

## ECJ: Interest from the Date of Payment of Duties to be Reimbursed

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In a judgement on 18 January 2017 (C-365/15 – Wortmann) the European Court of Justice (ECJ) stressed that Member States are obliged to pay interest on duties levied in breach of EU law from the date that these duties were paid. The ECJ thus continued its previous case law from cases Jülich II (joined cases C-113/10, C-147/10 and C 234/10), Littlewoods Retail (C-591/10) and Irimie (C-565/11) and extended it to the EU Customs Code's scope of application. In comparison to the Court's judgement in Jülich II, achieved under participation of BLOMSTEIN Of Counsel Hans-Joachim Prieß, in this judgement, the ECJ for the first time establishes for "*circumstances such as those in the case in the main proceedings*" that Article 241 Customs Code (CC) does not exclude the payment of interests – even though this provision generally exempts customs authorities from the obligation to pay interest.

"*Circumstances such as those in the case in the main proceedings*" can be assumed where the violation of EU law underlying the reimbursement does not purely result from an error caused by the "*speed of the customs clearance system*" (see C-365/15 – Wortmann, para. 29; cf. the opinion of Advocate General Manuel Campos Sánchez-Bordona), but follows from the mistaken legal assessment of the duties itself. In practice, this can be assumed wherever the customs authorities had sufficient time for the assessment of the respective circumstances.

Moreover, this will likely also apply under the Union Customs Code (UCC) that came into force on 1 May 2016 even though the option of derogating (favourable) interest provisions by the Member States previously provided has since then been abolished. This is because, also in the case of Wortmann, the ECJ has recognised that the Member States are obliged to pay interest where no interest favourable national provision existed,

There is therefore strong evidence that also in future the obligation to pay interest from the date of payment will pursuant to ECJ case law apply as an unwritten exception to Article 116 para. 6 UCC in all cases where the violation of EU law is not simply due to a speedy customs clearance.

Beyond the CC's and UCC's scope of application, – for Germany – the German Federal Finance Court (Bundesfinanzhof, *BFH*) had already confirmed in 2015 that interest has to be paid from the date of payment (see the 2015 [judgement](#) achieved by BLOMSTEIN Of Counsel Hans-Joachim Prieß and BLOMSTEIN associates Eva-Maria Meister and Sarah Bayer). In accordance with existing ECJ case law – and contrary to previous BFH case law – production levies levied in violation of EU law therefore lead to an obligation to pay interest not only from the date of *lis pendens* but from the date of payment of the respective levies.

Further information on the ECJ *Wortmann* judgement and its practical implication can be found in the annotations by BLOMSTEIN associates Eva-Maria Meister and Sarah Bayer (ZfZ 2017, 42 et seq.). Should you have any questions on the concrete implications of the ECJ and BFH case law for your business, please do not hesitate to contact [Roland Stein](#) or [Eva-Maria Meister](#).