



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

19 December 2024*

(Reference for a preliminary ruling – Excise duties – Directive 2008/118/EC – Article 36(1) – Online purchase of excise goods in another Member State – Transport by a transporter recommended by the vendor – National rules regarding the vendor as liable for the excise duties chargeable in the Member State of destination)

In Case C-596/23 [Pohjanri],ⁱ

REQUEST for a preliminary ruling under Article 267 TFEU from the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland), made by decision of 26 September 2023, received at the Court on 26 September 2023, in the proceedings brought by

B UG,

the other party to the proceedings:

Veronsaajien oikeudenvaltontayksikkö,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Third Chamber, acting as President of the Fourth Chamber, S. Rodin (Rapporteur) and O. Spineanu-Matei, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- B UG, by P. Snell, oikeustieteen kandidaatti,
- the Finnish Government, by H. Leppo, acting as Agent,
- the European Commission, by M. Björkland and I. Söderlund, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 September 2024,

* Language of the case: Finnish.

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 36(1) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).
- 2 The request has been made in the context of an action for annulment of an administrative decision by which the Verohallinto (tax authority, Finland) imposed on B UG, a German company, the payment of excise duties on alcohol and alcoholic beverages and a tax penalty totalling EUR 1 645.83.

Legal context

European Union law

Directive 2008/118

- 3 Although having been repealed, with effect from 13 February 2023, by Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ 2020 L 58, p. 4), the provisions of Directive 2008/118 are applicable in view of the date of the facts in the main proceedings.
- 4 Chapter II of Directive 2008/118, entitled ‘Chargeability, reimbursement, exemption’, included Article 7 of that directive, which was worded as follows, in paragraph 1 thereof:

‘Excise duty shall become chargeable at the time, and in the Member State, of release for consumption.’
- 5 Chapter V of that directive, entitled ‘Movement and taxation of excise goods after release for consumption’ contained an Article 32, itself entitled ‘Acquisition by private individuals’, which stated, in paragraph 1 thereof:

‘Excise duty on excise goods acquired by a private individual for his own use, and transported from one Member State to another by him, shall be charged only in the Member State in which the excise goods are acquired.’
- 6 Chapter V of Directive 2008/118 contained Article 36, entitled ‘Distance selling’, which provided, in paragraphs 1 to 3 thereof:

‘1. Excise goods already released for consumption in one Member State, which are purchased by a person, other than an authorised warehousekeeper or a registered consignee, established in another Member State who does not carry out an independent economic activity, and which are dispatched or transported to another Member State directly or indirectly by the vendor or on his behalf shall be subject to excise duty in the Member State of destination.

For the purposes of this Article, “Member State of destination” shall mean the Member State of arrival of the consignment or of transport.

2. In the case referred to in paragraph 1, the excise duty shall become chargeable in the Member State of destination at the time of delivery of the excise goods. The chargeability conditions and rate of excise duty to be applied shall be those in force on the date on which duty becomes chargeable.

The excise duty shall be paid in accordance with the procedure laid down by the Member State of destination.

3. The person liable to pay the excise duty in the Member State of destination shall be the vendor.

However, the Member State of destination may provide that the liable person shall be a tax representative, established in the Member State of destination and approved by the competent authorities of that Member State, or, in cases where the vendor has not respected the provision of paragraph 4(a), the consignee of the excise goods.’

Directive 92/12/EEC

- 7 Article 10 of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1), stated, in paragraphs 1 and 2 thereof:

‘1. Products subject to excise duty purchased by persons who are not authorised warehousekeepers or registered or non-registered traders and dispatched or transported directly or indirectly by the vendor or on his behalf shall be liable to excise duty in the Member State of destination. For the purposes of this Article, “Member State of destination” shall mean the Member State of arrival of the dispatch or transport.

2. To that end, the delivery of products subject to excise duty already released for consumption in a Member State and giving rise to the dispatch or transport of those products to a person as referred to in paragraph 1, established in another Member State, and which are dispatched or transported directly or indirectly by the vendor or on his behalf shall cause excise duty to be chargeable on those products in the Member State of destination.’

Finnish law

- 8 Directive 2008/118 was transposed in Finland by the Valmisteverotuslaki (182/2010) (Law on excise duty (182/2010)) (‘the Law on excise duty’). In the case in the main proceedings, that law applies in the version that was in force in 2020.
- 9 Under the second subparagraph of Paragraph 1 of the Law on excise duty, that law is to apply to the levying of excise duties on, inter alia, alcohol and alcoholic beverages, unless otherwise provided for in a law on a specific excise duty.
- 10 For the purposes of the Law on excise duty, point 11 of Paragraph 6 thereof defines ‘distance selling’ as a sale in which a person other than an authorised warehousekeeper or a registered or temporarily registered consignee, established in Finland and not engaged in an independent

economic activity, has purchased in another Member State excise goods released for consumption which are dispatched or transported to Finland directly or indirectly by the distance seller or on his or her behalf.

- 11 The first subparagraph of Paragraph 72 of the Law on excise duty provides that excise duty is not payable on goods released for consumption in another Member State and which are purchased by a private individual for his or her own use and transported by that private individual to Finland.
- 12 The first subparagraph of Paragraph 74 of that law provides that, where a private individual acquires, in a manner other than that provided for in Paragraph 72 of that law or by means of distance selling, excise goods originating from another Member State for his or her own use and where those goods are transported to Finland by another private individual or by a professional trader, the private individual who acquired the goods is to be liable to pay the excise duty. That provision specifies that any person who participated in the transport of those goods or in holding them in Finland is also liable for the excise duty payable by the private individual who acquired the excise goods as if it were his or her own debt.
- 13 The first subparagraph of Paragraph 79 of the Law on excise duty states that excise duty is to be levied on the goods sold in Finland by means of distance selling. The second subparagraph of Paragraph 79 of that law provides that the distance vendor is liable for that duty and that, if the distance vendor has a tax representative, that representative is liable for that duty instead of the distance vendor, the latter being liable for the excise duty payable by the tax representative as if it were his or her own debt. The third subparagraph of Paragraph 79 of that law provides that excise duty becomes chargeable when the excise goods are delivered to Finland, that duty being payable in accordance with the provisions in force on the day of delivery.

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

- 14 The company B UG operated a website, which was also available in Finnish, through which its customers were able to purchase beverages of different brands, with a low or high alcohol content.
- 15 On 20 April 2020, the Finnish customs authorities seized a consignment of alcoholic beverages which had been sold by B UG to a private individual residing in Finland and dispatched from Germany to that individual. The beverages in question were seized on the basis of Paragraph 103 of the Law on excise duty in order to determine whether the provisions of that law had been applied during their import.
- 16 The tax authority asked that purchaser to provide it with explanations on the order procedure and the organisation of the transport of those beverages to Finland.
- 17 According to the information provided by that purchaser on 25 June 2020, during the placing of the order on B UG's website, an advertisement for the transport services of the companies X, Y and Z appeared. In the course of the purchase, the total weight of the goods ordered and the freight price were updated each time that beverages were added to the order. Following the payment of the price of the beverages purchased, a prompt concerning the organisation of transport appeared on B UG's website. That prompt contained, according to the purchaser, direct links to the websites of transport providers. The purchaser chose the company X to transport the beverages that he had ordered. By clicking on the link entitled 'X' in B UG's online

shop, he was redirected to the website of the company X. On that website, he entered his contact details but did not provide any information concerning his order. He paid the freight directly to the company X on its website.

- 18 The tax authority produced two screenshots of pages from B UG's website, one dated 16 June 2020, containing instructions relating to the method of delivery, and the other dated 24 June 2020, containing the conditions of delivery. It is apparent from those screenshots that B UG does not itself organise the transport of the goods that it markets, but offers its customers the possibility of collecting their orders from a warehouse located in Germany or of choosing a transporter for that purpose, with certain transporters being mentioned in that regard on B UG's website. In addition, those screenshots reveal that B UG informed its customers that they were responsible for paying taxes in Finland.
- 19 By decision of 21 August 2020, the tax authority imposed on B UG, for the alcoholic beverages seized on 20 April 2020, the payment of excise duty on alcohol and alcoholic beverages and a tax penalty totalling EUR 1 645.83. It considered that B UG or a person acting on its behalf had directly or indirectly dispatched or transported the alcoholic beverages at issue to Finland and that, consequently, that company had acted as a distance seller and was liable for the excise duty in Finland.
- 20 B UG lodged a complaint against that decision with the tax authority. By decision of 1 June 2021, that authority rejected that complaint.
- 21 B UG brought before the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland), which is the referring court, an action against the decision of the tax authority of 1 June 2021, seeking the annulment of that decision and of all the excise duties on alcohol and alcoholic beverages that had been imposed on it.
- 22 The referring court asks whether B UG participated in the transport of the alcoholic beverages that it sold on its website such that it must be deemed liable to pay excise duties in Finland as a distance seller of those beverages. It states that the private individual who acquired them in Germany purchased them for his own use and paid the transport costs for the beverages directly to the transport company X.
- 23 According to that court, the case-law of the Court does not allow for a determination to be made as to how to interpret the expression 'dispatched or transported to another Member State directly or indirectly by the vendor or on his behalf' used in Article 36(1) of Directive 2008/118.
- 24 The referring court considers that, in the case before it, it must assess whether B UG participated in the transport of the beverages at issue to another Member State directly or indirectly, within the meaning of Article 36(1) of Directive 2008/118, having regard to the fact that its website mentions various transport undertakings and provides information about the transport costs borne by purchasers. In addition, the same court observes that that website contained links to the websites of the transport undertakings mentioned and that, once the purchaser had clicked on the link corresponding to one of those undertakings, information on the goods to be transported was automatically sent to the website of the transport undertaking chosen from the vendor's website.

- 25 In those circumstances, the Helsingin hallinto-oikeus (Administrative Court, Helsinki) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does Directive [2008/118], in particular Article 36 thereof concerning distance selling, preclude an interpretation [of the relevant national legal provisions] according to which a vendor of excise goods established in another Member State is regarded as involved in the transport of the goods to the Member State of destination and liable for excise duty in the Member State of destination from distance sales solely because the vendor, on its website, directs the purchaser to use a particular transport company?
- (2) Did the vendor of excise goods dispatch or transport goods to another Member State directly or indirectly within the meaning of Article 36(1) of Directive [2008/118] and was it subject to duty from distance sales within the meaning of the directive if the vendor’s website recommended particular transport companies and gave information on the transport costs [incurred by] the purchaser and the transport costs were charged by a transport company to which the information on the goods to be transported had been transmitted without the intervention of the purchaser? Is the fact that the purchaser concluded a separate contract for the carriage of the goods with the transport company mentioned on the vendor’s website of relevance to the assessment of that question?’

Consideration of the questions referred

- 26 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 36(1) of Directive 2008/118 must be interpreted as meaning that, in the situations referred to in that provision, excise goods must be regarded as ‘dispatched or transported to another Member State directly or indirectly by the vendor or on his behalf’, such that that vendor is liable for excise duty in that other Member State, where he or she acts in such a way as to guide the purchaser’s choice of the company responsible for the dispatch and/or transport of those goods by suggesting and facilitating the use of certain companies that can be responsible for that.
- 27 In accordance with Article 7(1) of Directive 2008/118, excise duty is to become chargeable at the time, and in the Member State, of release for consumption.
- 28 That being said, as the Advocate General observed in point 31 of his Opinion, the provisions of Chapter V of Directive 2008/118 concern situations in which, following the release of excise goods for consumption, those goods have been moved within the European Union. Subject to the specific situations described in Article 32 of that directive, those provisions meet the requirement of ensuring that the principle of territoriality as regards taxation, according to which payment of the excise duty must be made in the country of actual consumption, is complied with, and of avoiding double taxation of the goods concerned.
- 29 Among those provisions is Article 36 of the said directive.
- 30 Under paragraph 1 of that article, which covers distance selling, excise goods already released for consumption in one Member State, which are purchased by a person, other than an authorised warehousekeeper or a registered consignee, who is established in another Member State and who

does not carry out an independent economic activity, and which are dispatched or transported to another Member State directly or indirectly by the vendor or on his or her behalf, are to be subject to excise duty in the Member State of destination.

- 31 In the present case, the referring court seeks to determine whether the situation at issue in the main proceedings constitutes distance selling, the specific feature of which is that the goods concerned have been ‘dispatched or transported to another Member State directly or indirectly by the vendor or on his behalf’, within the meaning of that Article 36(1).
- 32 In that regard, it is apparent from the request for a preliminary ruling that B UG’s website, which was also available in Finnish, recommended to the purchasers of the alcoholic beverages marketed via that website transport companies which were identified there. In addition, that website provided information about the transport costs borne by a purchaser who had decided to use one of those companies and contained a link to each of those companies’ websites, to which, once one of those links had been activated by the purchaser, information about the goods to be transported was transmitted without that purchaser’s intervention.
- 33 In such circumstances, subject to the verifications to be carried out by the referring court, the vendor acts in such a way as to guide the purchaser’s choice of the company responsible for the dispatch and/or transport of the goods purchased on his or her website.
- 34 Where the vendor acts in that way, he or she must be regarded as being indirectly involved in the dispatch and/or transport of the excise goods to the Member State of destination and as being, consequently, liable for excise duty in that Member State, pursuant to the rules set out in Article 36(1) to (3) of Directive 2008/118.
- 35 As is apparent, in particular, from the use of the word ‘indirectly’ in Article 36(1) of that directive, that provision was drafted in such a way as to cover not only the case where the vendor him- or herself provides the transport and/or dispatch service, but also other cases, including the case where the vendor indirectly directs the dispatch and/or transport of goods by offering the consumer a choice between consignors and/or transporters that he or she recommends.
- 36 That provision thus clearly indicates that the EU legislature is more concerned with the objective nature of the transaction than with its legal form (see, to that effect, with regard to Article 10(2) of Directive 92/12, the content of which was similar to that of Article 36(1) of Directive 2008/118, judgment of 2 April 1998, *EMU Tabac and Others*, C-296/95, EU:C:1998:152, paragraph 46).
- 37 That means, as the Advocate General highlighted in point 43 of his Opinion, that the expression ‘dispatched or transported directly or indirectly by the vendor or on his behalf’ must be interpreted in such a way that the payment of excise duty reflects the economic reality of the transaction, and that any formalism must be disregarded.
- 38 Thus, as the Advocate General observed in point 65 of his Opinion, the fact that the purchaser entered into two separate contracts – with the vendor and with the transport company – is not relevant for the purposes of determining whether or not the distance sale at issue falls within the scenario referred to in Article 36(1) of Directive 2008/118.
- 39 In the light of all of the foregoing observations, the answer to the questions referred is that Article 36(1) of Directive 2008/118 must be interpreted as meaning that, in the situations referred to in that provision, excise goods must be regarded as ‘dispatched or transported to

another Member State directly or indirectly by the vendor or on his behalf', such that that vendor is liable for excise duty in that other Member State, where he or she acts in such a way as to guide the purchaser's choice of the company responsible for the dispatch and/or transport of those goods by suggesting and facilitating the use of certain companies that can be responsible for that.

Costs

- 40 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fourth Chamber) hereby rules:

Article 36(1) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC

must be interpreted as meaning that in the situations referred to in that provision, excise goods must be regarded as 'dispatched or transported to another Member State directly or indirectly by the vendor or on his behalf', such that that vendor is liable for excise duty in that other Member State, where he or she acts in such a way as to guide the purchaser's choice of the company responsible for the dispatch and/or transport of those goods by suggesting and facilitating the use of certain companies that can be responsible for that.

[Signatures]