

ECJ Preliminary Ruling Request: *Herdijk* (Case C-613/23) – Dutch Supreme Court Submits Referral on Unconditional Director's Liability for Unpaid VAT

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The Dutch Supreme Court (*Hoge Raad der Nederlanden*) made reference to the Court of Justice of the European Union (ECJ) on 6 October 2023 for a preliminary ruling in the case *Herdijk* (Case C-613/23) on the unconditional director's liability for unpaid VAT.

The Supreme Court requested the ECJ to answer the following questions:

"1. Does the principle of proportionality provided for under EU law preclude a legal rule such as that set out in Article 36(4) of the IW 1990, (2) which, in practice, makes it extremely difficult for a director of a legal person that has failed to comply, or has failed to comply properly, with its obligation to notify the tax collection authorities of its inability to pay, to escape liability for tax debts of that legal person, including turnover tax debts?

2. Does the answer to Question 1. depend on whether the director acted in good faith in that he or she acted with the care of a prudent business person, did everything reasonably within his or her power, and his or her involvement in abuse or fraud may be ruled out?"

The preliminary ruling request was published in the Official Journal of the European Union on 22 January 2024 (C/2024/709).