JUDGMENT OF THE COURT
2 April 1998 *

In Case C-296/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Court of Appeal, England and Wales, for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Commissioners of Customs and Excise,

ex parte **EMU Tabac SARL,**

The Man in Black Limited and

John Cunningham,

Intervener: **Imperial Tobacco Ltd,**

on the interpretation 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), as amended by Council Directive 92/108/EEC of 14 December 1992 (OJ 1992 L 390, p. 124),

* Language of the case: English.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, H. Ragnemalm, M. Wathelet and R. Schintgen (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, J. L. Murray (Rapporteur), J.-P. Puissochet, G. Hirsch, P. Jann and L. Sevón, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— EMU Tabac SARL, The Man in Black Limited and Mr Cunningham, by Robert Venables QC, Timothy Lyons and Amanda Hardy, Barristers,

— Imperial Tobacco Ltd, by David Vaughan QC, and Mark Brealey, Barrister,

— the United Kingdom Government, by Lindsey Nicoll, of the Treasury Solicitor's Department, acting as Agent, and by Stephen Richards and Robert Jay, Barristers,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Oberregierungsrat in that Ministry, acting as Agents,

— the Greek Government, by Fokion Georgakopoulos, Assistant Legal Adviser in the State Legal Service, and Galatia Alexaki, Adviser in the

Special Community Legal Service of the Ministry of Foreign Affairs, acting as Agents,

— the French Government, by Catherine de Salins, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Frédéric Pascal, Chargé de Mission in the same Ministry, acting as Agents,

— the Irish Government, by Michael A. Buckley, Chief State Solicitor, acting as Agent, Michael Collins, SC, and Jennifer Payne, Barrister-at-Law,

— the Italian Government, by Professor Umberto Leanza, Head of the Contentious Diplomatic Affairs Department of the Ministry of Foreign Affairs, acting as Agent, assisted by Ivo Braguglia, Avvocato dello Stato, acting as Agent,

— the Netherlands Government, by Adriaan Bos, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent,

— the Austrian Government, by Franz Cede, Ambassador, acting as Agent,

— the Swedish Government, by Erik Brattgård, Departementsråd in the Foreign Trade Department of the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by Enrico Traversa and Peter Oliver, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of EMU Tabac SARL, The Man in Black Limited and Mr Cunningham, represented by Robert Venables, Timothy Lyons and Amanda Hardy; Imperial Tobacco Ltd, represented by David Vaughan and Mark Brealey; the United Kingdom Government, represented by Lindsey Nicoll, Stephen Richards and Robert Jay; the Danish Government, represented by Peter Biering, Legal Adviser, Head of Department at the Ministry of Foreign Affairs, acting as Agent; the Greek Government, represented by Fokion Georgakopoulos; the French Government, represented by Frédéric Pascal; the Irish Government, represented by Andreas O'Caoimh, SC, and Niamh Hyland, Barrister-at-Law; the Italian Government, represented by Ivo M. Braguglia; the Netherlands Government, represented by Marc Fierstra, Assistant Legal Adviser at the Ministry of Foreign Affairs, acting as Agent; the Finnish Government, represented by Tuula Pynnä, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent; the Swedish Government, represented by Erik Brattgård; and the Commission, represented by Enrico Traversa and Peter Oliver, at the hearing on 4 March 1997,

after hearing the Opinion of the Advocate General at the sitting on 17 April 1997,

gives the following

Judgment

1 By order of 31 July 1995, received at the Court on 18 September 1995, the Court of Appeal referred to the Court for a preliminary ruling pursuant to Article 177 of the EC Treaty two questions concerning the interpretation 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), as amended by Council Directive 92/108/EEC of 14 December 1992 (OJ 1992 L 390, p. 124, hereinafter 'the Directive').

2 Those questions were raised in proceedings between EMU Tobacco SARL ('EMU'), The Man in Black Limited ('MBL') and John Cunningham, one of the directors of that company, and the Commissioners of Customs and Excise ('the Commissioners') concerning the charging of excise duty on cigarettes.

The United Kingdom legislation

3 Section 2(1) of the Tobacco Products Duty Act of 1979 provides that 'there shall be charged on tobacco products imported into ... the UK a duty of excise ...'. The Excise Goods Regulations 1992 set out who is to be liable and when the liability arises. The Excise Duties (Personal Reliefs) Order 1992 contains certain exemptions, but they appear to have no relevance for the present case.

The applicable Community legislation

4 The Directive was to be transposed by the Member States by 31 December 1992.

5 Article 6 provides:

'1. Excise duty shall become chargeable at the time of release for consumption or when shortages are recorded which must be subject to excise duty in accordance with Article 14(3).

Release for consumption of products subject to excise duty shall mean:

(a) any departure, including irregular departure, from a suspension arrangement;

(b) any manufacture, including irregular manufacture, of those products outside a suspension arrangement;

(c) any importation of those products, including irregular importation, where those products have not been placed under a suspension arrangement.

2. The chargeability conditions and rate of excise duty to be adopted shall be those in force on the date on which duty becomes chargeable in the Member State where release for consumption takes place or shortages are recorded. Excise duty shall be levied and collected according to the procedure laid down by each Member State, it being understood that Member States shall apply the same procedures for levying and collection to national products and to those from other Member States.'

6 According to Article 7:

'1. In the event of products subject to excise duty and already released for consumption in one Member State being held for commercial purposes in another Member State, the excise duty shall be levied in the Member State in which those products are held.

2. To that end, without prejudice to Article 6, where products already released for consumption as defined in Article 6 in one Member State are delivered, intended for delivery in another Member State or used in another Member State for the purposes of a trader carrying out an economic activity independently or for the purposes of a body governed by public law, excise duty shall become chargeable in that other Member State.

3. Depending on all the circumstances, the duty shall be due from the person making the delivery or holding the products intended for delivery or from the person receiving the products for use in a Member State other than the one where the products have already been released for consumption, or from the relevant trader or body governed by public law.

4. The products referred to in paragraph 1 shall move between the territories of the various Member States under cover of an accompanying document listing the main data from the document referred to in Article 18(1). The form and content of this document shall be established in accordance with the procedure laid down in Article 24 of this Directive.

5. The person, trader or body referred to in paragraph 3 must comply with the following requirements:

(a) before the goods are dispatched, make a declaration to the tax authorities of the Member State of destination and guarantee the payment of the excise duty;

(b) pay the excise duty of the Member State of destination in accordance with the procedure laid down by that Member State;

(c) consent to any check enabling the administration of the Member State of destination to satisfy itself that the goods have actually been received and that the excise duty to which they are liable has been paid.

6. The excise duty paid in the first Member State referred to in paragraph 1 shall be reimbursed in accordance with Article 22(3).'

7 Article 8 provides:

'As regards products acquired by private individuals for their own use and transported by them, the principle governing the internal market lays down that excise duty shall be charged in the Member State in which they are acquired.'

8 Article 9(1) and (2) reads as follows:

'1. Without prejudice to Articles 6, 7 and 8, excise duty shall become chargeable where products [released] for consumption in a Member State are held for commercial purposes in another Member State.

In this case, the duty shall be due in the Member State in whose territory the products are and shall become chargeable to the holder of the products.

2. To establish that the products referred to in Article 8 are intended for commercial purposes, Member States must take account, *inter alia*, of the following:

— the commercial status of the holder of the products and his reasons for holding them,

— the place where the products are located or, if appropriate, the mode of transport used,

— any document relating to the products,

— the nature of the products,

— the quantity of the products.

For the purposes of applying the content of the fifth indent of the first subparagraph, Member States may lay down guide levels, solely as a form of evidence. These guide levels may not be lower than:

(a) *Tobacco products*

cigarettes	800 items
cigarillos (cigars weighing not more than 3 g each)	400 items
cigars	200 items
smoking tobacco	1.0 kg;

(b) *Alcoholic beverages*

spirit drinks	10 l
intermediate products	20 l
wines (including a maximum of 60 l of sparkling wines)	90 l
beers	110 l.

Until 30 June 1997 Ireland shall be authorised to apply guide levels which may not be less than 45 litres for wine (including a maximum of 30 litres of sparkling wine) and 55 litres for beer.'

9 Article 10 provides:

'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.

3. The duty of the Member State of destination shall be chargeable to the vendor at the time of delivery. However, Member States may adopt provisions stipulating that the excise duty shall be payable by a tax representative, other than the consignee of the products. Such tax representative must be established in the Member State of destination and approved by the tax authorities of that Member State.

The Member State in which the vendor is established must ensure that he complies with the following requirements:

— guarantee payment of excise duty under the conditions set by the Member State of destination prior to dispatch of the products and ensure that the excise duty is paid following arrival of the products,

— keep accounts of deliveries of products.

4. In the case referred to in paragraph 2, the excise duty paid in the first Member State shall be reimbursed in accordance with Article 22(4).

5. Subject to Community law, Member States may lay down specific rules for applying this provision to products subject to excise duty which are covered by special national distribution arrangements compatible with the Treaty.'

The case in the main proceedings

10 EMU is a company incorporated in Luxembourg, a subsidiary of The Enlightened Tobacco Company ('ETC'), which specialises in selling tobacco products in the Grand Duchy of Luxembourg.

11 MBL is a company incorporated in the United Kingdom and is also a subsidiary of ETC. Since November 1994 it has been soliciting and obtaining from private individuals resident in the United Kingdom orders for cigarettes and tobaccos to be purchased from EMU. Those orders are placed by individuals, for the purposes of their own private requirements, on the basis of a price list drawn up in Luxembourg francs. They are placed through MBL, which purchases the products and arranges for their importation into the United Kingdom by a private carrier in the name and on behalf of those individuals, in return for payment of a fee. Customers may not purchase more than 800 cigarettes at one time.

12 The terms under which those transactions are carried out were set out in an agreement made between EMU and MBL on 14 November 1994.

13 Those terms included a provision that EMU was to open and maintain a credit account in the name of MBL for all purchases made by customers through MBL.

14 For its part, MBL undertook to pay all sums received from customers directly into bank accounts in London or Luxembourg. It irrevocably guaranteed the payment by return of EMU's monthly credit account statement in accordance with the latter's usual payment terms. MBL further agreed that any variations in the pound-sterling purchase price of the products caused by exchange rate fluctuations would be absorbed by equivalent increases or reductions in its own fee to customers.

15 The contracts for the sale and purchase of the products would be made in the Grand Duchy of Luxembourg and title in those products would pass in that country. The contract was to be subject to the law of England.

16 Excise duty in the United Kingdom is generally higher than in the Grand Duchy of Luxembourg.

17 In the course of 1995, the Commissioners detained certain quantities of tobacco products when they were imported into Dover, as they are authorised to do by United Kingdom legislation when excise duty is payable.

18 EMU, MBL and Mr Cunningham applied for judicial review of that detention. They sought declarations that United Kingdom excise duty was not payable and that the detention of the tobacco was unlawful, and also an injunction restraining the Commissioners from detaining the products imported under their scheme. They contended that excise duty was payable in the Grand Duchy of Luxembourg and that consequently the products in question were exempt from that duty in the United Kingdom, with the result that their prices were considerably reduced, by up to 40% in some cases.

19 Their application was refused and on 30 May 1995 they appealed to the Court of Appeal.

20 The Court of Appeal considered that the case turned on the interpretation of the Directive, in particular of Article 8 thereof, and accordingly decided to stay proceedings and request the Court of Justice to give a preliminary ruling the following questions:

'1. Does Directive 92/12/EEC and in particular Article 8 have the effect of precluding the charging of excise duty on goods in Member State A in circumstances where —

(i) the goods were acquired for the use of a private individual in Member State A;

(ii) they were acquired in Member State B by an agent acting on behalf of that private individual;

(iii) transportation of the goods from Member State B to Member State A was arranged by the agent; and

(iv) the individual did not himself travel with the goods from Member State B to Member State A?

2. Where a scheme has been commercially devised and marketed whereunder purchases made in Member State B for the personal use of a private individual in Member State A are made by an agent for that individual and those purchases are transported from Member State B to Member State A as a result of arrangements made by such an agent, does Directive 92/12/EEC have the effect of precluding the charging of excise duty on those purchases in Member State A?'

21 It appears from the order for reference that by its two questions the national court seeks essentially to ascertain whether the Directive must be interpreted as precluding the levying of excise duty in Member State A on goods released for consumption in Member State B, where the goods were acquired from a company, X, for the use of private individuals in Member State A, through a company, Y, acting in return for payment as agent for those individuals, and where transportation of the goods from Member State B to Member State A was also arranged by company Y on behalf of those individuals and effected by a professional carrier charging for his services.

22 It should first be observed that the clear purpose of the Directive is to lay down a number of rules on the holding, movement and monitoring of products subject to excise duty, in particular so as to ensure that chargeability of excise duties is identical in all the Member States.

23 As is apparent from the third, fifth, sixth and eleventh recitals in its preamble, the Directive draws a distinction between, on the one hand, goods held for commercial purposes, in respect of which accompanying documents are required for transportation purposes, and, on the other hand, goods held for personal use.

24 As regards the goods last mentioned, as Article 8 provides that excise duty is payable in the Member State in which they were purchased, no document is required when they are transported to another Member State.

25 For Article 8 to apply, however, a number of conditions must be satisfied. The goods on which excise duty is chargeable must have been acquired by private individuals for their own use and transported by them.

26 Those conditions must make it possible to establish that goods on which duty is chargeable and which are acquired in one State and then transported to another are held for strictly personal purposes.

27 The applicants in the main proceedings submit, first, that that provision should be applied in a situation such as this, where the purchase of the goods chargeable to excise duty was effected through an agent who also arranged for their transportation.

28 In support of their submission, the applicants in the main proceedings argue that the maxim of Roman law *qui facit per alium facit per se*, meaning that a person acting through an agent must be treated as if he himself were so acting, constitutes a general principle in a number of legal systems, in particular in English law, and must be applied in this case, *a fortiori* since neither the English version of the Directive nor the French, Italian, Spanish, German, Dutch or Portuguese versions exclude the possibility of using an agent.

29 That argument cannot be upheld.

30 First, it is clear from the case-law of the Court that the Community legal order does not, in principle, aim to define concepts on the basis of one or more national legal systems unless there is express provision to that effect (Case 64/81 *Corman* [1982] ECR 13, paragraph 8). The text of Article 8 of the Directive does not contain any express reference to national legal systems.

31 Secondly, even if the abovementioned principle were common to all the Member States, it must be noted that, as the Advocate General has observed, it is one which

derives from civil law, and more specifically from the law of obligations, and it does not necessarily fall to be applied in the sphere of fiscal law, where the objectives are of a quite different nature.

32 Lastly, it should be noted that where the Community legislature intended the Directive to apply in the event of the involvement of a third party it did so by means of an express provision formulated for that purpose. That is the case in Articles 9(3) and 10(1).

33 As far as Article 8 is concerned, it is evident that none of the language versions expressly provides for such involvement and that, on the contrary, the Danish and Greek versions indicate particularly clearly that, for excise duty to be payable in the country of purchase, transportation must be effected personally by the purchaser of the products subject to duty.

34 The applicants in the main proceedings accept that those two language versions preclude the involvement of an agent. They submit, however, that if those versions are not consistent with the other versions they are to be disregarded, on the ground that, at the time when the Directive was adopted, those two Member States represented in total only 5% of the population of the 12 Member States and their languages are not easily understood by the nationals of the other Member States.

35 In that regard it must be observed that the contradiction between the Danish and Greek versions on the one hand and the other language versions on the other only arises if the argument put forward by the applicants in the main proceedings is accepted.

36 Furthermore, to discount two language versions, as the applicants in the main proceedings suggest, would run counter to the Court's settled case-law to the effect

that the need for a uniform interpretation of Community regulations makes it impossible for the text of a provision to be considered in isolation but requires, on the contrary, that it should be interpreted and applied in the light of the versions existing in the other official languages (see, in particular, Case 9/79 *Koschniske* [1979] ECR 2717, paragraph 6). Lastly, all the language versions must, in principle, be recognised as having the same weight and this cannot vary according to the size of the population of the Member States using the language in question.

37 It follows from the foregoing that Article 8 of the Directive is not applicable where the purchase and/or transportation of goods subject to duty is effected through an agent. The conditions governing the application of Article 8 are not, therefore, satisfied in the situation described by the national court.

38 The applicants in the main proceedings argue further that the principle of legal certainty, as set out in particular in Case C-30/89 *Commission* v *France* [1990] ECR I-691, implies that the Directive should be so construed as to give the benefit of any ambiguity to private individuals in so far as it is liable to entail financial consequences.

39 In that connection, it is to be observed that the existence of possible ambiguity in a provision can only be established by reference to the context of that provision (see, *inter alia*, Case 292/82 *Merck* [1983] ECR 3781, paragraph 12).

40 As already noted in this judgment, in particular at paragraph 33, it is clear from the Directive that at no point did the Community legislature intend Article 8 to apply in the event of the involvement of an agent. Accordingly that provision is not ambiguous.

41 The applicants in the main proceedings submit, secondly, that, should Article 8 be interpreted as not applying where an agent is involved, then Article 6 would have to be applied, with the consequence that excise duty would be payable, in this case, solely in the Grand Duchy of Luxembourg, the country in which the goods were released for consumption.

42 On that point, it should be observed that, although Article 6 provides that duty is to become chargeable at the time of release for consumption of goods in a Member State, this does not, however, preclude excise duty from being subsequently levied in another Member State pursuant to Articles 7, 9 or 10, whereupon duty paid in the first State may be reimbursed pursuant to Articles 7(6) or 10(4).

43 A situation such as that described by the national court would appear to fall under both Article 7 and Article 10 of the Directive.

44 Article 10(2) provides that 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 established in another Member State who is not an authorised warehousekeeper or registered or non-registered trader, and which are dispatched or transported directly or indirectly by the vendor or on his behalf is to cause excise duty to be chargeable on those products in the Member State of destination.

45 That provision was so drafted as to cover not only the case where the products are dispatched or transported by the vendor himself, but also, more broadly, all cases of dispatch or transport on behalf of the vendor.

46 Moreover, the formula used in that provision clearly indicates that the Community legislature is more concerned with the objective nature of the transaction than with its legal form.

47 In the case in the main proceedings, EMU and MBL are subsidiaries of the same company and as such they can be regarded as forming part of the same economic entity, despite the fact that they are separate legal persons (see Case 170/93 *Hydrotherm* v *Compact* [1984] ECR 2999, paragraph 11).

48 In addition, it appears from the order for reference that MBL does not act at the instigation of the private individuals it represents, but solicits from them orders for tobacco and cigarettes which are then placed exclusively with EMU, the vendor. Lastly, MBL and EMU set out in general terms their reciprocal obligations in an agreement made in 1991 which makes clear that the risks inherent in fluctuation of exchange rates are to be borne by MBL and not by the purchasers themselves.

49 Accordingly, although MBL acted as agent for the purchasers under English law, it must be concluded that the goods in question in the main proceedings were dispatched or transported directly or indirectly by the vendor or on his behalf in the sense contemplated by Article 10 of the Directive and that excise duty is chargeable in the United Kingdom.

50 As regards the double taxation that would result, according to the applicants in the main proceedings, from the levying of excise duty in the United Kingdom, Article 10(4) provides expressly that, if Article 10(2) applies, the excise duty paid in the Member State where the goods were released for consumption is to be reimbursed.

51 With regard to Article 7, paragraph 1 thereof provides for the levying of excise duty in a Member State in which products already released for consumption in another Member State are held for commercial purposes. Article 7(2) provides, to that end, that where such products are delivered, intended for delivery in another Member State or used in another Member State for the purposes of a trader carrying out an economic activity independently or for the purposes of a body governed by public law, excise duty is to become chargeable in that other Member State.

52 In a case such as that now before the national court, where goods from one Member State are carried to another Member State on the instructions of a trader acting in return for payment who has previously solicited customers in that latter State and has arranged for importation of the goods, it must be held that excise duty is chargeable in that latter Member State.

53 It follows from the foregoing that the Directive must be interpreted as not precluding the levying of excise duty in Member State A on goods released for consumption in Member State B, where the goods were acquired from a company, X, for the use of private individuals in Member State A, through a company, Y, acting in return for payment as agent for those individuals, and where transportation of the goods from Member State B to Member State A was also arranged by company Y on behalf of those individuals and effected by a professional carrier charging for his services.

Costs

54 The costs incurred by the United Kingdom, Austrian, Danish, Finnish, French, German, Greek, Irish, Italian, Netherlands and Swedish Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Court of Appeal by order of 31 July 1995, hereby rules:

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, as amended by Council Directive 92/108/EEC of 14 December 1992, must be interpreted as not precluding the levying of excise duty in Member State A on goods released for consumption in Member State B, where the goods were acquired from a company, X, for the use of private individuals in Member State A, through a company, Y, acting in return for payment as agent for those individuals, and where transportation of the goods from Member State B to Member State A was also arranged by company Y on behalf of those individuals and effected by a professional carrier charging for his services.

Rodríguez Iglesias Ragnemalm Wathelet

Schintgen Mancini

Moitinho de Almeida Murray Puissochet

Hirsch Jann Sevón

Delivered in open court in Luxembourg on 2 April 1998.

R. Grass G. C. Rodríguez Iglesias

Registrar President