Preliminary decision-making procedures in financial law matters in countries that joined in 2004

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ABSTRACT: The aim of this study is to show the proportion of cases in which the courts of the countries that joined the European Union in 2004 (Cyprus, the Czech Republic, Estonia, Poland, Latvia, Lithuania, Hungary, Malta, Slovakia, and Slovenia) have referred financial law issues to the Court of Justice of the European Union for preliminary rulings, and the types of cases in which they have sought guidance. In the introduction, I discuss whether there is such a thing as a European tax, and then I go on to discuss the importance of the case law developed by the Court of Justice of the European Union in the field of financial law. The research method is based on a statistical analysis of search results using keywords specified on the website https://curia.europa.eu.

I filtered the available data and information based on requests for advance rulings on customs cooperation, customs valuation, common customs tariff, customs union, indirect taxation, excise duties, value added tax, internal taxation, and taxation. As a result, I used a ratio to compare the data and grouped the motions into different categories. If a case is interesting or noteworthy from any point of view, or if it has an impact on the practice of tax authorities or courts, I highlight the facts of the case or its theoretical significance.

I then summarized my general and substantive legal conclusions, from which I drew my final conclusion.

KEYWORDS: EU tax law, preliminary ruling procedure, customs law, countries that joined in 2004, tax avoidance
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European tax

The European Union2 has exclusive competence in the area of customs union3 , while in the areas of the internal market4 and economic cohesion, it has shared competence, meaning that tax assessment falls within the fundamental financial sovereignty of the Member States.5 As Balázs Békés pointed out, „There is no universally accepted, clear definition of European tax law, but scholars are trying to define the concept. Their ideas vary widely."[6]

In the area of indirect taxation, the freedom of national legislators is limited, while in the area of direct taxation, the approximation of legislation is less extensive. In the absence of a uniform European tax, Member States shape their direct tax systems in accordance with their political and economic interests. In a narrower sense, European tax law is the set of rules relating to direct taxation; in a broader sense, it includes the principles defined by negative harmonization. and in an even broader sense, according to Békés, this also includes prohibited state aid schemes.[7]

Tax provisions can be harmonized through the legislative process, in which the Council adopts directives[8] to approximate the laws of the Member States, or through judgments of the Court of Justice of the European Union.[9] As Herich also pointed out, Title VII, Chapter 2 of the Treaty on the Functioning of the European Union (TFEU), as amended by the Treaty of Lisbon (TEU) contains the fundamental provisions on which EU tax harmonization is based, Article 115 confers a general power of approximation on the Council and provides a legal basis for the harmonization of direct taxes in the form of a directive.[10] The most important tax institutions of the

2 With the signing of France, Germany, Italy, and the three Benelux countries, the first result of integration efforts was the creation of the European Coal and Steel Community in 1951, followed by the European Economic Community and the European Atomic Energy Community in 1957, collectively known as the European Union. Budapest University of Economics, Institute of Finance, *Finance II*, second revised edition, Tanszék Kft., Budapest, 2002, p. 78.

3 By the end of the 1960s, customs duties between member states had been abolished. Im. *Finance II.* p. 78.

4 The single internal market contributed to the integration process and shook the Community out of its Euro-pessimism. Paul CRAIG, Grainne DE BURCA: *EU Law Text, cases, and materials* Oxford University Press, 2003, p. 1202.

5 CSŰRÖS Gabriella: *EU Finance, A Financial and Legal Analysis of the Development of European Integration,* HVG-ORAC Lap- és Könyvkiadó Kft., 2015. p. 33.

6 BÉKÉS Balázs: Direct taxation in the European Union, Harmonization and competition of Member State laws Wolters Kluwer Hungary, Budapest, 2019. p. 27.

7 Im. BÉKÉS pp. 27-30.

8 Positive harmonization process. In: ERDŐS Gabriella-FÖLDES Balázs-ŐRY Tamás: *Tax Law in the European Union,* Wolters Kluwer, Budapest 2013. p. 28.

9 Negative harmonization process. Im. ERDŐS-FÖLDES-ŐRY p. 28.

10 DR. György HERICH, ed. *International Taxation II. Revised edition,* Penta Unió 2020. March 157.

European Union[11] include the Council of the European Union[12], the Parliament[13], the European Commission[14] and the Court of Justice of the European Union (hereinafter: CJEU, Court)[15].

The role of the request for a preliminary ruling

Within the EU legal system,[16] the primary sources of law include the Treaties (including amending, accession, and supplementary treaties)[17] and general legal principles, while secondary sources of law include legal acts issued by the Community and its institutions, and non-binding legal instruments may also be taken into account in tax matters.[18] [19] Tax law is part of EU law, so legal sources and principles are applied in a similar way,

11 Im. HERICH pp. 145-150.

12 The most important is the ECOFIN Council of Ministers, with COREPER playing a coordinating role within the Council. Im. HERICH p. 145.

13 The European Parliament is entitled to set up standing and ad hoc committees, one of which is the Subcommittee on Taxation (FISC). Im. *Pénzügytan II* . p. 79, cf. GOMBOS Katalin: *European Law – Public Law of the European Union,* Wolters Kluwer Hungary Budapest, 2021, pp. 143-152.

14 The „guardian of the treaties," a supranational body, is, according to Gombos, the engine of integration or the government of the European Union. One of its directorates-general is TAXUD (Directorate-General for Taxation and Customs Union). As far as taxation is concerned, there is the Committee on Mutual Assistance in Tax Matters, the Committee on Excise Duties, the VAT Administrative Cooperation Committee (SCAC) and the Fiscalis Committee, as well as the TAXUD VAT Committee and the Anti-Tax Fraud Committee (ATFS), and the Committee on Tax Cooperation (CACT). Im. *Finance II.* p. 79, cf. HERICH pp. 149-150, cf. also GOMBOS pp. 163-165, 171.

15 Pursuant to Article 19(1) of the TFEU, it interprets the basic treaties and ensures that the law is respected in their application. Conclusions can be drawn from the Advocate General's opinion with regard to the subsequent decision. Im. HERICH p. 150, cf. GOMBOS p. 176.

16 This is the „acquis communautaire". EU law is a uniform, sui generis legal order, independent and derivative, different from national law, yet it fits into internal law and is binding on everyone. Im. Allan F. TATHAM: A *Case-Study Approach,* HVG Orac Lap-és Könyvkiadó Kft., 2006, p. 1, cf. OSZTOVITS András, ed. *EU Law,* HVG-ORAC Lap-és Könyvkiadó Kft. 2015, p. 166.

17 Gombos also includes the Charter of Fundamental Rights of the European Union in this category, and among other primary sources of law, he also classifies protocols, annexes, and declarations attached to treaties, as well as budgetary agreements. Tatham also includes the latter, mentioning other international treaties and cooperation agreements. Katalin GOMBOS: *European Law – The Legal System of the European Union,* Wolters Kluwer Hungary Budapest, 2019, pp. 48-49. cf. TATHAM pp. 3-10.

18 In the area of direct taxation, regulations are used sparingly, while directives are the main regulatory instruments for direct taxation. Im. GOMBOS 2019 pp. 52-53.

19 According to Gombos, further classification can be accepted on the basis of the new system introduced by the Treaty of Lisbon. Im. GOMBOS 2019 pp. 56-60. According to another typology, other sources of law can also be included here, e.g. international treaties concluded by the Union and the case law of the CJEU. Im. OSZTOVITS p. 168.

but positive harmonization is limited, so the case law of the Court of Justice[20] and the negative harmonization it has established are of paramount importance.[21]

The Court of Justice of the European Union contributes fundamentally to the interpretation of sources of law relating to tax law through its case law[22], and among its procedures[23] the preliminary ruling procedure also plays a role in law-making, with the conclusion always being drawn by the court that referred the question.[24] The preliminary ruling procedure is useful when an interpretation issue arises that may serve a new public interest in terms of the uniform application of EU law.[25] Due to its judicial nature, the Court of Justice can only influence EU tax law very indirectly, as its activities only cover a specific case and a specific Member State, and it does not take a position on many issues, yet it can still restrict national legislators.[26]

Methodology of the study

https://curia.europa.eu I examined the requests for preliminary rulings submitted by the courts of the Member States that joined in 2004 until March 27, 2024, and the decisions of the Court.[27] Based on the data, it can be stated that neither the Cypriot nor the Maltese courts have submitted any requests for preliminary rulings. In contrast, the Czech Republic has referred 27 cases, Estonia eight, Poland 87, Latvia 37, Lithuania 24, Hungary 74, Slovakia 10, and Slovenia 12 to the Court of Justice of the European Union on financial matters. For a more accurate comparison, I used a ratio that I determined by calculating the number of preliminary rulings per 100,000

20 Which, together with legal principles, TATHAM mentions as a tertiary source of law. Im. TATHAM pp. 20-43.
21 Im. BÉKÉS pp. 51-59.
22 It interprets both primary and secondary sources of law.
23 Cf. HORVÁTH Zoltán: *Handbook on the European Union,* Seventh revised and expanded edition, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2007. pp. 161-164. Gombos uses a different classification. Im. GOMBOS 2019 pp. 76-78.
24 He concludes his decisions with the phrase „the examination of which is the task of the referring court."
25 EUR-Lex – l14552 – HU – EUR-Lex (europa.eu) downloaded on 26 April 2023.
26 Im. BÉKÉS p. 253.
27 Search source: customs cooperation, customs valuation, common customs tariff, customs union, indirect taxes, excise duties, value added tax, internal taxes, taxation, then the country concerned.

inhabitants in each Member State to two decimal places (later to three decimal places for a more detailed comparison) based on rounding rules.[28]

I compared the preliminary ruling procedures initiated by the Member States that joined on May 1, 2004, because all ten Member States had similar economic and political backgrounds, it was the largest enlargement of the European Union in Eastern Europe,[29] among them were the V4 countries[30] , which shared historical, economic, and political traditions with Hungary and had concluded an agreement with the aim of achieving European integration, and which also joined at the same time[31] , and last but not least, because Hungary was among the countries that joined. All this happened twenty years ago.

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28 Hungary (population: 9,771,000, motions: 74, of which four cases did not involve the tax authority as the defendant) 0.76, Czech Republic (population: 10,625,000, motions: 27) 0.25; Slovakia (population: 5,443,000, motions: 12) 0.22, Poland (population: 38,611,000, motions: 86) 0.22; Estonia (population: 1,315,000, motions: 8) 0.61; Latvia (population: 1,934,000, motions: 37) 1.91; Lithuania (population: 2,795,000, motions: 24) 0.86; Slovenia (population: 2,067,000, motions: 10) 0.48.

29 From the mid-1990s, the countries of Central and Eastern Europe, which initially only had association agreements (Im. OSZTOVITS 51.p.), jointly concluded a European Agreement (Im. GOMBOS 35.p.), „knocked more and more insistently on the door of the European Union, waiting for full membership" (Im. OSZTOVITS 49.p.). „On Mach 30, 1998, at a ceremonial meeting of foreign ministers, the enlargement process began with the participation of all 10 Central and Eastern European associated states and Cyprus." On April 16, 2003, in Athens, the leaders of the 25 member states signed the accession treaty in a ceremonial setting, and as a result of the ratification process, „on May 1, 2004, the Union's first eastward enlargement took place, thus completing the dismantling of the Iron Curtain." Im. HORVÁTH pp. 83-109.

30 „The Czech and Slovak Federal Republic, the leaders of the Czech and Slovak Federal Republic, the Republic of Poland, and the Republic of Hungary signed a declaration in Visegrád on February 15, 1991, establishing the Visegrád Three cooperation" with the aim of achieving European integration, which also became a product of the „new regionalism" of the 1990s. Beyond their shared historical, geographical, and cultural traditions, the Visegrad Four have influenced each other's economic development within the framework of the Visegrad cooperation. *The significance, structure, and values of the Visegrad Four Publisher: Institute of Foreign Affairs and Foreign Trade, 2018* V4_konyv.pdf (kki.hu) PÉTER TULOK: *The origins of the Visegrad Cooperation, the significance of the triple royal meeting in the Middle Ages* p. 14. Downloaded on 27 March 2024. *The significance, structure and values of the Visegrad Four Publisher: Institute of Foreign Affairs and Foreign Trade, 2018* V4_konyv.pdf (kki.hu) JÁNOS SÁRINGER: The rebirth of Visegrád after the fall of state socialism (1991–2004) pp. 22 and 25. Downloaded on March 27, 2024. ZITA SZAKÁLNÉ SZABÓ: Thirty years on the same path—the political development of the Visegrad Four cooperation from its beginnings to the present day 07_KulugyiMuhely_SzakalneSzaboZita.pdf (mtak.hu) p. 1. Downloaded on: 27 March 2024.

31 The Czech Republic wanted to be a member of the European Union before any other country. Im. OSZTOVITS 51.p

Detailed analysis and classification of the proposed questions

Customs and excise duty matters and other financial issues related to Community law not classified elsewhere

In relation to customs and excise duties, the Czech Republic nine times[32], Estonia five times[33], Poland ten times[34], Latvia twenty-four times[35], Lithuania ten times[36], Hungary ten times[37], Slovakia once[38] and Slovenia twice[39] turned to the CJEU, while in other financial law issues related to Community law not classified elsewhere, the

32 C-86/24, C-567/23, C-129/23, C-133/23, C-711/20 (excise duty), C-941/19, C-306/18, C-638/15 (excise duty), C-339/09, almost without exception, concerned tariff classification.

33 Cases C-553/13 (excise duty), C-3/13, C-583/12, C-140/08, and C-56/08 raised issues of tariff classification and general customs procedural law.

34 The only customs case (C-195/18) concerned tariff classification, while nine cases concerned excise duty (C-266/23, C-30/17, C-418/14, C-313/14, C-275/14, C-349/13, C-26/07, C-134/07, C-313/05).

35 One case raised an issue related to excise duty (C-326/20), while 23 cases (C-376/23, C-344/23, C-542/21, C-72/21, C-230/20, C-340/19, C-1/18, C-154/16, C-47/16, C-46/16, C-286/15, C-233/15, C-430/14, C-427/14, C-547/13, C-571/12, C-558/11, C-487/11, C-382/09, C-248/09, C-199/09, C-16/08, C-93/08) raised questions concerning customs law, which concerned tariff classification, customs valuation, customs administration issues, but also the issue of limitation in connection with a post-clearance customs audit.

36 Questions concerning excise duty (C-674/19, C-368/17, C-567/17, C-151/16, C-63/06) and customs law (C-782/23, C-599/20, C-489/20, C-75/20, C-250/11) arose, which were mainly related to customs valuation and basic concepts.

37 In the field of customs law, questions of interpretation arose in relation to transaction value, customs valuation and certain basic concepts, and tariff issues also arose (C-33/24, C-366/22, C-187/21, C-547/15, C-291/15, C-409/14, C-74/13, C-182/12, C-290/05). One excise case was involved, in Case C-391/22, where the issue was the interpretation of the concept of diesel fuel used during journeys made for the purpose of repairing, maintaining or refueling passenger vehicles.

38 In Case C-810/18, the issue was tariff classification.

39 In cases C-725/21 and C-700/15, the issue concerned tariff classification.

Czech Republic twice[40], Estonia twice[41], Poland four times[42], Hungary five times[43], Slovakia three times[44] and Slovenia once[45] turned to the CJEU.

If we apply the ratio defined above, it is clear that Latvia (with a ratio of 1.241) has referred the highest proportion of cases concerning customs and excise duties to the CJEU, followed by Estonia (0.38) and Lithuania (0.35), with Slovakia having the lowest ratio (0.018) and Poland also bringing up the rear (0.026), while Hungary ranks fourth in this imaginary ranking (0.102). With regard to other unclassifiable issues, the specific figures show that Member State judges actually asked very few questions, but using the ratio, it can be established that Estonia asked the most questions in proportion, Slovakia (0.055) and Hungary (0.051) are also on the imaginary podium, while Latvia and Lithuania did not ask any questions on this topic.

Case C-161/06 should be highlighted in this context because the Court of Justice ruled on a point of principle and ensured the guarantee of clients' right to a fair trial, a situation that could arise at any time in the proceedings of any Member State. Although the Czech version of the Community law provisions applied by the customs authorities had not yet been officially published, according to the customs authorities' argument, it was available on the authority's website, so in the customs authorities' view, Community law was applicable. However, the Court of Justice of the European Union did not accept the customs authorities' approach. Among the Hungarian cases, it is worth mentioning case C-746/22., the outcome of which will have an impact on current practice, as it may fundamentally affect the prohibition of novation in refund procedures laid down in Section 124(3) of Act CL of 2017 on Tax Administration (Air.), insofar as the applicant for a VAT refund only attaches the documents requested by the tax authority to their appeal.[46]

40 C-78/22, C-161/06.
41 C-745/23, C-420/19.
42 All four cases concerned the interpretation of the law on indirect taxes on capital increases.
43 Case C-75/18 concerned a progressive special tax levied on certain sectors (it should be noted here that although cases C-323/18 and C-385/12 were not included in the search results using the above method, presumably due to inadequate data storage, these cases also belong to this group of cases, with the exception that in Case C-385/12, in view of its partially different facts, the EU Court of Justice reached a contrary conclusion), Case C-283/06 (and 312/16) concerned the maintenance of local business tax, cases C-746/22 and C-396/20 concerned tax refunds, case C-255/14 concerned failure to notify the tax rate and failure to control cash entering and leaving the Community.
44 C-186/20, C-113/20, C-305/17.
45 C-603/10.
46 The Advocate General's opinion does not consider the tax authority's procedure to be appropriate.

VAT Directive[47]

The interpretation of the VAT Directive raised the most questions, so I divided the motions related to the directive into several topics to facilitate the comparison of interrelated issues.

Basic concepts and other non-specific issues relating to the VAT Directive

The subject matter of the cases is essentially the interpretation of basic concepts, but in its decisions, the CJEU does not disregard the requirement to examine fraudulent conduct in the fight against tax evasion.[48]

The Czech Republic has referred six cases to the CJEU[49], which raised questions regarding the interpretation of the concepts of taxable person, complex services, and services provided in return for consideration. The most recent case, C-796/23, concerns the definition of the concept of taxable person. Estonia has only requested a preliminary ruling in case C-475/17, which concerns the compatibility of the introduction of a local sales tax with Community provisions. Poland has referred 36 cases to the CJEU[50]. Questions of interpretation arose in relation to the concepts of consideration, provision of services, date of performance, complex transaction, establishment, place of establishment, unit of service, provision of services, material scope, payment deadline, the object of the sale, and the determination of the taxpayer liable for VAT. In the most recent case, C-241/23, the question to be decided is whether the term ‚consideration' should be understood as meaning the nominal value or the issue price of the shares in question, if the parties have stipulated that the issue price of the shares is to be considered as the consideration. Latvia has referred four questions to the Court of Justice[51] concerning the concepts of taxpayer and economic activity. Lithuania has referred five questions[52] concerning the interpretation of the concepts of taxpayer and scope. Hungary has referred thirteen questions to the CJEU.[53] These

47 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

48 C-442/22, C-697/20, C-527/11.

49 C-796/23, C-414/17, C-432/15, C-11/15, C-220/11, C-572/07.

50 C-241/23, C-182/23, C-709/22, C-442/22, C-282/22, C-108/22, C-729/21, C-616/21, C-612/21, C-697/20, C-935/19, C-855/19, C-604/19, C-547/18, C-225/18, C-214/18, C-422/17, C-421/17, C-665/16, C-371/16, C-36/16, C-229/15, C-276/14, C-42/14, C-499/13, C-72/13, C-605/12, C-169/12, C-155/12, C-557/11, C-160/11, C-180/10 (181/10), C-530/09, C-229/09, C-507/07.

51 C-87/23, C-154/17, C-527/11, C-263/11

52 C-56/21, C-312/19, C-265/15, C-624/15 and C-119/08.

53 C-615/21, C-583/20, C-276/18, C-434/17, C-182/17, C-566/16, C-28/16, C-263/15, C-208/15, C-424/14, C-419/14, C-97/14, C-96/08

included questions concerning the concept of economic activity and the reporting obligations of taxpayers, the place of performance and uniform service, and the determination of the date of performance, as well as the application of fines and penalties and the provision of security. Slovakia has requested a decision-making procedure in two cases[54] concerning the definition of the provision of security and the concept of sale. Slovenia has referred three cases to the CJEU[55] concerning the definition of the concepts of taxable person, invoice and single service.

The CJEU has repeatedly emphasized the fight against tax fraud in connection with the interpretation of basic concepts and as a goal to be achieved. This was also the case in Case C-442/22, which essentially concerned the determination of the person liable for VAT, but the examination of the reasonable measures to be taken to prevent tax fraud cannot be ignored, as the Court of Justice recently (in its judgment of January 30, 2024) that the person liable for VAT is the employee who issues invoices without the employer's knowledge or consent, unless the employer has failed to exercise reasonable care in monitoring the employee's actions. The Court also emphasized the importance of combating fraud in Case C-697/20. According to the ruling, in the context of the same business, spouses engaged in joint household activities involving the use of joint assets must be treated as two separate taxpayers if both spouses carry out independent economic activities; if the activity of one spouse is subject to general VAT rules, the other spouse may lose their status as an agricultural producer eligible for the flat-rate refund if this legal effect proves necessary to counteract the risk of abuse and fraud. Case C-527/11 also falls under this category, in which the tax authority unjustifiably refused to issue a VAT identification number to the company on the sole ground that it did not have the material, technical, and financial resources necessary to carry out the declared economic activity technical and financial resources necessary to carry out the declared economic activity, and had previously obtained tax numbers on several occasions for companies that did not engage in any real economic activity, which it then sold, without the tax authority having established, on the basis of objective factors, that the VAT identification number would be used fraudulently.

There have also been cases involving local authorities, such as Case C-36/16, in which the applicant, as a VAT taxpayer, carried out economic activities in the field of real estate. In order to settle its tax debt, it offered to transfer the ownership of undeveloped land it owned to the local government, which, according to the CJEU ruling, does not constitute a supply of goods for consideration. In this context, it is also worth mentioning Case C-72/13, according to which municipal transactions may be subject to VAT if they constitute economic activities and are not carried out by the municipality in its capacity as a public authority, unless the activity results in a distortion of competition.

54 C-165/11, C-534/16
55 C-235/21, C-331/14, C-209/14

Although the Hungarian court's request in Case C-276/18 KrakVet Marek Batko was aimed exclusively at defining the concept of the supply of goods, the case nevertheless became significant because paragraph 51 of the judgment also established an exception to the obligation to refer for a preliminary ruling under Article 267 TFEU. [56]

Among Hungarian cases, case C-615/21 deserves special mention, in which the Court ruled that Member State regulations and practices under which the limitation period for the right to assess tax is suspended for the entire duration of judicial review, regardless of the number of tax authority proceedings repeated as a result of judicial review and without any limitation on the cumulative duration of the suspension. The motion is also of particular importance because the Hungarian Constitutional Court, in its decision 2/2022. (II. 10.) AB, annulled the phrase „and repeated" in the legislation on the basis of a judicial initiative submitted by the same judge. In its decision, the Constitutional Court explained that the text violated the prohibition of retroactive legislation causing disadvantage, as the changes to the legislation fundamentally affected the limitation period for the right to assess tax.

Case C-419/14 is one of the Hungarian decisions that still has an impact on legal practice today. Although the Court of Justice of the European Union ruled, among other things, on the subject of the license agreement and the legal assessment of the leasing of know-how, it is more important that it also stated that the tax authority is obliged to request information from the tax authorities of other Member States. In addition, the tax authority may, subject to certain conditions, use evidence obtained through secret data collection against the taxpayer in order to prove abusive practices in the field of VAT in the context of parallel and ongoing criminal proceedings that have not yet been concluded. Furthermore, in accordance with the general principle of respect for the right of defense, the taxpayer must be given the opportunity to access the evidence in the context of the administrative procedure.

Invoice correction, right to deduct tax, right to refund, tax exemption and VAT fraud

As a further distinguishing factor in the VAT Directive, I have taken into account the issues of invoice correction, the right to deduct, tax fraud in this context, and matters relating to the right to refund and tax exemption. It is necessary to treat these topics as a whole because tax exemption rules are closely linked to the right to deduct tax, and abuse of these rules constitutes abuse of the right to deduct tax, which is related to the issue of tax fraud.[57] It follows from this that if a taxpayer can exercise their right to deduction, they can reclaim, reclaim, or refund the amount of tax.

56 If there is no legal remedy under national law against the decision of the court concerned, there is an obligation to submit a request for a preliminary ruling under Article 267 TFEU, so in the Hungarian court system, the Supreme Court or the administrative panels of certain courts can initiate preliminary ruling proceedings on financial matters.

57 C-653/18, C-564/15, C-691/17, C-292/19, C-507/20, C-397/21.

Czech judges referred eight cases to the CJEU on this subject ([58]). Three cases dealt with tax exemption issues. Estonia did not raise any questions on this subject. Poland referred 34 cases to the Court of Justice of the European Union ([59]), thirteen of which dealt with tax exemption issues relating to the concept of the provision of services in connection with insurance activities, the provision of services in connection with the granting of credit, and the tax exemption of certain charitable activities and chain transactions. Twenty-one motions were submitted concerning the right to deduction and refund, related tax fraud, and invoice correction. Latvia referred eight cases to the CJEU[60], three of which concerned the right to exemption. Lithuania referred nine questions to the Court of Justice ([61]), three of which concerned exemptions. Hungary referred thirty-three questions to the Court of Justice of the European Union ([62]) on this issue, three of which concerned exemptions and eleven concerned tax fraud. Slovakia submitted six questions[63] to the Court of Justice of the European Union, one of which concerned exemption, one VAT fraud, one the restriction of the right to deduct, and three refunds. Slovenia referred four questions[64] to the CJEU, two of which concerned exemption, one irrecoverable debt, and one invoice correction.

In this regard, it would appear that Poland has again submitted the most questions to the Court, but the relative figures paint a different picture. According to these figures, Latvia (0.414), Lithuania (0.322), Hungary (0.306), followed by Slovenia (0.194), Slovakia (0.11), then Poland (0.088), and finally the Czech Republic (0.075). Estonia did not submit any questions on this topic.

The Court's recent judgment (February 29, 2024) in Case C-676/22 ultimately emphasized the importance of combating tax fraud, stressing that if the taxpayer has not proven that the goods were sold to a recipient who is a taxable person in another Member State, and there is no information available to establish whether that recipient had that status, the VAT exemption for a seller established in a Member State must be denied. The same conclusion can be drawn from Case C-653/18[65], according to which

58 C-676/22, C-398/20, C-154/20, C-446/18, C/401/18, C-275/18, C-127/18, C-18/12.

59 C-615/23, C-606/22, C-146/22, C-114/22, C-250/21, C-696/20, C-48/20, C-895/19, C-703/19, C-335/19, C-653/18, C-491/18, C-235/18, C-224/18, C-566/17, C-140/17, C-499/16, C-308/16, C-307/16, C-605/15, C-393/15, C-40/15, C-277/14, C-500/13, C-33/13, C-392/12, C-224/11, C-588/10, C-280/10, C-438/09, C-395/09, C-188/09, C-414/07, C-25/07

60 C-598/20, C-329/18, C-273/18, C-288/16, C-326/15, C-563/11, C-525/11, C-472/08.

61 C-293/21, C-227/21, C-108/17, C-532/16, C-387/16, C-386/16, C-126/14, C-526/13, C-385/09.

62 C-532/23, C-248/23, C-537/22, C-426/22, C-289/22, C-512/21, C-482/21, C-458/21, C-397/21, C-188/21, C-507/20, C-334/20, C-717/19, C-656/19, C-611/19, C-610/19, C-13/18 (126/18), C-691/17, C-404/16, C-254/16, C-564/15, C-446/15, C-654/13, C-337/13, C-563/12, C-144/12, C-191/12, C-324/11, C-273/11, C-80/11 (142/11), C-392/09, C-368/09, C-74/08

63 C-151/23, C-621/19, C-533/16, C-120/15, C-504/10, C-456/07.

64 C-664/21, C-146/19, C-528/17, C-396/16.

65 The applicant sold mobile phones to two Ukrainian taxpayers, the export procedure was carried out, but the products were not acquired by the legal entities indicated on the invoices.

tax exemption must be denied if, due to the inability to identify the actual purchaser, it cannot be determined whether the transaction involved the sale of goods, or if the tax authority finds that the taxpayer knew or should have known that the transaction was affected by tax fraud committed to the detriment of the common VAT system.

Case C-401/18 is noteworthy not because of its facts[66], but because of the court's finding that it is contrary to EU law for a national court to rely on the national constitutional principle of in dubio mitius to adopt an interpretation more favorable to the taxpayer even after the CJEU has ruled that such an interpretation is incompatible with EU law.

I highlight the decision in Case C-606/22 because it is one of the Court's most recent decisions (21 March 2024). According to the judgment, the practice of not allowing the tax base and the amount of tax payable to be corrected when the sale of goods and services to consumers at a high VAT rate was recorded by a cash register and only confirmed by a receipt, while the price (the gross amount of the sale) was not modified as a result of this correction, unless it can be concluded from all the relevant circumstances that the economic burden on the taxpayer caused by the tax collected without legal basis was completely neutralized.

Case C-395/09[67] shows that the fact that a taxpayer uses a service offered by a company registered in a tax haven does not automatically exclude the right to deduct VAT charged in advance on the importation of services.

Case C-598/20 is interesting because of the complexity of the facts. Following the restoration of the independence of the Republic of Latvia, the national legislature carried out land reform in order to restore social justice, which had been undermined by the unlawful expropriation of the property of the Latvian people during the Soviet occupation without compensation. Ownership of nationalized land was returned to its former owners or their heirs. However, residential buildings, including state and municipal residential buildings, had been built on the land. The national legislature subsequently privatized these buildings and provided that the ownership of apartments, residential premises, and artists' studios located in these buildings could be acquired not only by the landowners but also by other persons. In order to regulate the legal relationship between landowners and property owners resulting from the compulsory division of ownership, the national legislature introduced compulsory leasing, under which the property owner is obliged to conclude a land lease agreement with the landowner. However, according to a ruling by the Supreme Court, these agreements are only superficial contractual relationships, as they arise from compulsory leasing. The plaintiff is subject to VAT, and its main activity is the leasing and management of real estate. Under the law, if the parties cannot agree

66 The applicant used its own resources and at its own expense to transport fuel from several Member States, acting not only as a carrier but also as the final purchaser, carried out a single fuel transport under excise duty suspension, and then resold the products to another economic operator, receiving only a commercial margin.

67 The applicant manufactured and sold water cooling equipment and used the services of the other undertaking in the course of its activities, which also included customer service.

on the amount of rent, it is determined by the court, and since this was the case, the court determined the amount of rent, with the exception of the VAT amount. However, since the court refused to determine the amount of VAT to be paid, the plaintiff appealed to the Constitutional Court, which initiated a preliminary ruling procedure. The CJEU ruled that Article 112 of the Directive does not preclude national legislation which excludes the compulsory lease of land from VAT exemption.

The decision in Case C-227/21[68] relates to the refusal of a tax deduction without tax evasion, However, in its judgment, the Court applied the well-known formula of ‚knew or should have known' in its examination of the fight against tax fraud, stating that the right to deduct VAT paid in advance cannot be denied solely on the grounds that the taxpayer knew or should have known that the seller was in a difficult financial situation, insolvent, and that this circumstance could result in the seller not paying or being unable to pay the VAT to the State Treasury.

Among Hungarian cases, the issue of late payment penalties for VAT that cannot be reclaimed within a reasonable period of time has become a classification criterion. This issue has arisen on several occasions in tax authority and court practice, and therefore, even after continuous development of practice, it was necessary to seek an interpretation from the Court of Justice of the European Union. In its ruling in case C-654/13, the Court ruled that the practice of Member States of excluding late payment interest on VAT that cannot be reclaimed within a reasonable period of time was contrary to EU law. With a view to harmonizing tax authority practice, the Supreme Court provided further guidance in EBH2017.K.18. This was followed by the decision in Case C-13/18, which, following the legislative response, led to the next phase of interpretation issues in Case C-426/22. In the most recent case, C-523/23, the issue of determining default interest following a claim for reimbursement arose, and in this case the court raised other tax administration procedural issues (e.g., the principle of binding on the application). Confirming Hungarian practice, the CJEU ruled in the Slovak case C-151/23 that a taxpayer is entitled to be paid default interest on the VAT difference by the national tax authority, within the scope of its procedural powers, to compensate for losses incurred by the taxpayer if that authority has not refunded the difference within a reasonable period of time.

With regard to the Hungarian right to a refund, cases in which taxpayers may request a tax refund directly from the tax authority, subject to certain conditions and

68 According to the facts of the case, a bank granted a loan to the seller, which, in order to secure the contract, provided a contractual mortgage in favor of the bank on a plot of land on which a building under construction was located. Subsequently, by means of a claim assignment agreement, the plaintiff acquired from the lending bank, in return for consideration, all financial claims arising from the loan agreement as well as all rights established to secure the performance of the obligations, including the contractual mortgage right, while at the same time acknowledging that insolvency proceedings were pending against the seller. Following the unsuccessful auction, the plaintiff took over the property for the starting price, received invoices and documents, then recorded the invoice containing VAT and deducted the VAT. The seller set the VAT as a tax payable, but never paid it.

provided that there is no tax fraud, also form a separate group (C-564/15, C-691/17, C-292/19, C-507/20, C-397/21). A question similar to the Hungarian cases arose in Case C-146/19[69] , in which the court ruled that the tax authority had found, contrary to Community law, that since the applicant had not reported these claims in the insolvency proceedings concerned, nor that the claims in question had ceased to exist, the conditions for a reduction in VAT were not met. The CJEU also reiterated that the national court must interpret national law in accordance with that provision or, if such an interpretation is impossible, refrain from applying any provision of national law whose application would lead to a result contrary to that provision.

Although the Slovenian case C-664/21 concerned the interpretation of an exemption rule[70] , the decision has more of an impact on tax administration practice, which is also found in Hungarian tax administration practice, as the Court ruled that national legislation which, in the course of the administrative procedure leading to the tax assessment decision, following the tax audit, but prior to the adoption of that decision.

General conclusions

The general conclusion that can be drawn from the ratio is that, relative to their population, the courts in Estonia, Latvia, and Lithuania are particularly active, while among the V4 countries, the same is true of Hungary.

In their motions, the courts refer to the interpretation of Community rules, the principle of neutrality of debtors[71] – which precludes economic operators from being placed at a competitive disadvantage – the prohibition of tax discrimination, and effective enforcement[72] – which requires that Member States' procedural rules do not make it practically impossible or excessively difficult to enforce claims based on EU law – equivalence[73] , according to which procedural rules for the implementation of EU law must be equivalent to the internal rules applicable in Member States, i.e. they must not be less favorable, are referred to, but references to the principles of

69 In April 2014, the plaintiff made a VAT correction in relation to unpaid claims against two companies in respect of which bankruptcy proceedings had been legally concluded in June 2013.

70 According to the facts of the case, a tax audit was conducted against the plaintiff, who submitted the attached documents but did not submit delivery notes and other documents at one stage of the proceedings, although he indicated that he would endeavor to obtain them. He attached the documents to his comments submitted to the minutes, but they were not accepted by the tax authority.

71 Im. HERICH 155.p.

72 Article 110 TFEU.

73 The impact of EU law on civil procedure law – VI. The principle of equivalence – MeRSZ MUZSALYI Róbert: The impact of EU law on civil procedure law downloaded on 10 December 2023.

direct effect and proportionality also appear regularly[41], as well as the Charter of Fundamental Rights, including the right to defense and legal remedy.

The number of cases dismissed, withdrawn or rejected due to lack of jurisdiction is particularly high in Hungarian cases. In one Czech case, the petition contained an inadmissible question (due to the lack of a statement of facts and reasoning), and in another case, the validity of the legislation was questioned with regard to the disputed period[74] . Among Polish cases, one case was dismissed, one case was limited to answering the question of validity, and one case proved to be outside the court's jurisdiction[75]. Among Latvian cases, the court withdrew its application in one case.[76]

Although the number of Hungarian motions that have not been reviewed appears high, the reasons for this are not necessarily due to a lack of legal knowledge on the part of the judges or to poorly formulated questions, but rather to other factors: in four cases, the judges withdrew the motion; in one case, the court informed the CJEU that the parties had reached an agreement[77], and the case was therefore removed from the register; in two cases, the CJEU did not have jurisdiction[78]; and two were withdrawn because a decision had already been made on the question raised in another case[79]. In three cases, the order does not reveal the reason for the withdrawal of the motion[80], and in one case the request was inadmissible.[81]

The data also show that the Estonian courts left a gap of about four years between the submission of two motions, as after 2019 they did not refer any cases to the CJEU until 2023. Such a long interregnum occurred in Lithuania, where the Lithuanian courts left a gap of two years (between 2021 and 2023).

It is worth noting that the constitutional courts of certain Member States also appear at some level of the preliminary ruling procedure. In Slovakia, two cases found a violation of the right to a fair trial when the court did not rule on the party's motion for the court to refer the case to the CJEU or failed to examine the applicability of Article 12 of the Directive[82], while in one of the Slovenian cases, the Supreme Court had to conduct a retrial.[83] The Latvian Constitutional Court referred a case to the CJEU concerning the tax assessment of the right to lease land.[84] The Czech Constitutional Court ruled that the referring court had failed to examine the need to submit a request for a preliminary ruling, even though the applicant had claimed

74 C-520/19, C-405/14.
75 C-745/18, C-390/15 and C-168/06.
76 C-204/15.
77 C-114/16.
78 C-258/19, C-596/20.
79 C-173/18, C-195/07.
80 C-519/22, C-643/20, C-447/06.
81 C-636/20.
82 C-621/19, C-165/11.
83 C-331/14.
84 C-598/20.

that this was necessary, thereby violating the company's right to a fair trial, and the case was referred back to the ordinary courts.[85]

From the perspective of the development of case law, reference should be made to Lithuanian case C-599/20, in which the European Court of Human Rights ruled that if the courts do not justify why they do not refer the case to the CJEU despite the parties' request, this constitutes a violation of the parties' rights, and as a result of the decision, the Lithuanian Supreme Court repeated the proceedings.

The facts reveal that the organizational structures of the tax authorities of the Member States differ in some respects, and it is worth examining separately in which countries the tax authority has the right to seek redress and the right to initiate legal proceedings, as in Latvia and Lithuania the tax authority may bring an action.[86] Special mention should be made of the specific Polish administrative procedure, under which taxpayers may request a tax ruling from the tax authority, which they may then challenge in court. This type of ruling also exists in Hungarian tax law practice. On March 1, 2024, a separate Information Directorate was established, which operates nationwide[87]. In addition, separate departments deal with taxpayers' requests, issue rulings, and respond to requests. However, this position is not binding, although taxpayers and even the tax authority may refer to it if the tax authority itself issues internal positions, as it determines and may determine the course of the tax administration procedure, but in litigation proceedings it is merely a statement by one of the parties and has no binding force in the absence of a legal norm. In contrast to the conditional assessment of tax, which is regulated in Section 164 of Act CL of 2017 on the Rules of Taxation (Art.)[88], a decision made in the course of a procedure for the conditional assessment of tax, which is binding until the last day of the fifth tax year following the issuance of the decision and may be extended for a further two years, cannot be appealed separately, but may be challenged in administrative litigation.[89]

Turning to the substantive legal conclusions, it should first be noted that part of the mechanism of VAT is the application of the principle of fiscal neutrality, the purpose of which, according to the settled case law of the CJEU, is to exempt the entrepreneur entirely from the VAT liability payable or paid in the course of all his economic activities. The common VAT system thus ensures neutrality with regard to the tax burden on all economic activities, regardless of their purpose and results, provided that those activities are themselves subject to VAT as a general rule. In

85 C-78/22.

86 C-87/23, C-638/17, C-151/16, C-265/18, C-532/16.

87 Information Directorate established at the NAV (ado.hu) downloaded: 24.04.2024.

88 According to Section 164(1), the minister responsible for tax policy may, at the taxpayer's request, based on the detailed facts of a transaction reported by the taxpayer, future transaction, or a transaction not classified as a future transaction, or a standard contract, shall determine the taxpayer's tax liability or lack thereof with regard to the specific issue indicated in the request.

89 Art. 168 and Art. 170(1).

order to prevent tax fraud, Member States impose administrative burdens on businesses (e.g., record-keeping requirements, strict accounting and documentation requirements, data reporting, use of online cash registers, document retention requirements), but Member States also cooperate with each other by exchanging information through the VAT Information Exchange System (V.I.E.S.) (which is an online public system where the EU tax number of the contracting partner can be checked by anyone), and by making inquiries to each other. In addition, the reverse charge mechanism, which was extended in particular as a result of circular debt experienced in the construction industry, has also become a tool for preventing tax evasion. The CJEU has repeatedly emphasized that combating tax fraud, tax evasion, and other abuses is an objective that is recognized and supported by the directive.

As a general rule, the right to deduct tax cannot be restricted, with exceptions outlined in the case law of the CJEU, which also provides a more precise definition of the concept. It has established as a matter of principle that a taxable person is entitled to deduct VAT on the basis of an invoice containing the necessary information issued by another taxable person not registered for VAT.[90] The right to deduct cannot be denied[91] if it is impossible or extremely difficult for the seller to obtain a receipt within a reasonable period of time, he must be given the opportunity to prove that he has taken reasonable care to ensure that the purchaser or customer has received and acknowledged the corrected invoice and, on the other hand, that the transaction in question was actually carried out in accordance with the terms of the corrected invoice. With regard to the formal content of invoices, the Court is more lenient than the national authorities, stating in principle that the incorrect identification of the type of goods on the invoices is not a sufficient reason to restrict the right to deduct, especially if all other documents are available.[92] It also stated expressly that even if the taxpayer is not always able to indicate on its invoice the VAT payable on intra-Community purchases of goods, but makes up for this by correcting its tax return, the right to deduct cannot be made subject to conditions.[93] It also provided important guidance that if no invoice was issued after the conclusion of the contract, but the contract contains all the essential elements from which it can be established that the substantive legal conditions for the right to deduct VAT are met, then the contract itself can be considered an invoice.[94]

It also pointed out that a VAT taxpayer who meets the substantive legal conditions for VAT deduction and who is registered as a VAT taxpayer within a reasonable period of time from the performance of the transactions entitling them to exercise the

90 C-438/09.
91 C-588/10.
92 C-491/18.
93 C-895/19.
94 C-235/21.

right of deduction is entitled to the right of deduction.[95] He then reiterated that the right to deduct VAT cannot be made conditional, in particular on the debtor being registered as an active VAT payer at the time of the sale of goods or the provision of services and on the day preceding the submission of the tax return correcting the tax reduction, and not be subject to insolvency or liquidation proceedings, and that on the day before the submission of the tax return correction, the creditor itself must still be registered as an active VAT payer.[96] If the claimant did not record its turnover and the amount of tax in a cash register, it is still possible to temporarily limit the amount of VAT that can be deducted.[97] However, the Court emphasized that, in order for the right to deduct VAT to be recognized, there must be a direct and immediate link between the expenses related to the purchase transactions and the one or more sales transactions giving rise to the right to deduct VAT or the taxpayer's economic activities as a whole.[98] The right to deduct tax cannot be denied even if the service was not used for the invoice recipient's activities and did not result in any sales revenue.[99]

The CJEU is also more lenient than national authorities with regard to invoice corrections. In Case C-127/18, it ruled that if the applicant's debtor pays only part or none of the amount due for the transaction, the taxpayer's status ceases to exist and the applicant may correct the invoice.[100] In Case C-48/20, the Court emphasized that, after the initiation of a tax audit procedure, the claimant cannot be prohibited from correcting the invoices declared if the recipient of the invoice would have been entitled to a tax refund.

In the area of tax fraud, in Case C-563/11 Forvards V[101], the ECJ stated for the first time that tax audits must be conducted on the basis of objective factors, and that the recipient of an invoice cannot be expected to carry out checks for which they are not responsible but knew or should have known that the transaction involved VAT fraud. In case C-33/13, the ECJ confirmed this principle; in that case, due to fraud or irregularities committed by the issuer of the invoice, the tax authority considered that the issuer of the invoice had not actually made the sale. In Case C-277/14[102], the

95 C-385/09.
96 C-335/19.
97 C-188/09.
98 C-126/14.
99 C-334/20.
100 The applicant provided Lithuanian transport companies with fuel cards that enabled them to refuel at certain filling stations in Poland.
101 The transport of the vehicles was not carried out by the company indicated on the consignment note, as it did not engage in any economic activity, the other details of the transaction are unknown, and the company's managing director admitted that although he had signed several documents, he had not performed the service.
102 The applicant purchased diesel fuel and used it in the course of its economic activity, deducting VAT, but according to the tax authority, the relevant invoices were issued by a non-existent economic operator and it is impossible to establish the identity of the actual seller of the products.

CJEU also established this principle. In Case C-108/17[103], the CJEU further developed the criteria for assessment when it ruled that the right to exemption cannot be denied if the conditions for tax exemption on intra-Community sales of goods following importation are not met due to tax fraud committed by the purchaser, unless it is proven that the importer knew or should have known that the transaction contributed to tax fraud committed by the purchaser and that he did not take all reasonable measures to avoid participating in that fraud. It is also necessary that the substantive conditions for tax exemption are met and that the importer transfers the right to dispose of the products in question as owner to the purchaser.[104] In Case C-329/18, the CJEU further developed its practice by stating that a single ground cannot be relied upon to justify the refusal of the right to deduct, but it may be one of the factors which, taken together and considered as a whole, may indicate that the legal entity was aware or should have been aware that it was participating in a transaction involving VAT fraud. However, it emphasized that the failure to check the registration is not relevant to the question of awareness. It is important to note that if the service was actually provided but the identity of the service provider and their VAT status could not be established due to a lack of documentation, in which case the tax authority does not have to prove in the facts of the case that VAT fraud was committed, nor that the plaintiff knew or should have known that the transaction referred to in order to establish the right to deduction was part of such fraud.[105] Particularly significant from the point of view of case law is the decision in Case C-114/22[106], according to which a taxable person cannot be deprived of the right to deduct input VAT on the sole ground that the transaction is void, without it being necessary to prove that the conditions are met which, under EU law, would allow that transaction to be classified as a fictitious transaction or, if that transaction actually took place, that it is based on VAT fraud or abuse of rights.

Part of the tax evasion mechanism is also to examine whether a given transaction is contrary to its intended purpose (whether it violates the prohibition on the exercise

103 The claimant imported fuel from Belarus to Lithuania and provided its VAT identification number to purchasers in another Member State (Polish, Slovak and Hungarian companies) to whom it intended to sell the products, and undertook only to transport the fuel to the purchasers in Lithuania. In some cases, however, it also sold products to taxable persons in other Member States than those indicated in the declaration, but the applicant provided information about those taxable persons to the tax authorities. The products were not transferred directly to the purchaser, but were forwarded to transport companies and tax warehouses designated by the latter.

104 It did not comply with the obligations to identify its suppliers for the purposes of food traceability.

105 C-154/20.

106 According to the facts of the case, the contract for the transfer of trademarks to another company for VAT purposes was, in the opinion of the tax authority, null and void under the Civil Code, and the company declared and paid the VAT amount. The tax authority found that since the transaction was void under civil law, the right to deduct could be restricted.

of rights under Section 1 of Act CL of 2017 on the Rules of Taxation (hereinafter: Art.)).[107] This question also arises in Case C-289/22 A.T.S. 2003. The improper conduct is deliberate, the parties' intention is to circumvent tax laws, the economic event has formally taken place but has no economic substance, and the purpose of the transactions is to obtain a tax advantage, which in itself is contrary to the rules and purpose of VAT legislation.[108] This type of tax fraud arose in case C-273/18[109] , in which the CJEU first of all established that this was not a case of classic tax fraud, but rather abusive conduct, it found that the circumstances established in the facts of the case were not sufficient in themselves to establish the existence of abusive practices on the part of the taxpayer or other persons involved in the chain in order to deny the right to deduct VAT, the tax authority must prove the existence of an unjustified tax advantage enjoyed by that taxpayer or other persons. In Case C-504/10[110], the CJEU found no fault with the facts of the case, insofar as national law allows for such transactions, but emphasized that, since combating tax fraud, tax evasion, and other abuses is an objective recognized and supported by the directive, it must be examined whether there has been an abuse of rights in light of all the factual circumstances characterizing the provision of services.

Final conclusions

Twenty years have passed since ten countries, including the V4 Member States, former socialist Member States and Hungary, have adapted, are familiar with and apply the EU legal order, and their courts make use of the possibility of referring to the CJEU for interpretation of EU law. The aim of my study is to show how the courts of the countries that joined in 2004 have made use of their opportunities, what development curve can be seen when analyzing their questions, and what conclusions can be drawn from the individual data. From the formal data, it could be logically concluded that a smaller country with a smaller judicial system is mathematically less likely to refer to the CJEU, but a more accurate comparison can be made by applying relative figures. Although Poland is a large country, it surpasses

107 Hungarian practice has developed the so-called Halifax test. BH.2021.4.115.

108 BH.2021.4.115.

109 The purchases took place at the end of a chain of economically irrational intra-Community transactions between several companies, and the products in question came into the possession of the taxpayer in the warehouse of a person other than the person indicated as the seller on the invoice, who was part of this chain.

110 Two companies represented by the same person submitted an application to the industrial property office for the registration of an invention entitled „Method for manufacturing a product using high-purity soapstone" as a patent. One company transferred 50% of the joint rights to the unregistered patent to the other. The invoice issued gave rise to a tax deduction, but the tax payable in advance was not paid, and ultimately the company transferring the ownership ceased to exist without liquidation.

smaller Hungary in terms of the number of questions asked, but based on the ratio, the number of questions per 100,000 inhabitants is low in almost all areas.

Which Member State refers most frequently to the CJEU depends largely on the degree of activism expected of the judicial system, whether Community law is applied more loosely, or whether judges faithfully apply the text of the law in their decisions, drafters or judges who have an opinion but are not sure about it, and who prefer to decide on the basis of the principle of concentration of proceedings, and also depends on their knowledge of Community law and their level of language proficiency. In addition, it is important to note that some judges turn to the CJEU on their own initiative or at the request of their legal representatives, with well-reasoned, logically and legally perfect or imperfectly constructed applications. It is also important to what extent a judge develops himself or herself, whether they follow case law, whether they follow it through self-development or in an organized manner, or perhaps within the framework of an advisory network, as is the case in Hungary, Poland, the Czech Republic, or Lithuania, as opposed to Slovakia, for example, where there is no such network, is also a factor that cannot be ignored.[111] In cases involving financial law, due to its harmonization, judges must always be mindful of Community rules, as there is virtually no situation to which a Community norm cannot be applied, and judges must be prepared and open to submitting motions. The subject matter and number of cases show that, with the exception of two accession countries, judges consciously turn to the ECJ and are capable of interpreting and applying Community law. With regard to individual countries, it is not possible to look beyond the numbers; if a country has referred fewer cases to the ECJ, this may mean that the judge is more confident in applying Community law and is able to derive it from case law, but it may also mean that he or she does not recognize the application of Community law, A higher proportion, on the other hand, may indicate legal uncertainty, judicial uncertainty, the shifting of responsibility, or even unnecessary questions, but it may also mean that the judge is able to set aside the rules laid down by national law and is able and willing to raise questions because of conflicts with Community law.

Although the VAT Directive is only a directive, it is very detailed. Nevertheless, courts often refer to the CJEU for its interpretation. This is because the VAT Directive allows Member States to apply derogations, which leads to problems of interpretation. In Poland, too, the interpretation of the VAT Directive has caused the most problems in numerical terms, but unlike other Member States, the Polish courts have asked the CJEU to clarify the basic concepts, presumably because the interpretation of the concepts causes difficulties for Polish judges, as this interpretation of the law cannot be derived from general case law but requires a specific interpretation of the law, such as the issue of tax exemptions and tax relief, which are particularly prevalent in Poland. It is also interesting to note from the data

111 (Microsoft Word – \366summary\363 opinion\351.doc) (kúria-birosag.hu) 25.p. Downloaded on 12/12/2023.

that the number of cases involving VAT fraud is not high. It is not clear from the facts of the cases whether this is because tax authority audits are more effective in this area, but this number is probably related to the fact that Polish judges are more willing to apply the acte clair or acte éclairé doctrine to other issues, i.e., they take into account the judgments of the CJEU, and the interpretation of basic concepts is more difficult due to the diversity of cases, making it much more complicated to find a judgment that can be applied to a given individual case.

The statistical data also clearly show that the smaller Baltic countries (including Latvia in absolute terms) regularly request interpretative assistance from the CJEU, which may be related to the fact that the Baltic countries are more active in customs matters, a type of case that is more difficult to assess from a legal point of view and may give rise to more diverse problems due to the nature of the Customs Code. However, the high ratio also indicates that judges in the Baltic countries recognize the problem, dare to ask questions, and have a solid knowledge of EU law. For some Member States, tariff classification causes problems in customs matters, and not without reason, as every product is different and more and more new, previously unknown products are appearing on the market, the tariff classification of which can be problematic. The novelty of the regulation and the fact that its practice has not yet been established may also explain the large number of questions relating to customs matters.

The CJEU has identified a number of important concepts that are relevant in practice and has provided guidance for the future, putting the practices of the authorities and courts of the Member States on a common path. Among other things, the CJEU has stated that debt neutrality is part of the VAT mechanism, and therefore neither the right to correct invoices nor the right to deduct tax can be restricted. An exception to this is when the right to deduct tax has become a central element of tax fraud. In the case of VAT fraud, it is up to the tax authorities to prove that the taxpayer has abused their right to deduct tax.

Although harmonization needs to be further developed, as does the single European market, the ECJ still has a lot of work to do with regard to the requirements of the monetary union. In addition, the harmonization of corporate tax rules will also be important ([112]; the Hungarian court has already raised questions regarding corporate tax). However, during harmonization, care must be taken to ensure that countries with different circumstances are treated equally and that differences between countries do not increase. The questions raised also reveal the problems that the courts of the Eastern European Member States, and through them the countries themselves, have to contend with in terms of the harmonization of tax law and the sovereignty of Member States.[113]

The fight against tax fraud and tax evasion will remain a key issue in the future, even if the established practice is already clear and only needs to be followed. To this

112 Im. HERICH 776.p.
113 Im. HERICH 780.p.

end, the professional knowledge of judges needs to be improved and professional consultations need to be expanded so that they can ask more precise and clearer questions if they consider that a new type of tax fraud is involved. However, this also requires courts to regularly interpret previous decisions and not to ask multiple questions about the same facts. This means that judges must follow not only the questions raised by their own country, but also the proceedings initiated by judges in other countries.

Overall, it can be concluded that, as in the financial field, apart from the tariff classification of products, most of the interpretation problems for the courts of the Member States relate to the VAT Directive, and since economic activities are diverse and constantly evolving, the interpretation of direct taxation related to economic activities will always be a problem. I do not expect the number of referrals to decrease in the future. ■

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