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POLINE

PRINCIPLES OF LAW IN NATIONAL AND EUROPEAN VAT

**European Judicial Interpretative Formulas and Their Influence on Bulgarian
Administrative VAT Litigation**

**AI to better access and retrieve Judicial
Interpretative Formulas – POLINE Final Conference**

Florence, 05.12.2025

Short institutional map of Bulgarian Administrative VAT Litigation

Administrative appeal

Tax audit instrument → Director of the Appeals and Tax and Social Security Practice Directorate at the Head Office of the National Revenue Agency (NRA)

Judicial appeal

First instance: Administrative court → Cassation instance: Supreme Administrative Court of the Republic of Bulgaria (SAC)

Types of SAC Judgments



SAC judgments on the merits, which resolve a particular dispute:

- have *inter partes* effect, no binding force;
- persuasive authority; judges from the SAC and lower administrative courts refer to this case law; when a number of SAC judgments interpreting a given provision in the same spirit accumulate, this series of judgments is called established ("settled", "constant") case law;
- contain implicit JIFs.

Interpretative Judgments of the SAC:

- are issued by the General Assembly of the Chambers of the Supreme Administrative Court when the SAC is seized of a matter that has been resolved inconsistently by the administrative courts; they determine how a given provision should be interpreted and which holding is the correct;
- are binding on the judicial and executive authorities, on local self-government bodies, as well as on all bodies issuing administrative acts;
- the operative part contains a generally applicable abstract formula that is used to resolve similar future cases and helps to harmonize judicial practice;
- contain explicit JIFs; a small number of interpretative decisions on VAT matters.

Channels of Influence of the EU JIFs

- **CJEU judgments on preliminary rulings referred by Bulgarian courts - 49**
CJEU judgments on preliminary rulings referred by Bulgarian courts concerning the application of the VAT Directive; **most cited:** Bonik (Case C 285/11), Maks Pen (Case C-18/13), ALTI (Case C 4/20)
- **CJEU judgments on preliminary rulings referred by other Member States –**
most cited: Mahagében & Dávid (Joined cases C 80/11 & C 142/11), Gábor Tóth (Case C 324/11), Halifax (Case C-255/02), Kittel & Recolta (Joined cases C 439/04 & C 440/04)
- **CJEU judgments on cases concerning infringements of the VAT Directive –**
Commission v Austria (Case C-433/09), Commission v Poland (Case C- 228/09).

EU JIFs cited in an Interpretative Judgment of the SAC



Focus example: Joint and several liability for VAT and default interest

- **C-4/20 ALTI** – The Court of Justice of the EU rules that the provisions of Bulgarian law on the payment of default interest in the specific case of joint and several liability do not conflict with Article 205 of the VAT Directive.
- The subsequent **Interpretative Judgment No. 4/10.05.2022 of the SAC**, which further clarifies the meaning of Article 177 of the Value Added Tax Act, is expressly aligned with ALTI case and the principles of EU law.

EU JIF	BG JIF
Judgment of the Court (First Chamber) of 20 May 2021, „ALTI“ LTD, Case C-4/20	Interpretative Judgment No. 4 of 10.05.2022 of the Supreme Administrative Court on case No. 2/2020
"45. Article 205 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in the light of the <u>principle of proportionality</u> , must be interpreted as not precluding national legislation pursuant to which the person held jointly and severally liable, for the purpose of that article, must pay, in addition to the value added tax (VAT) not paid by the person liable for payment of that tax, the default interest on that amount , due from the person liable for payment, where it is proved that, in exercising its right of deduction, it knew or should have known that the person liable for payment would not pay that VAT."	"The correspondence of the national legal norm - Art. 177 VAT Act - with the requirements for the application of Art. 205 of Directive 2006/112 was established in the Judgment on case C-4/20, ALTI, ECLI:EU:C:2021:397, paragraph 40." "The scope of the joint and several liability under Article 177 of the VAT Act includes the liability for default interest on the tax due by the liable person. "

EU JIFs cited in a cassation decision of the SAC on a particular administrative case



Focus example: Taxable amount for the VAT payable on commercial advertising screening services

EU JIF	BG JIF
Judgment of the Court (Third Chamber) of 5 December 2013, TVI — Televisão Independente SA v Fazenda Pública. Joined Cases C-618/11, C-637/11 and C-659/11	Judgment No. 2686 of 14 March 2023 of the Supreme Administrative Court on administrative case No. 5234/2022
<p>“33. In that connection, it should be recalled that, under Article 11(A)(1)(a) of the Sixth Directive and Article 73 of Directive 2006/112, the taxable amount for VAT includes everything that constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies.”</p> <p>“35 Article 11(A)(3)(c) of the Sixth Directive and point (c) of the first paragraph of Article 79 of Directive 2006/112 provide, for their part, that amounts received by a taxable person from his purchaser or customer as repayment for expenses paid out in the name and for the account of the latter, and entered in his books in a suspense account, are to be excluded from the taxable amount.”</p>	<p>“In paragraph 33 of its judgment of 5 December 2013 in joined cases C-618/11, C-637/11 and C-659/11, the ECJ states that the VAT taxable amount includes everything that constitutes consideration received or to be received by the supplier in return for the supply, from the customer or a third party. Paragraph 35 of that judgment states that the first subparagraph of Article 79(c) (c) of Directive 2006/112 provides that amounts received by the taxable person from the customer as reimbursement of expenses incurred on behalf of and for the account of the customer and recorded in his accounts in a suspense account must be excluded from the taxable amount.”</p>

EU JIFs imposed a legislative amendment to the Bulgarian VAT Act

Focus example: Basis of assessment for a transaction in the event of consideration in the form of goods or services

EU JIF	BG JIF
Judgment of the Court (Eighth Chamber), 19 December 2012, Orfey Bulgaria, Case C-549/11	Judgment No. 14612 of 27 November 2018 of the Supreme Administrative Court on administrative case No. 6473/2018
„49. Articles 73 and 80 of the VAT Directive must be interpreted as precluding a national provision, such as that at issue in the main proceedings, under which, when the consideration for a transaction is made up entirely of goods or services, the taxable amount of the transaction is the open market value of the goods or services supplied. ”	<p>“According to paragraph 49 of the ECJ Judgment of 19 December 2012 in case C-549/11, Orfey Bulgaria, however, when the supply is not made between connected persons, as in the present case, Articles 73 and 80 of Directive 2006/112 must be interpreted as precluding a national provision such as that at issue in the main proceedings (Article 26(7) of the VAT Act), according to which, if the consideration for a supply is determined entirely in goods or services, the taxable amount of the supply is the market value of the goods or services provided.</p> <p>In accordance with paragraph 45 of the same Judgment, Article 26(7) of the VAT Act was amended (State Gazette No. 101 of 2013, effective as of 1 January 2014) and, according to the new wording of the provision, in this case the taxable amount is determined on the basis of the direct costs of performing the service provided.”</p>

Citation by the SAC of the EU JIF on an infringement case



Focus example: Failure of a Member State to fulfil its obligations - Inclusion in the taxable amount of a duty applicable to non-registered cars

EU JIF	BG JIF
Judgment of the Court (Third Chamber) of 20 May 2010, European Commission v Republic of Poland Case C-228/09	Judgment No. 15126 of 6 December 2018 of the Supreme Administrative Court on administrative case No. 2592/2018
“40. Indeed, the determining factor for including a tax in the value of the goods supplied is whether the supplier has paid the tax in its own name and on its own account . If so, the consideration taken into account for calculating the taxable amount includes the amount of the tax in question.”	“Another decisive factor for the inclusion of a fee or tax in the taxable amount is whether the supplier has paid them in its own name and on its own account – paragraph 40 of the Judgment of 20 May 2010 in Case C-228/09, Commission v Poland.”

Conclusions

- The Bulgarian court strives to fulfill its obligation to interpret domestic legal norms in the field of VAT in conformity with EU law.
- SAC explicitly quoting or paraphrasing standard CJEU formulas. Linguistic consistency, verbatim quotations, and references to specific paragraphs of CJEU judgments are evident.
- Core EU VAT principles that frequently appear as JIFs: **fiscal neutrality, effectiveness, proportionality, legal certainty, anti-fraud.**
- EU JIFs contribute to **legal certainty, predictability, and uniform interpretation and application of EU law.**