by Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union’s financial interests by means of criminal law (OJ 2017 L 198, p. 29). However, since that directive did not enter into force until 17

August 2017 and the facts at issue in the main proceedings occurred during 2014 and 2015, only the PFI Convention is capable of applying to the dispute in the main proceedings.

43 It should be pointed out that the PFI Convention imposes obligations on Member States in criminal matters. It is clear from, inter alia, the preamble to, and Articles 1 and 2 of, that convention that it requires the Member States, first, to ensure that conduct consisting in 'fraud affecting the European Communities' financial interests' constitutes a criminal offence and, secondly, to ensure that such conduct is punishable by effective, proportionate and dissuasive criminal penalties.

44 In the present case, it is common ground that a system such as that provided for in Article 19(2) of the DOPK, first, does not render conduct that is capable of giving rise to joint and several liability for the VAT debts of the legal person a criminal offence and, secondly, does not provide for any criminal penalties in that regard.

45 Accordingly, and as the Director and the European Commission rightly argued, the PFI Convention is not applicable to a system of joint and several liability such as that provided for in Article 19(2) of the DOPK.

46 In the second place, the Director argued, in the alternative, that the system of liability established in Article 19(2) of the DOPK comes within the scope of Article 205 of the VAT Directive, under which Member States may, in certain situations, provide that a person other than the person liable for payment of VAT is to be held jointly and severally liable for payment of VAT.

47 In that regard, it should be noted that, as set out in Article 205 of the VAT Directive, in the situations referred to in Articles 193 to 200 and 202 to 204 of that directive, Member States may provide that a person other than the person liable for payment of VAT is to be held jointly and severally liable for payment of VAT.

48 Articles 193 to 200 and 202 to 204 of the VAT Directive determine the persons liable for payment of VAT, in accordance with the purpose of Section 1 of Chapter 1 of Title XI of that directive, headed 'Persons liable for payment of VAT to the tax authorities'. Although Article 193 of that directive provides, as the basic rule, that VAT is payable by any taxable person carrying out a taxable supply of goods or services, the wording of that article states that other persons may or shall be liable for payment of VAT in the situations referred to in Articles 194 to 199b and 202 of that directive (judgment of 20 May 2021, *ALTI*, C-4/20, EU:C:2021:397, paragraph 27).

49 It is apparent from the context formed by Articles 193 to 205 of the VAT Directive that Article 205 of that directive is part of a set of provisions aimed at identifying the person liable for payment of VAT in various situations. Those provisions thereby seek to ensure for the public exchequer the efficient collection of VAT from the most appropriate person in the light of the specific situation, particularly where the parties to the contract are not in the same Member State or where the transaction subject to VAT relates to supplies the specific nature of which makes it necessary to identify a person other than that referred to in Article 193 of that directive (judgment of 20 May 2021, *ALTI*, C-4/20, EU:C:2021:397, paragraph 28).

50 In principle, therefore, Article 205 of the VAT Directive allows Member States to adopt, for the efficient collection of VAT, measures pursuant to which a person other than the person normally liable for that tax under Articles 193 to 200 and 202 to 204 of that directive is jointly and severally liable for payment of that tax (judgment of 20 May 2021, *ALTI*, C-4/20, EU:C:2021:397, paragraph 29).

51 In the present case, as the Spanish Government and the Commission rightly argued, it should nevertheless be pointed out that a system of joint and several liability such as that at issue

in the main proceedings is not intended to designate a person liable for payment of the tax on a specific taxable transaction, within the meaning of Article 205 of the VAT Directive.

52 First, the person designated under that system does not become liable for the VAT on a specific taxable transaction, but is jointly and severally liable for all or part of a legal person's VAT debts, irrespective of the taxable transactions concerned.

53 Secondly, the scope of that system does not cover all the unpaid VAT on a specific taxable transaction, but is limited to the amount by which the legal person's assets have been depleted as a result of the acts carried out in bad faith by the person designated as jointly and severally liable.

54 Such a system is to be distinguished, in particular, from those referred to in the requests for a preliminary ruling in the cases which gave rise to the judgments of 11 May 2006, *Federation of Technological Industries and Others* (C-384/04, EU:C:2006:309); of 21 December 2011, *Vlaamse Oliemaatschappij* (C-499/10, EU:C:2011:871); and of 20 May 2021, *ALTI* (C-4/20, EU:C:2021:397). Unlike the system at issue in the main proceedings, those systems designated a person as jointly and severally liable for the entirety of the VAT payable on a specific taxable transaction, in accordance with Article 205 of the VAT Directive.

55 It follows from the foregoing that Article 205 of the VAT Directive is not applicable in the circumstances of the dispute in the main proceedings.

56 In the third place, as regards Article 273 of the VAT Directive, it should be recalled that, under that provision, Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion.

57 In that regard, Article 325(1) TFEU requires the Member States to counter fraud and any other illegal activities affecting the financial interests of the European Union through effective and deterrent measures (judgments of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 50, and of 8 March 2022, *Commission v United Kingdom (Action to counter undervaluation fraud)*, C-213/19, EU:C:2022:167, paragraph 209).

58 Pursuant to Council Decision 2014/335/EU, Euratom of 26 May 2014 on the system of own resources of the European Union (OJ 2014 L 168, p. 105), the European Union's own resources include, inter alia, revenue from the application of a uniform rate to the harmonised VAT assessment bases determined in accordance with EU rules. Accordingly, there is a direct link between the collection of VAT revenue in compliance with the EU law applicable and the availability to the EU budget of the corresponding VAT resources, since any lacuna in the collection of the first potentially causes a reduction in the second (judgments of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraph 31, and of 17 January 2019, *Dzivev and Others*, C-310/16, EU:C:2019:30, paragraph 26).

59 In order to ensure the protection of the financial interests of the European Union, it is for the Member States, inter alia, to adopt the measures necessary to guarantee the effective and comprehensive collection of own resources, namely the revenue from the application of a uniform rate to the harmonised VAT assessment bases (judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 182).

60 Thus, it follows, inter alia, from Articles 2 and 273 of the VAT Directive, read in conjunction with Article 4(3) TEU and Article 325(1) TFEU, that the Member States are required to take all legislative and administrative measures appropriate for ensuring collection of all VAT due on their territory and for preventing tax evasion (see, to that effect, judgments of 19 October 2017, *Paper Consult*

, C-101/16, EU:C:2017:775, paragraph 47; of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 18; and of 17 May 2018, *Vámos*, C-566/16, EU:C:2018:321, paragraph 37).

61 In the present case, a system of joint and several liability such as that established by Article 19(2) of the DOPK contributes to the collection of amounts of VAT which have not been paid by a taxable legal person within the mandatory time limits laid down by the VAT Directive. That system helps to ensure the correct collection of VAT and/or to prevent evasion, within the meaning of Article 273 of the VAT Directive, in accordance with the obligation laid down in Article 325(1) TFEU.

62 That finding cannot be called into question by the fact that the persons held jointly and severally liable under the system at issue in the main proceedings, namely the manager or member of an executive body of the legal person, are not, in that capacity, themselves subject to VAT.

63 In that regard, and first of all, it is not apparent from the wording of Article 273 of the VAT Directive that the obligations laid down by the Member States pursuant to that provision can apply only to persons subject to VAT.

64 Next, as regards the context of that provision, it should be pointed out that it forms part of Title XI of the VAT Directive, the heading of which expressly refers to the 'obligations of taxable persons and certain non-taxable persons'.

65 Lastly, as regards the objectives pursued by Article 273 of the VAT Directive, the obligation on the Member States to take all measures necessary to ensure collection of all VAT and to counter evasion, referred to in paragraph 60 above, may, in certain circumstances, require a Member State to impose penalties on non-taxable persons who take part in decision-making within a taxable legal person, otherwise the effectiveness of such measures would be undermined.

66 It follows from the foregoing that a system of joint and several liability, such as that at issue in the main proceedings, comes within the scope of Article 273 of the VAT Directive, interpreted in the light of Article 325(1) TFEU.

67 In the light of all the foregoing considerations, the questions submitted by the referring court should be understood as seeking an interpretation of Article 273 of the VAT Directive and of the principle of proportionality.

The first question

68 By its first question, the referring court asks, in essence, whether Article 273 of the VAT Directive and the principle of proportionality must be interpreted as precluding national legislation which provides for a system of joint and several liability for a legal person's VAT debts in the following circumstances:

- the person held jointly and severally liable is a manager or member of an executive body of the legal person;
- the person held jointly and severally liable made, in bad faith, payments from the legal person's assets which could be characterised as a hidden distribution of profits or dividends, or transferred those assets free of charge or at a price significantly lower than the market price;
- the acts carried out in bad faith had the effect of rendering the legal person unable to pay all or part of the VAT for which it is liable;
- the joint and several liability is limited to the amount by which the legal person's assets were

depleted as a result of the acts carried out in bad faith; and

– that joint and several liability is incurred only in the alternative, where it proves impossible to recover from the legal person the amounts of VAT payable.

69 The Court has previously had occasion to clarify 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 (see, *inter alia*, judgments of 17 May 2018, *Vámos*, C-566/16, EU:C:2018:321, paragraph 38, and of 21 November 2018, *Fontana*, C-648/16, EU:C:2018:932, paragraph 35).

70 In the present case, it should be noted that a system of joint and several liability such as that at issue in the main proceedings contributes to the recovery of amounts of VAT which have not been paid by a taxable legal person within the mandatory time limits laid down by the VAT Directive, with the result that it helps to ensure the correct collection of VAT and/or to prevent evasion, within the meaning of the first paragraph of Article 273 of the VAT Directive. In principle, therefore, such a system falls within the discretion enjoyed by the Member States in implementing Article 273 of the VAT Directive.

71 It should be added that such a system contributes to compliance with the obligation, referred to in paragraph 60 above, incumbent on each Member State to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on its territory and for preventing evasion, in accordance, *inter alia*, with Article 325(1) TFEU.

72 Nevertheless, the Member States must exercise that power in accordance with EU law and its general principles and, consequently, in accordance with the principle of proportionality (see, *inter alia*, judgments of 21 November 2018, *Fontana*, C-648/16, EU:C:2018:932, paragraph 35, and of 15 April 2021, *Grupa Warzywna*, C-935/19, EU:C:2021:287, paragraph 26).

73 As regards the principle of proportionality, the Court has held that Member States must employ means which, whilst enabling them effectively to attain the objectives pursued by their domestic laws, cause the least possible detriment to the objectives and principles laid down by the relevant EU legislation. Therefore, while it is legitimate for the measures adopted by the Member States to seek to preserve the rights of the public exchequer as effectively as possible, they must not go further than is necessary for that purpose (judgments of 21 December 2011, *Vlaamse Oliemaatschappij*, C-499/10, EU:C:2011:871, paragraphs 21 and 22, and of 20 May 2021, *ALTI*, C-4/20, EU:C:2021:397, paragraph 33).

74 In that regard, the Court has already held that national measures which bring about, *de facto*, a system of strict joint and several liability go beyond what is necessary to preserve the public exchequer's rights. Imposing responsibility for paying VAT on a person other than the person liable to pay that tax, without allowing him or her to escape liability by providing proof that he or she had nothing whatsoever to do with the acts of the person liable to pay the tax must, therefore, be considered contrary to the principle of proportionality. It would clearly be disproportionate to hold that person unconditionally liable for the shortfall in tax caused by acts of a third party over which he or she has no influence whatsoever (judgment of 21 December 2011, *Vlaamse Oliemaatschappij*, C-499/10, EU:C:2011:871, paragraph 24).

75 Accordingly, exercise of the Member States' power to designate a joint and several debtor other than the person liable for payment of the tax in order to ensure efficient collection of that tax must be justified by the factual and/or legal relationship between the two persons concerned in the light of the principles of legal certainty and of proportionality. In particular, it is for Member States

to specify the particular circumstances in which a person such as the recipient of a taxable supply is to be held jointly and severally liable for payment of the tax owed by the other party to the contract even though that person has paid that tax by paying the transaction price (judgment of 20 May 2021, *ALTI*, C-4/20, EU:C:2021:397, paragraph 34).

76 The Court has also held that the fact that a person other than the person liable to pay the tax acted in good faith, exhibiting all the due diligence of a circumspect trader, that he or she took every reasonable measure in his or her power and that his or her participation in abuse or fraud is excluded are points to be taken into account in deciding whether that person can be obliged to account for the VAT owed (judgments of 21 December 2011, *Vlaamse Oliemaatschappij*, C-499/20, EU:C:2011:871, paragraph 26, and of 20 May 2021, *ALTI*, C-4/20, EU:C:2021:397, paragraph 37).

77 In the present case, it is clear that a system of joint and several liability, such as that at issue in the main proceedings, does not go beyond what is necessary to ensure the correct collection of VAT and to prevent evasion.

78 More specifically, having regard to its characteristics, such a system cannot be equated with a system of strict joint and several liability within the meaning of the case-law referred to in paragraphs 74 to 76 above, which would be incompatible with the principle of proportionality.

79 In the first place, the person designated as jointly and severally liable must be a manager or member of an executive body of the legal person liable for unpaid VAT debts, with the result that they can be regarded as participating in decision-making within that legal person.

80 In the second place, the person designated as jointly and severally liable must have made, in bad faith, payments from the legal person's assets that can be characterised as a hidden distribution of profits or dividends, or must have transferred all or part of those assets free of charge or at a price significantly lower than the market price.

81 In the third place, there must be a causal link between the acts performed in bad faith by the person designated as jointly and severally liable and the legal person's inability to pay the VAT for which it is liable.

82 In the fourth place, the extent of the joint and several liability is limited to the amount by which the legal person's assets have been depleted as a result of the acts committed in bad faith.

83 In the fifth and final place, that liability is incurred only in the alternative, where it proves impossible to recover from the legal person the amounts of VAT payable.

84 In the light of the case-law referred to in paragraphs 72 to 76 above, it must be held that the establishment of such a system does not go beyond what is necessary to ensure the correct collection of tax and to prevent evasion.

85 In the light of the foregoing, the answer to the first question is that Article 273 of the VAT Directive and the principle of proportionality must be interpreted as not precluding national legislation which provides for a system of joint and several liability for a legal person's VAT debts in the following circumstances:

- the person held jointly and severally liable is a manager or member of an executive body of the legal person;
- the person held jointly and severally liable made, in bad faith, payments from the legal person's assets which could be characterised as a hidden distribution of profits or dividends, or

transferred those assets free of charge or at a price significantly lower than the market price;

- the acts carried out in bad faith had the effect of rendering the legal person unable to pay all or part of the VAT for which it is liable;
- the joint and several liability is limited to the amount by which the legal person's assets were depleted as a result of the acts carried out in bad faith; and
- that joint and several liability is incurred only in the alternative, where it proves impossible to recover from the legal person the amounts of VAT payable.

The second question

86 By its second question, the referring court asks, in essence, whether Article 273 of the VAT Directive and the principle of proportionality must be interpreted as precluding national legislation providing for a system of joint and several liability, such as that described in the first question, which extends to default interest payable by the legal person on account of a failure to pay VAT within the mandatory time limits laid down by that directive.

87 In that regard, it is clear from the information in the order for reference that the system of joint and several liability referred to in the first question is, as such, limited to the amount by which the legal person's assets have been depleted as a result of the acts carried out in bad faith. Nevertheless, the national legislation provides, in addition, that the recovery of taxes which have not been paid within the prescribed time limits 'shall be collected together with interest', as stated in paragraph 11 above, and the referring court seeks to ascertain, in essence, whether that scheme may be implemented in addition to the system of joint and several liability at issue.

88 It should be pointed out, first of all, that charging default interest, in the event of a failure to pay VAT within the mandatory time limits laid down by the VAT Directive, contributes to ensuring the correct collection of VAT in accordance with Article 273 of that directive.

89 The charging of default interest makes it possible to compensate the loss caused to the public exchequer by the unavailability of the amounts of VAT paid late, for the period from the date on which those amounts are due until the date on which they are actually paid (see, by analogy, judgments of 19 July 2012, *Littlewoods Retail Ltd and Others*, C?591/10, EU:C:2012:478, paragraphs 25 and 26, and of 28 February 2018, *Nidera*, C?387/16, EU:C:2018:121, paragraph 25).

90 Next, charging default interest also encourages the persons concerned to pay the VAT within the mandatory time limits laid down by the VAT Directive or as soon as possible after those periods expire.

91 The Court has thus held that the payment of default interest may constitute an adequate penalty where there is a failure to pay the VAT within the prescribed time limits, provided that it goes no further than is necessary to achieve the objective of ensuring the correct collection of VAT and of preventing evasion (see, to that effect, judgments of 12 July 2012, *EMS-Bulgaria Transport*, C?284/11, EU:C:2012:458, paragraph 75, and of 17 July 2014, *Equoland*, C?272/13, EU:C:2014:2091, paragraph 46).

92 Therefore, 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.

93 Lastly, and for the reasons set out in paragraphs 77 to 84 above, including default interest in a system of joint and several liability, such as that at issue in the main proceedings, is compliant with the principle of proportionality, since that interest relates to the failure to pay the VAT within the mandatory time limits laid down by the VAT Directive by the legal person liable for that tax, on account of the acts carried out in bad faith by the person designated as jointly and severally liable (see, by analogy, judgment of 20 May 2021, *ALTI*, C-4/20, EU:C:2021:397, paragraphs 43 and 44).

94 As pointed out, in essence, in paragraph 74 above, the principle of proportionality must be interpreted as precluding a person other than the person liable for payment of VAT from being held liable for the loss of tax revenue caused by acts of a third party over which he or she has no influence.

95 Consequently, the inclusion of default interest in a system of joint and several liability such as that established in Article 19(2) of the DOPK may be regarded as compatible with the principle of proportionality only in so far as that interest relates to the failure to pay VAT, within the mandatory time limits laid down by the VAT Directive, on account of acts carried out in bad faith by the person designated as jointly and severally liable.

96 In the light of the foregoing, the answer to the second question is that Article 273 of the VAT Directive and the principle of proportionality must be interpreted as not precluding national legislation providing for a system of joint and several liability, such as that described in the first question, which extends to default interest payable by the legal person for failure to pay VAT within the mandatory time limits laid down by that directive on account of acts committed in bad faith by the person designated as jointly and severally liable.

The third question

97 By its third question, the referring court asks whether the principle of proportionality must be interpreted as precluding national legislation providing for a system of joint and several liability, such as that described in the first question, which extends to default interest payable by the legal person for failure to pay VAT within the mandatory time limits laid down by the VAT Directive, where the late payment is attributable not to the conduct of the person held jointly and severally liable, but to the conduct of another person or to the occurrence of objective circumstances.

98 It should be borne in mind that, in accordance with the Court's settled case-law, 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 bears no relation to the actual facts of the main action or its purpose, 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 (see, *inter alia*, judgments of 6 November 2008, *Trespa International*, C-248/07, EU:C:2008:607, paragraph 33, and of 22 February 2022, *Stitching Rookpreventie Jeugd and Others*, C-160/20, EU:C:2022:101, paragraph 82).

99 In the present case, the implementation of the system of joint and several liability established in Article 19(2) of the DOPK, as described by the referring court, requires that the legal person's inability to pay all or part of its debts to the State be caused by acts committed in bad faith by the person held jointly and severally liable. Consequently, recourse to that system precludes, *ex hypothesi*, the failure to pay VAT within the mandatory time limits laid down by the

VAT Directive from being attributable to the conduct of another person or to the occurrence of objective circumstances.

100 Furthermore, as regards the dispute in the main proceedings, the referring court has made no reference to the conduct of another person or to the occurrence of objective circumstances which would have led to the failure to pay VAT within the prescribed period.

101 Consequently, it must be held that the interpretation of EU law sought bears no relation to the actual facts of the main action or its purpose, within the meaning of the case-law referred to in paragraph 98 above, and, therefore, that the third question referred is inadmissible.

Costs

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

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

1. Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, and the principle of proportionality

must be interpreted as not precluding national legislation providing for a system of joint and several liability for a legal person's value added tax (VAT) debts in the following circumstances:

- the person held jointly and severally liable is a manager or member of an executive body of the legal person;**
- the person held jointly and severally liable made, in bad faith, payments from the legal person's assets which could be characterised as a hidden distribution of profits or dividends, or transferred those assets free of charge or at a price significantly lower than the market price;**
- the acts carried out in bad faith had the effect of rendering the legal person unable to pay all or part of the VAT for which it is liable;**
- the joint and several liability is limited to the amount by which the legal person's assets were depleted as a result of the acts carried out in bad faith; and**
- that joint and several liability is incurred only in the alternative, where it proves impossible to recover from the legal person the amounts of VAT payable.**

2. Article 273 of Directive 2006/112 and the principle of proportionality

must be interpreted as not precluding national legislation providing for a system of joint and several liability, such as that described in point 1 of the operative part of the present judgment, which extends to default interest payable by the legal person for failure to pay VAT within the mandatory time limits laid down by that directive on account of acts committed in bad faith by the person designated as jointly and severally liable.

[Signatures]

* Language of the case: Bulgarian.