ECLI:EU:C:2017:1010

Provisional text

JUDGMENT OF THE COURT (Seventh Chamber)

20 December 2017 (*)

(Reference for a preliminary ruling — Principle of protection of the rights of the defence — Right to be heard — Regulation (EEC) No 2913/92 — Community Customs Code — Article 244 — Recovery of a customs debt — Lack of prior hearing of the addressee before the adoption of an amended tax assessment — Right of the addressee to obtain suspension of the implementation of the amended tax assessment — Lack of automatic suspension in the event of the bringing of administrative proceedings — Reference to the conditions provided for in Article 244 of the Customs Code)

In Case C-276/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Court of Cassation, Italy), made by decision of 17 March 2016, received at the Court on 17 May 2016, in the proceedings

Prequ' Italia Srl

v

Agenzia delle Dogane e dei Monopoli,

THE COURT (Seventh Chamber),

composed of A. Rosas (Rapporteur), President of the Chamber, C. Toader and A. Prechal, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Italian Government, by G. Palmieri, acting as Agent, and by G. Albenzio, avvocato dello Stato,

– the European Commission, by F. Tomat and L. Grønfeldt, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 (OJ 2000 L 311, p. 17) ('the Customs Code'), and the principle of respect for the rights of the defence under EU law.

2 The request has been made in the course of proceedings between Prequ' Italia Srl and the Agenzia delle Dogane e dei Monopoli (Customs and Monopolies Authority, Italy) ('the customs authority'), concerning a tax assessment issued by the latter, reminding the appellant of the levying of import value added tax (VAT) for non-compliance with the obligation to physically place goods in a tax warehouse.

Legal context

The Customs Code

3 Article 243 of the Customs Code provides as follows:

'(1) Any person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually.

…

The appeal must be lodged in the Member State where the decision has been taken or applied for.

(2) The right of appeal may be exercised:

(a) initially, before the customs authorities designated for that purpose by the Member States;

(b) subsequently, before an independent body, which may be a judicial authority or an equivalent specialized body, according to the provisions in force in the Member States.'

4 According to Article 244 of the Customs Code:

'The lodging of an appeal shall not cause implementation of the disputed decision to be suspended.

The customs authorities shall, however, suspend implementation of such decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.

Where the disputed decision has the effect of causing import duties or export duties to be charged, suspension of implementation of that decision shall be subject to the existence or lodging of a security. However, such security need not be required where such a requirement would be likely, owing to the debtor's circumstances, to cause serious economic or social difficulties'.

5 Article 245 of the Customs Code provides:

'The provisions for the implementation of the appeals procedure shall be determined by the Member States.'

Italian law

6 Legislative Decree No 374 of 8 November 1990 reorganising the customs institutions and revising the procedures for assessment and review (GURI No 291 of 14 December 1990; ordinary supplement No 80) ('Legislative Decree No 374/1990'), provides, in Article 11, entitled 'Revision of assessments: competence and powers of [customs] offices', in the version in force at the time of the facts in the main proceedings:

'(1) The customs office may review an assessment which has become final even if the goods which were the subject of it have been left at the disposal of the trader or if they have already left the customs territory. The review shall be carried out either by the customs office of its own motion or following an application made by the trader concerned … .

(2) For the purposes of the review of the assessment, the customs office may invite the traders … to appear in person or through a representative, or to provide, within the abovementioned time limit, information and documents … concerning the goods which were the subject of the customs operations. …

…

(5) Where the review, whether carried out on the office's own initiative or on the application of a party, reveals … errors relating to the factors on which the assessment was based, the office shall make the corresponding correction and shall give the trader concerned appropriate notice thereof.
…

(5a) The statement of grounds for the measure shall set out the factual circumstances as well as the legal grounds which led to its adoption. … In the event of a failure to state the grounds for the assessment in accordance with the provisions of this subparagraph, the assessment shall be deemed void.

…

(7) The amendment may be challenged by the trader within 30 days of its being notified of the assessment. At the time any such challenge is made, a report shall be drawn up in relation thereto, in order that the administrative procedures for the resolution of disputes provided for in Article 66 et seq. of the Consolidated Law on Customs, approved by Decree of the President of the Republic No 43 of 23 January 1973, may be initiated.

(8) Once the amendment has become final, the office shall recover the additional duties owed by the trader or set in motion, on its own initiative, the procedure for reimbursement of overpayments.

Where appropriate, amendment of the assessment shall include charges of infringements arising from false declarations or more serious infringements which may have been detected.

…'

7 Law No 212 of 27 July 2000 laying down provisions relating to the status of rights of taxable persons, in the version in force on the date of the facts in the main proceedings (GURI No 177 of 31 July 2000) ('Law No 212/2000'), provides, in paragraph (7) of Article 12, entitled 'Rights and guarantees of taxable persons subject to tax reviews':

'In accordance with the principle of co-operation between the administrative authorities and the taxable person, the latter may, after publication of the minutes terminating the operations carried out by the inspection bodies, within 60 days submit his observations and claims, which shall be examined by the tax offices. The tax assessment may not be issued before the expiry of that time-limit, except in cases of particular urgency, for which reasons must be stated.'

8 It is apparent from the order for reference that, in 2012, subsequent to the facts in the main proceedings, the national legislator repealed Article 11(7) of Legislative Decree No 374/1990 by replacing the internal appeal system with a procedure similar to that provided for in Article 12 of Law No 212/2000.

9 Decree of the President of the Republic No 43 of 23 January 1973 approving the Consolidated Law on Customs (GURI No 80 of 28 March 1973) ('the Consolidated Law on Customs'), provides in Article 66, entitled 'Administrative procedure at first instance for the resolution of disputes':

'Within 30 days of the signing of the report [declaring that the owner of the goods contests the decision of the head of the customs office], failing which the request will be time-barred, the trader may ask the head of the customs department to resolve the dispute. To that end, that trader must submit an application to that effect to the competent customs authorities, producing the documents and indicating the evidence which it deems relevant. The application shall be forwarded within the next 10 days by the customs authorities, together with the report thereon, … and the trader's objections, to the head of the customs department. The latter shall decide on the dispute by reasoned decision … . A copy of the customs authorities' observations must be provided to the trader concerned. Where no application is submitted within the period indicated in the first paragraph, the customs authorities' claim will be deemed to be accepted …'.

10 Article 68 of the Consolidated Law on Customs, entitled 'Administrative procedure at second instance for the resolution of disputes', provides:

'The head of the customs department shall issue his decision within four months from the date of submission of the formal application referred to in Article 66 and the competent customs office shall notify the person concerned without delay. The latter may bring an action before the Ministro per le finanze [Minister of Finance] against the decision of the head of the customs department; … . The minister shall decide, by means of a reasoned decision, after hearing the central advisory forum of customs experts, established in accordance with the following article. In the absence of an action brought within the time limit stated in the second subparagraph, the decision at first instance shall be deemed to be accepted. In such a case, the customs office shall proceed in accordance with the second subparagraph of Article 61'.

11 Memorandum No 41(D) of the customs authority of 17 June 2002 provides details about the administrative procedures relating to the resolution of customs disputes referred to in Articles 66 et seq. of the Consolidated Law on Customs. It follows that, where a trader decides to bring administrative proceedings to resolve the dispute, the 60-day time limit for contesting the assessment before the tax jurisdiction starts to run only at the end of that administrative procedure, that is to say following notification of the decision to the regional director of the competent customs office which makes the assessment final. The trader may decide not to invoke the administrative procedure referred to in the Consolidated Law on Customs. In such a case, the amended tax assessment must be contested within the 60-day time limit from the date of notification of that assessment.

12 In relation to the amended tax assessments referred to in Article 11(5) of Legislative Decree No 374/1990, Memorandum No 41(D) states that:

'… those tax measures — in accordance with Article 244 of … the Community Customs Code — shall be immediately enforceable against the taxable person and, as such, individually open to challenge before the Tax Courts within the time-limit mentioned above. In that regard it is worth bearing in mind that challenging an amendment made to an assessment, in the context of a customs dispute or an action brought before the competent Provincial Tax Court, does not suspend the implementation of that amendment (see Article 244 of the Community Customs Code). However, this is without prejudice to the fact that offices of the Customs Agency may, under the administrative procedure, allow — following an application to that effect by the operator concerned — a provisional suspension where the conditions laid down in that provision of Community legislation are satisfied'.

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

13 Prequ' Italia carried out imports of goods under VAT suspension. During the completion of the customs formalities, it relied on the possibility not to pay VAT by making a commitment, in its import declarations, to place the purchased goods in a specific tax warehouse. The imported goods were, however, not physically placed in that warehouse.

14 After finding that Prequ' Italia had made purely virtual use of the tax warehouse, on 13 November 2009, the Ufficio delle Dogane di Livorno (customs office, Livorno, Italy) issued 10 amended notices reminding the appellant of the levying of import VAT.

15 In each of those notices, it was stated that the taxable person could, in accordance with Article 11(7) of Legislative Decree No 374/1990, initiate an administrative review governed by Articles 66 et seq. of the Consolidated Law on Customs following which that taxable person had the possibility of instituting legal challenges.

16 Those notices stated that it was possible, subject to compliance with the conditions provided for in Article 244 of the Customs Code, to obtain suspension of the implementation of the tax assessment, by submitting a request to the regional director of the customs authority, accompanied by an appropriate guarantee in relation to the additional customs duties which had been declared.

17 It is not stated in the order for reference whether, in the present case, Prequ' Italia relied on the possibility, granted to it by Article 11(7) of Legislative Decree No 374/1990, to contest the amended tax assessments within 30 days of the notification thereof and initiated an administrative customs dispute procedure in accordance with Article 66 of the Consolidated Law on Customs.

18 In any event, in February 2010, Prequ' Italia brought a legal challenge against the 10 amended tax assessment notices before the Commissione tributaria provinciale di Livorno (Provincial Tax Court, Livorno), which dismissed it by a decision of 24 February 2011.

19 Prequ' Italia lodged an appeal against that judgment before the Commissione tributaria regionale di Firenze (Regional Tax Court, Florence, Italy), which dismissed its appeal by a decision of 13 December 2012.

20 It is apparent from the file submitted to the Court that, in the context of those legal challenges, Prequ' Italia invoked infringement of its rights to be heard and claimed, in essence, that the amended assessments should have been adopted on the basis of Article 12(7) of Law No 212/2000, and not on the basis of Article 11(7) of Legislative Decree No 374/1990.

21 The Commissione tributaria provinciale di Livorno (Provincial Tax Court of Livorno) and the Commissione tributaria regionale di Firenze (Regional Tax Court of Florence) upheld the decision of the customs authority by applying the case-law of the Corte suprema di cassazione (Court of Cassation, Italy) in accordance with which Article 12(7) of Law No 212/2000 is inapplicable to customs cases.

22 Prequ' Italia thus lodged an appeal in cassation before the Corte suprema di cassazione (Court of Cassation).

23 Of the pleas in law raised before the Corte suprema di cassazione (Court of Cassation), Prequ' Italia invokes an infringement of its rights of defence in so far as the contested amended tax assessments were adopted by the customs office without it having been first heard in the context of an adversarial administrative procedure. It claims that Article 12(7) of Law No 212/2000 should have been applied, granting the taxable person the right to an adversarial procedure and allowing him to submit observations to the competent authorities.

24 In its defence, the customs authority contends that the pleas in law raised by Prequ' Italia are unfounded. As regards the question of an infringement of the principle of an adversarial process in customs matters, it notes that, in accordance with the case-law of the Corte suprema di cassazione (Court of Cassation), Article 12(7) of Law No 212/2000 does not apply to customs procedures. Moreover, the rule set out in Article 11(7) of Legislative Decree No 374/1990 is such as to protect the right to an adversarial procedure.

25 In that regard, the referring court states, in the first place that, according to its case-law, Article 12(7) of Law No 212/2000, which seeks to guarantee to the taxable person compliance with the principle of an adversarial procedure, is not applicable before the initiation of proceedings for judicial review of a tax assessment, and is, in any event, not applicable to customs matters.

26 It adds that it has repeatedly held, concerning the specific nature of customs matters in the light of the question of compliance with an adversarial procedure, that compliance with the principle of an adversarial procedure, even during the administrative phase, although it is not expressly referred to in the Customs Code, results from the express provisions of Article 11 of Legislative Decree No 374/1990 and constitutes a general principle of EU law which is applicable each time the authorities propose the adoption of a measure adversely affecting a person.

27 The referring court further states that, in its case-law, it has repeatedly held that compliance with the principle of an adversarial procedure is fully guaranteed by the administrative procedures referred to in Articles 66 et seq. of the Consolidated Law on Customs, to which reference is made

by Article 11 of Legislative Decree No 374/1990. Those procedures permit the establishment, at the outset, of an adversarial procedure in favour of the taxable person, in so far as, first, Article 66 of the Consolidated Law on Customs provides that the trader is to lodge an appeal against the amended assessment 'by producing the documents and indicating the means of proof considered to be effective', and secondly, it is only at the end of the adversarial administrative procedure, in the event of a decision which is partially or totally unfavourable to the party lodging an appeal, that the 'definitive nature' of the amended assessment is determined and that taxable person could seek judicial review of that amended assessment.

28 In the second place, the referring court refers to the case-law of the Court relating to the right to be heard and, in particular, to the judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics* (C-129/13 and C-130/13, EU:C:2014:2041).

29 Whilst noting the principles identified by the Court in the context of cases in which the suspension of a payment notice, adopted in breach of the right to a prior hearing, was provided for by a ministerial memorandum, the referring court raises questions concerning the situation where, as in the present case, the internal rules merely provide for the suspension of the implementation of a measure adopted without a prior hearing of the person concerned by referring, only, to the provisions of Article 244 of the Customs Code, and do not provide for specific rules in the implementation of those provisions.

30 The referring court notes, in that regard, that the suspension of a customs measure adopted without a prior hearing of the taxable person is not an automatic consequence of the initiation of an administrative appeal, but only a measure which the authorities may adopt where the conditions provided for in Article 244 of the Customs Code are satisfied.

31 As a result, the referring court questions whether the principles relating to the right to be heard in customs cases, as formulated in the judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics* (C-129/13 and C-130/13, EU:C:2014:2041), precludes national customs legislation such as that which was applicable on the date of the facts in the main proceedings, which provides for the possibility, for the addressee of a tax assessment adopted in the absence of a prior adversarial procedure, to obtain suspension of the implementation of the measure on the date he brings a challenge, by relying on the conditions referred to in Article 244 of the Customs Code and without providing for the suspension of the implementation of the contested measure as the normal consequence of initiating an administrative review.

32 In those circumstances, the Corte suprema di cassazione (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'Is the Italian [tax] legislation [in question] contrary to the general principle of EU law that parties have a right to be heard in administrative procedures in that it does not provide, in favour of a taxable person who has not been heard prior to the adoption of a tax measure by the customs authorities, for the suspension of that measure as the normal consequence of the lodging of an appeal?'

Consideration of the question referred

Admissibility of the reference for a preliminary ruling

33 The Italian Government and the European Commission contest the admissibility of the question referred.

34 The Italian Government contends that the request for a preliminary ruling is inadmissible on the grounds that Prequ' Italia's argument relating to the alleged infringement of its rights of defence is unfounded in so far as, before the issue of amended tax assessments, that company was informed of the initiation of the administrative procedure and of its right to submit observations within 30 days, and therefore benefited from an adversarial procedure.

35 The Commission questions whether the referring court has sufficiently defined the factual and legal context of the question referred so that the Court has before it the factual or legal material allowing it to give a useful answer to that question.

36 It contends, in that context, that the referring court merely set out briefly the relevant facts and the procedural issues which gave rise to the request for a preliminary ruling. Therefore, it is unclear whether Prequ' Italia contested the amended tax assessments as it is entitled to do under Article 11(7) of Legislative Decree No 374/1990 and whether it then initiated the administrative dispute resolution procedure. Furthermore, it is not stated whether Prequ' Italia submitted an application for suspension of the operation of those measures and, as the case may be, whether that application was granted or rejected.

37 In that regard, it should be noted that, according to settled case-law, the procedure set out in Article 267 TFEU is an instrument of cooperation between the Court and the national courts, which gives the latter the responsibility to determine, in view of the special features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they put to the Court (judgment of 12 October 2017, *Kubicka*, C-218/16, EU:C:2017:755, paragraph 31 and the case-law cited).

38 Although the order for reference must, on pain of being declared inadmissible, comply with the requirements set out in Article 94 of the Rules of Procedure of the Court (see, to that effect, judgment of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraphs 18, 19 and 21), the refusal to rule on a question referred for a preliminary ruling by a national court is however possible only where it is manifestly clear 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 enable it to give a useful answer to the questions submitted to it (judgment of 12 October 2017, *Kubicka*, C-218/16, EU:C:2017:755, paragraph 32 and the case-law cited).

39 In this case, it should be noted that the question referred in the present case clearly concerns the possibility, in the context of the administrative procedure relating to the resolution of a customs dispute and, therefore, at a stage before the initiation of judicial review, of obtaining the suspension of the implementation of a customs assessment and is related to the answer given by the Court to the second question examined in the judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics* (C-129/13 and C-130/13, EU:C:2014:2041).

40 The referring court considers that the principles set out in that judgment can apply to the dispute pending before it, whilst expressing doubts concerning whether, in order to be able to exclude the unlawfulness of a measure adopted, in a customs matter, without there having been a prior hearing of the taxable person, it is necessary for the national legislation to guarantee to that taxable person, first, the possibility of contesting the measure at issue in the context of an administrative review and, secondly, the suspension of that measure as the normal consequence of bringing such a review.

41 As a result, the factual and legal context, as it is set out in the order for reference, provides the reasons leading the referring court to question the Court and suffices for the purpose of clarifying the question posed by the referring court, relating to the compatibility with the right to be heard of national legislation in accordance with which the addressee of an amended tax assessment has the possibility of contesting that measure in the context of an administrative appeal and of requesting the suspension of that measure, without the suspension of that measure being the normal consequence of bringing such an administrative appeal.

42 Furthermore, in the light of the Italian Government's arguments, it should be noted that it is apparent from the order for reference that the interpretation, in customs matters, of the principle of respect for the right to be heard is necessary to the referring court. In any event, it does not appear, having regard to the order for reference, that the question referred is not relevant to the outcome of the dispute before the referring court.

43 In the light of the above, the question referred for a preliminary ruling is admissible.

Substance

44 By its question, the referring court asks, in essence, whether the right of any person to be heard before the adoption of a decision likely to adversely affect his interests must be interpreted as meaning that the rights of defence of the addressee of an amended tax assessment adopted by the customs authorities, in the absence of a prior hearing of the person concerned, are infringed if the national legislation which allows the person concerned to contest that measure in the context of an administrative review is restricted to providing the possibility to request the suspension of the implementation of that measure until its possible amendment by referring to Article 244 of the Customs Code and does not provide that the initiation of an administrative review automatically suspends the implementation of that measure.

45 In that regard, it should be noted that, according to settled case-law, observance of the rights of the defence is a fundamental principle of EU law, in which the right to be heard in all proceedings is inherent (judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 28 and the case-law cited).

46 In accordance with that principle, which applies where the authorities are minded to adopt a measure which will adversely affect an individual, the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision (judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 30 and the case-law cited).

47 The authorities of the Member States are subject to that obligation when they take decisions which come within the scope of EU law, even though the legislation applicable does not expressly provide for such a procedural requirement (see, to that effect, judgments of 18 December 2008, *Sopropé*, C-349/07, EU:C:2008:746, paragraph 38, and of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 31).

48 In the main proceedings, the national legislation at issue does not impose on the authorities, who carry out customs checks, the obligation to hear the addressees of amended tax assessments before proceeding to a review of the findings and a possible amendment thereof. It thus entails, in

principle, a limitation of the right to be heard on the part of the addressees of those amended assessments, even though they can express their views during a subsequent administrative objection stage.

49 The Court has noted, in that regard, that the purpose of the rule that the addressee of an adverse decision must be placed in a position to submit his observations before that decision is adopted is to enable the competent authority effectively to take into account all relevant information. In order to ensure that the person or undertaking concerned is in fact protected, the purpose of that rule is, inter alia, to enable them to correct an error or submit such information relating to their personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (see, to that effect, judgments of 18 December 2008, *Sopropé*, C-349/07, EU:C:2008:746, paragraph 49, and of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 38).

50 However, according to settled case-law, the general principle of EU law of respect for the rights of the defence is not an unfettered prerogative but may be restricted, provided that the restrictions in fact correspond to objectives of public interest pursued by the measure in question and do not constitute, in the light of the objectives pursued, a disproportionate and intolerable interference which impairs the very substance of the rights guaranteed (see, to that effect, judgments of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 42, and of 9 November 2017, *Ispas*, C-298/16, EU:C:2017:843, paragraph 35).

51 The Court has already acknowledged that the general interest of the European Union, and in particular the interest in recovering its own revenue as soon as possible, means that inspections must be capable of being carried out promptly and effectively (see, to that effect, judgments of 18 December 2008, *Sopropé*, C-349/07, EU:C:2008:746, paragraph 41, and of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 54).

52 That is the case in respect of decisions of the customs authorities.

53 According to Article 243(1) of the Customs Code, any person has the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually. However, the lodging of an appeal pursuant to Article 243 of the Customs Code does not, under the first paragraph of Article 244 of that code, in principle, cause implementation of the disputed decision to be suspended. As the appeal does not have suspensory effect, it does not preclude the immediate implementation of that decision. The second paragraph of Article 244 of the Customs Code authorises the customs authorities to suspend, in whole or in part, implementation of a customs decision where they have good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.

54 In the order for reference, the national court states that the national procedure for administrative complaints against measures issued by the customs authorities does not have the effect of automatically suspending the implementation of the adverse decision and rendering it immediately inoperable.

55 As is apparent from the Court's case-law, such a fact may be of some importance when considering possible justifications for restricting the right to be heard before the adoption of an

adverse decision (judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 65).

56 However, in the absence of a hearing prior to the adoption of a demand for payment, the lodging of an objection or administrative appeal against that demand for payment should not necessarily have the effect of automatically suspending implementation of the demand for payment in order to ensure observance of the right to be heard in connection with that objection or appeal (judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 67).

57 On the other hand, it is important that the national procedure for administrative complaints against measures issued by the customs authorities guarantee the full effectiveness of EU law and, in this case, of the provisions of Article 244 of the Customs Code.

58 As regards the customs recovery decisions, it is as a result of the general interest of the European Union in recovering its own revenue as soon as possible that the second paragraph of Article 244 of the Customs Code provides that the lodging of an appeal against a demand for payment has the effect of suspending implementation of that demand only where there is good reason to believe that the contested decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned (see, to that effect, judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 68).

59 Since the provisions of EU law, such as those of the Customs Code, must be interpreted in the light of the fundamental rights which, according to settled case-law, form an integral part of the general principles of law whose observance the Court ensures, the national provisions implementing the conditions provided for in the second paragraph of Article 244 of the Customs Code for the grant of suspension of implementation must, in the absence of a prior hearing, ensure that those conditions are not applied or interpreted restrictively (see, to that effect, judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraphs 69 and 70).

60 In the main proceedings, the referring court states that the suspension of the implementation of amended tax assessments may be granted only in so far as the conditions referred to in Article 244 of the Customs Code are satisfied, without stating the criteria applied by the offices of the customs authority in order to assess the grant of that suspension. In that regard, there is also no clarification in the text of Memorandum No 41(D) of 17 June 2002, which merely refers to the conditions in Article 244 of the Customs Code.

61 Where the addressee of amended tax assessments such as those at issue in the main proceedings has the possibility of obtaining the suspension of the implementation of those measures until their possible amendment and where, in the context of the administrative procedure, the conditions referred to in Article 244 of the Customs Code are not applied restrictively, which it is for the national court to assess, there is no infringement of respect for the rights of defence of the addressee of the amended tax assessments.

62 In any event, it must be pointed out that the obligation of the national court to ensure the full effectiveness of EU law does not always result in the annulment of a contested decision, where the latter was adopted in infringement of the rights of the defence. According to settled case-law, an infringement of the rights of the defence, in particular the right to be heard, results in the annulment of the decision taken at the end of the administrative procedure at issue only if, had it not been for

such an irregularity, the outcome of the procedure might have been different (judgments of 10 September 2013, *G. and R.*, C-383/13 PPU, EU:C:2013:533, paragraph 38, and of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraphs 78 and 79).

63 In the light of the above considerations, the answer to the question referred is that the right of any person to be heard before the adoption of a decision likely to adversely affect his interests must be interpreted as meaning that the rights of defence of the addressee of an amended tax assessment adopted by the customs authorities, in the absence of a prior hearing of the person concerned, are not infringed if the national legislation which allows the person concerned to contest that measure in the context of an administrative review merely provides the possibility to request the suspension of the implementation of that measure until its possible amendment by referring to Article 244 of the Customs Code without the initiation of an administrative appeal automatically suspending the implementation of the contested measure, since the application of the second paragraph of Article 244 of the Customs Code, by the customs authorities, does not restrict the grant of a suspension of implementation where there are reasons to doubt the conformity of the contested decision with the customs legislation or that irreparable damage is to be feared for the person concerned.

Costs

64 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 costs of those parties, are not recoverable.

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

The right of any person to be heard before the adoption of a decision likely to adversely affect his interests must be interpreted as meaning that the rights of defence of the addressee of an amended tax assessment adopted by the customs authorities, in the absence of a prior hearing of the person concerned, are not infringed if the national legislation which allows the person concerned to contest that measure in the context of an administrative review merely provides the possibility to request the suspension of the implementation of that measure until its possible amendment by referring to Article 244 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 without the initiation of an administrative appeal automatically suspending the implementation of the contested measure, since the application of the second paragraph of Article 244 of that regulation, by the customs authorities, does not restrict the grant of a suspension of implementation where there are reasons to doubt the conformity of the contested decision with the customs legislation or that irreparable damage is to be feared for the person concerned.

[Signatures]

* Language of the case: Italian.