



Interest in the case of breaches of Union law – an end to the waiting for economic operators?

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1 Background

As early as 2022, the Hamburg Fiscal Court ruled that interest must be paid on sums of money that have been levied from or withheld from economic operators in breach of Union law (Hamburg Fiscal Court, judgment of 3 November 2022, 4 K 56/18). Prior to its decision, the Hamburg Fiscal Court had referred questions to the ECJ regarding three different constellations. The Hamburg Fiscal Court then ruled in accordance with the ECJ's statements and denied permission for its judgement to be appealed. The defendant, the Hamburg Main Customs Office, filed an appeal against the decision. The German Federal Fiscal Court has now rejected this appeal as being unfounded (decision of 7 August 2024, VII B 168/22).

A large number of proceedings were suspended at various main customs offices with reference to the pending appeal against denial of leave to appeal. The German Federal Fiscal Court's decision, which has now been issued, is likely to be crucial for these proceedings. As a result, the main customs offices no longer have available their previously most important argument for denying the payment of interest to economic operators. It remains to be seen whether this puts an end to the dispute or whether the Main Customs Offices will find further reservations regarding interest claims. At least the court decisions no longer provide any room for flexibility in this regard.

2 Main proceedings for the referral to the ECJ

The subject of the references for a preliminary ruling to the ECJ dealt with three constellations from proceedings before the Hamburg Fiscal Court in which sums of money were initially levied or withheld in breach of Union law and then subsequently refunded or granted after the respective court decision. In all three of these constellations, however, the Hamburg and Kiel Main Customs Offices refused to pay interest to the economic operators.



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In the first case (*Gräfendorfer*, C-415/20), the Hamburg Main Customs Office refused to grant export refunds to an economic operator and also imposed a fine on the grounds that the relevant goods were not of fair marketable quality, despite this being a requirement. In the second case (*Rehyer*, C-419/20), the Hamburg Main Customs Office imposed anti-dumping duties on the grounds that the goods originated in the People's Republic of China. In the third case (*Flexi Montagetechnik*, C-427/20), the Kiel Main Customs Office took a different view of the classification of the goods to that of the economic operator and set higher import duties than those recorded in the import declaration.

On the basis of these three examples, the ECJ consolidated the principles of Union law according to which economic operators are entitled to the payment of interest on sums of money that they have been required to pay or have been refused payment of in breach of Union law. These three examples vividly show that the nature of the infringement is not the primary concern. In particular, the interest claim also exists in the case of an incorrect legal interpretation of Union law by the Main Customs Offices.

3 Hamburg Fiscal Court decision

In line with the ECJ's statements, the Hamburg Fiscal Court upheld the claim for the payment of interest, which has its legal basis directly in Union law. The Hamburg Main Customs Office continued to defend itself on the grounds that the ECJ had granted the Member States the power to exercise their own discretion when determining how to regulate the interest payment modalities, as these were not regulated at EU level. The German regulation of sec. 236 of the German Fiscal Code falls within the scope of this room for flexibility.

The Hamburg Fiscal Court rejected the objections and ruled in favour of the economic operators in two respects. Firstly, it ruled that the payment of interest should also be granted for the period between the collection or withholding of the sums of money and the date the legal action was referred to the court. Sec. 236 para. 1 of the German Fiscal Code provides for the payment of interest only between the date on which the action was brought and the date of payment. Secondly, it ruled that, in deviation from the regulation in accordance with sec. 236 of the German Fiscal Code, interest also accrues if the economic operator does not initiate any legal action. The latter is relevant for cases in which refunds or grants of sums of money can be obtained from economic operators as early as the administrative appeal proceedings.

4 Recommendation for action

Economic operators who have successfully applied for a refund or grant of sums of money in the past should check whether interest claims are still possible. The period for assessing interest is two years, commencing at the end of the calendar year in which the refund or grant of the sums of money occurred. If the interest claim was submitted at the same time as the refund amount was claimed, the procedure can be resumed with reference to the rejection of the appeal.

It remains to be seen what impact this German Federal Fiscal Court's decision will have on the examination practices of the Main Customs Offices with regard to the collection or granting of sums of money. The customs administration can no longer collect or withhold money without risk. Instead, it must expect to be held liable for the payment of interest if its legal interpretation is found to be contrary to Union law.