Reports of Cases

JUDGMENT OF THE GENERAL COURT (Chamber giving preliminary rulings)

26 November 2025 *

(Reference for a preliminary ruling – Taxation – Excise duties – Directive 2008/118/EC – Article 10(2) and (4) of Directive 2008/118 – Occurrence of an irregularity during a movement of excise goods – Movement of goods under a duty suspension arrangement – Detection of the irregularity during the movement – Quantity of missing goods detected when unloading the means of transport)

In Case T-690/24, [Kolinsen [i]],

REQUEST for a preliminary ruling under Article 267 TFEU from the Gerechtshof 's-Hertogenbosch (Court of Appeal, 's-Hertogenbosch, Netherlands), made by decision of 18 December 2024, received at the Court on 30 December 2024, in the proceedings

Inspecteur van de Douane

v

FL,

THE GENERAL COURT (Chamber giving preliminary rulings),

composed, at the time of deliberation, by S. Papasavvas, President, M. Sampol Pucurull, G. Steinfatt, D. Petrlík (Rapporteur) and W. Valasidis, Judges,

Advocate General: J. Martín y Pérez de Nanclares,

Registrar: V. Di Bucci,

having regard to the transmission of the request for a preliminary ruling to the General Court by the Court of Justice on 16 January 2025, pursuant to the third paragraph of Article 50b of the Statute of the Court of Justice of the European Union,

having regard to the fact that the case concerns the area referred to in point (b) of the first paragraph of Article 50b of the Statute of the Court of Justice of the European Union and the fact that there is no independent question relating to interpretation within the meaning of the second paragraph of Article 50b of that statute,

having regard to the written part of the procedure,

* Language of the case: Dutch.

[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.

after considering the observations submitted on behalf of:

– FL, by N.P.J. Ooyevaar,

– the Belgian Government, by S. Baeyens and M. Jacobs, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and P.P. Huurnink, acting as Agents,

– the Swedish Government, by H. Eklinder, F.-L. Göransson, C. Meyer-Seitz and J. Olsson, acting as Agents,

– the European Commission, by M. Björkland and W. Roels, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 10(2) and (4) 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 proceedings between the Inspecteur van de Douane (Customs Inspector, Netherlands) ('the inspector') and FL concerning the reimbursement of excise duty paid by FL on a missing quantity of ethyl alcohol detected when that product was delivered to a tax warehouse in the Netherlands.

Legal framework

European Union law

3 Directive 2008/118 was 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), which replaced it. However, in view of the date of the facts at issue in the dispute in the main proceedings, the present reference for a preliminary ruling must be examined in the light of the provisions of Directive 2008/118.

4 Recital 11 of Directive 2008/118 stated:

'In the event of an irregularity, excise duty should be due in the Member State on whose territory the irregularity has been committed which has led to the release for consumption or, if it is not possible to establish where the irregularity has been committed, it should be due in the Member State where it has been detected. Where excise goods do not arrive at their destination and no irregularity has been detected, the irregularity shall be deemed to have occurred in the Member State of dispatch.'

5 Article 4 of Directive 2008/118 provided:

‘For the purpose of this Directive as well as its implementing provisions, the following definitions shall apply:

…

7. “duty suspension arrangement” means a tax arrangement applied to the production, processing, holding or movement of excise goods not covered by a customs suspensive procedure or arrangement, excise duty being suspended;

…

11. “tax warehouse” means a place where excise goods are produced, processed, held, received or dispatched under duty suspension arrangements by an authorised warehousekeeper in the course of his business, subject to certain conditions laid down by the competent authorities of the Member State where the tax warehouse is located.’

6 Under Article 7 of Directive 2008/118:

‘1. Excise duty shall become chargeable at the time, and in the Member State, of release for consumption.

2. For the purposes of this Directive, “release for consumption” shall mean any of the following:

(a) the departure of excise goods, including irregular departure, from a duty suspension arrangement;

…

4. The total destruction or irretrievable loss of excise goods under a duty suspension arrangement, as a result of the actual nature of the goods, of unforeseeable circumstances or force majeure, or as a consequence of authorisation by the competent authorities of the Member State, shall not be considered a release for consumption.

For the purpose of this Directive, goods shall be considered totally destroyed or irretrievably lost when they are rendered unusable as excise goods.

The total destruction or irretrievable loss of the excise goods in question shall be proven to the satisfaction of the competent authorities of the Member State where the total destruction or irretrievable loss occurred or, when it is not possible to determine where the loss occurred, where it was detected.

…’

7 Article 10 of Directive 2008/118 stated:

‘1. Where an irregularity has occurred during a movement of excise goods under a duty suspension arrangement, giving rise to their release for consumption in accordance with

Article 7(2)(a), the release for consumption shall take place in the Member State where the irregularity occurred.

2. Where an irregularity has been detected during a movement of excise goods under a duty suspension arrangement, giving rise to their release for consumption in accordance with Article 7(2)(a), and it is not possible to determine where the irregularity occurred, it shall be deemed to have occurred in the Member State in which and at the time when the irregularity was detected.

…

4. Where excise goods moving under a duty suspension arrangement have not arrived at their destination and no irregularity giving rise to their release for consumption in accordance with Article 7(2)(a) has been detected during the movement, an irregularity shall be deemed to have occurred in the Member State of dispatch and at the time when the movement began, unless, within a period of four months from the start of the movement in accordance with Article 20(1), evidence is provided to the satisfaction of the competent authorities of the Member State of dispatch of the end of the movement in accordance with Article 20(2), or of the place where the irregularity occurred.

…

6. For the purposes of this Article, "irregularity" shall mean a situation occurring during a movement of excise goods under a duty suspension arrangement, other than the one referred to in Article 7(4), due to which a movement, or a part of a movement of excise goods, has not ended in accordance with Article 20(2).'

8 Article 17(1) of Directive 2008/118 provided:

'Excise goods may be moved under a duty suspension arrangement within the territory of the [European Union], including where the goods are moved via a third country or a third territory:

(a) from a tax warehouse to:
    (i) another tax warehouse;

…'

9 Under Article 20(2) of Directive 2008/118:

'The movement of excise goods under a duty suspension arrangement shall end, in the [case] referred to in Article 17(1)(a)(i) …, when the consignee has taken delivery of the excise goods …'

Netherlands law

10 Article 2b(2) of the Wet op de accijns (Law on excise duty) of 31 October 1991 (Stb. 1991, No 561), in the version applicable to the dispute in the main proceedings, was worded as follows:

'The movement of excise goods under a duty suspension arrangement shall end, in the cases referred to in Article 2a(1)(a), (b), (c) and (e), (2) and (3)(a), (b), (c) and (e), when the consignee has taken delivery of the excise goods …'

11 Under Article 2c of the Law on excise duty:

‘…

2. If it is detected in the Netherlands that an irregularity has occurred during a movement of excise goods referred to in paragraph 1, giving rise to the release for consumption of those goods referred to in Article 2(1)(a), and it is not possible to determine where the irregularity occurred, it shall be deemed to have occurred in the Netherlands at the time when the irregularity was detected.

…

7. For the purposes of this article, “irregularity” shall mean a situation other than the one referred to in Article 2(5), which occurs during a movement of excise goods under a duty suspension arrangement and due to which a movement or a part of a movement of excise goods has not ended in accordance with Article 2b(2).

…’

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

12 In March and April 2019, FL sent by ship two consignments of 1 680 018 and 1 460 715 litres of bulk ethyl alcohol from a tax warehouse in Belgium to a tax warehouse in the Netherlands. The transport was carried out as a movement of excise goods under suspension of duty, as provided for in Articles 17 to 31 of Directive 2008/118.

13 On arrival at the place of destination, the consignee found that he had received, respectively, 9 239 and 4 732 litres of ethyl alcohol less than the quantities stated on the electronic administrative documents drawn up for the application of the duty suspension arrangement.

14 By two letters sent in July 2019, the inspector informed FL of the latter’s obligation to pay excise duty in the Netherlands in the amount, respectively, of EUR 42 405 and EUR 5 889 as regards the missing quantities of ethyl alcohol detected.

15 In accordance with the information provided by the inspector, FL submitted two excise duty declarations in the Netherlands for the amounts of EUR 42 405 and EUR 5 889 and paid those amounts. Furthermore, the Kingdom of Belgium also levied excise duty in the amount of EUR 49 997.60 as regards the first of the two consignments at issue.

16 FL lodged an objection with the inspector who, by decision of 30 January 2020, dismissed that objection and refused to reimburse the excise duty paid by FL.

17 By decision of 20 June 2022, the rechtbank Zeeland-West-Brabant (District Court, Zeeland-West-Brabant, Netherlands) upheld FL’s actions against the inspector’s decision and held that the excise duty paid by FL in the Netherlands should be reimbursed.

18 The inspector filed an appeal before the referring court, the Gerechtshof ’s-Hertogenbosch (Court of Appeal, ’s-Hertogenbosch, Netherlands).

19 The referring court expresses doubts as to whether the excise duty relating to the missing quantity of ethyl alcohol delivered was chargeable in the Netherlands under Article 10(2) of Directive 2008/118 or in Belgium under Article 10(4) thereof. In particular, it essentially enquires whether the detection of a missing quantity of excise goods moving under a duty suspension arrangement when unloading the means of transport containing those goods should be regarded as the detection of an irregularity during a movement of excise goods, in accordance with Article 10(2) of Directive 2008/118, or rather as a situation in which excise goods have not arrived at their destination and no irregularity has been detected during that movement, for the purposes of Article 10(4) thereof.

20 In those circumstances, the Gerechtshof 's-Hertogenbosch (Court of Appeal, 's-Hertogenbosch) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 10(2) of [Directive 2008/118] to be interpreted as meaning that the conditions laid down in that provision are fulfilled in a case where [excise] goods moved under the duty suspension arrangement have not arrived, or have not arrived in their entirety, at their destination, and that [missing quantity (shortfall)] has not been detected until the means of transport was unloaded, so that that detection of the shortfall constitutes the irregularity and the Member State of arrival therefore has the competence to levy the duty? Or is the earlier event, which remains unknown, which led to the shortfall to be regarded as the irregularity referred to in Article 10(4) of Directive [2008/118], so that the Member State of dispatch has the competence to levy the duty?'

Consideration of the question referred

21 By its question, the referring court asks, in essence, whether Article 10(2) of Directive 2008/118 must be interpreted as applying to a situation in which excise goods moving under a duty suspension arrangement have not arrived in their entirety at their destination and the missing quantity of goods has not been detected until the means of transport containing those goods was unloaded, so that, since the irregularity within the meaning of that provision is thus deemed to have occurred in the State of arrival, excise duty is chargeable there.

22 As a preliminary point, it should be recalled that, under Article 2 of Directive 2008/118, the goods referred to in Article 1 of that directive are to be subject to excise duty at the time of their production within the territory of the European Union or their importation into that territory. While the chargeable event for excise duty is thus the production of the goods concerned within or their importation into that territory, pursuant to Article 7(1) of Directive 2008/118 excise duty becomes chargeable only at the time of their release for consumption.

23 Under Article 17(1)(a)(i) of Directive 2008/118, excise goods may be moved under a duty suspension arrangement within the territory of the European Union, in particular, as in the main proceedings, from a tax warehouse in one Member State to a tax warehouse in another Member State. It is a feature of that duty suspension arrangement that the excise duty on the goods covered by it is not yet payable, although the chargeable event for taxation purposes has already taken place. Consequently, as regards the goods subject to excise duty, that arrangement postpones the chargeability of excise duty until the chargeability condition is met (see, to that effect, judgment of 28 January 2016, *BP Europa*, C-64/15, EU:C:2016:62, paragraph 22 and the case-law cited).

24 For excise goods moving under a duty suspension arrangement ('excise goods'), Article 7(2)(a) of Directive 2008/118 provides that any departure from that arrangement – whether regular or irregular – is to be regarded as a release for consumption.

25 In that context, Article 10 of Directive 2008/118 lays down the rules for determining the Member State in which excise goods must be regarded as having been released for consumption as a result of irregularities which occurred during the movement of those goods.

26 For the purposes of applying Article 10 of Directive 2008/118, 'irregularity' is defined in paragraph 6 of that article as a situation occurring during a movement of excise goods, other than the one referred to in Article 7(4) of that directive, due to which a movement or a part of a movement has not ended in accordance with Article 20(2) thereof.

27 As regards that concept of 'irregularity', the Court of Justice has already held that the detection of a missing quantity of excise goods upon delivery of those goods reveals a situation which is, of necessity, in the past, where the missing goods did not form part of that delivery and the movement of those goods did not therefore end in accordance with Article 20(2) of Directive 2008/118. In consequence, that situation constitutes an irregularity within the meaning of Article 10(6) of that directive. An irregularity of that type of necessity gives rise to a departure from the duty suspension arrangement and, as a result, a release for consumption as presumed under Article 7(2)(a) of that directive (see, to that effect, judgment of 28 January 2016, *BP Europa*, C-64/15, EU:C:2016:62, paragraph 43).

28 In that regard, it must be pointed out that it is not the detection of a missing quantity of goods upon delivery which, in itself, constitutes an irregularity within the meaning of Article 10(6) of Directive 2008/118. The situation which the decision cited in paragraph 27 above classified as an irregularity was one where the missing goods did not form part of a delivery and the movement of those goods did not therefore end in accordance with Article 20(2) of Directive 2008/118. It is therefore the very existence of a missing quantity that constitutes an irregularity within the meaning of Article 10(6) of that directive.

29 Furthermore, since the concept of 'irregularity' is defined in the same way for the whole of Article 10 of Directive 2008/118, it must have the same meaning when applying both Article 10(2) and Article 10(4) of that directive. Thus, the situation where the missing goods did not form part of the delivery of excise goods may, as an irregularity within the meaning of Article 10(6) of Directive 2008/118, either fall within Article 10(2) or Article 10(4) of that directive, depending on the circumstances.

30 In that regard, it follows from the wording of Article 10(2) and (4) of Directive 2008/118 that Article 10(2) of that directive is intended to apply where an irregularity has been detected 'during a movement' of excise goods, whereas Article 10(4) thereof covers the situation where the irregularity, although occurring during a movement, was not detected during that movement (see, to that effect, judgment of 28 January 2016, *BP Europa*, C-64/15, EU:C:2016:62, paragraphs 38 and 53).

31 Thus, it is necessary to examine whether the detection of a missing quantity of excise goods when unloading the means of transport containing those goods must be regarded as still occurring during a movement of those goods, within the meaning of Article 10(2) of Directive 2008/118, or as occurring after the end of that movement.

32 In that regard, it is apparent, first of all, from Article 20(2) of Directive 2008/118 that the movement of excise goods ends, in the case of a movement from one tax warehouse to another tax warehouse, when the consignee has taken delivery of those goods.

33 Next, it follows from the context of which Article 20(2) of Directive 2008/118 forms part that the EU legislature intended to make the actual receipt of the excise goods the element determining the conditions under which the movement of those goods must be assessed at the time of their delivery (see, to that effect, judgment of 28 January 2016, *BP Europa*, C-64/15, EU:C:2016:62, paragraph 30).

34 Furthermore, if delivery of the goods were to be considered to be complete once the means of transport of the excise goods has arrived at the destination without the consignee having yet been able to measure the quantity actually delivered, the duty would become chargeable in disregard of the requirements connected with the very nature of the duty at issue, which presupposes exact knowledge of the quantity of goods released for consumption (see, to that effect, judgment of 28 January 2016, *BP Europa*, C-64/15, EU:C:2016:62, paragraphs 32 and 33).

35 Lastly, it should be noted that excise goods are delivered, as a general rule, to a warehousekeeper of a tax warehouse. By requiring such a warehousekeeper, under Article 16(2)(d) of Directive 2008/118, to enter into his or her tax warehouse and enter in his or her accounts, at the end of their movement, all excise goods, and by thus having those physical and accounting operations coincide with the end of the movement of those goods, the EU legislature intended to place that end at a time when such goods had actually been received by the warehousekeeper and when their quantity could be measured accurately with a view to their entry into the warehouse's records (see, to that effect, judgment of 28 January 2016, *BP Europa*, C-64/15, EU:C:2016:62, paragraph 34).

36 In those circumstances, Article 20(2) of Directive 2008/118 must be interpreted as meaning that the end of the movement of excise goods is to be regarded as occurring only when the consignee is in a position to know exactly what quantity of goods he or she has actually received (see, to that effect, judgment of 28 January 2016, *BP Europa*, C-64/15, EU:C:2016:62, paragraph 32).

37 Consequently, the end of the movement of excise goods cannot be regarded as having occurred before the means of transport containing those goods has been fully unloaded, since such unloading or a pre-unloading check enables the consignee to ascertain exactly what quantity of goods he or she has actually received (see, to that effect, judgment of 28 January 2016, *BP Europa*, C-64/15, EU:C:2016:62, paragraph 33).

38 It follows that the detection of a missing quantity of goods when unloading the means of transport containing those goods, or upon completion of the full unloading of that means of transport, must be regarded as still occurring during the movement of such goods, within the meaning of Article 10(2) of Directive 2008/118.

39 That conclusion is not affected by the referring court's enquiry as to whether, by interpreting the scope of Article 10(2) of Directive 2008/118 in that way, Article 10(4) of that directive might be rendered meaningless, since a missing quantity of goods will always be detected, at the latest, when unloading the means of transport and such a situation will therefore still be covered by Article 10(2) of that directive.

40 Article 10(4) of Directive 2008/118 is still intended to apply, inter alia, where the quantity of excise goods received by the consignee is lower than the quantity due to be delivered to him or her, but that irregularity, for whatever reason, was detected not during the movement but at a later stage. That may be the case, for instance, where the consignee did not check the quantity of the goods when they were being unloaded and the missing quantity of goods was detected only after the end of the movement of those goods, or where the consignee, as a result of an incorrect check of the quantity of the goods when they were being unloaded, considered that the quantity delivered was complete, the detection of the missing quantity having occurred only subsequently.

41 Likewise, recital 11 of Directive 2008/118 is not capable of leading to a different interpretation, since it merely summarises the content of Article 10(1), (2) and (4) of that directive and does not permit any departure from the rules determining the Member State in which excise duty is chargeable, as interpreted by the Court of Justice in its judgment of 28 January 2016, *BP Europa* (C-64/15, EU:C:2016:62), having regard, in particular, to Article 20(2) of that directive.

42 In the light of the foregoing, the answer to the question referred for a preliminary ruling is that Article 10(2) of Directive 2008/118 must be interpreted as applying to a situation in which excise goods have not arrived in their entirety at their destination and the missing quantity of goods has not been detected until the means of transport containing those goods was unloaded, so that, since the irregularity within the meaning of that provision is thus deemed to have occurred in the State of arrival, excise duty is chargeable there.

Costs

43 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 General Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE GENERAL COURT (Chamber giving preliminary rulings)

hereby rules:

Article 10(2) 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 applying to a situation in which excise goods moving under a duty suspension arrangement have not arrived in their entirety at their destination and the missing quantity of goods has not been detected until the means of transport containing those goods was unloaded, so that, since the irregularity within the meaning of that provision is thus deemed to have occurred in the State of arrival, excise duty is chargeable there.

Papasavvas Sampol Pucurull Steinfatt

Petrlík Valasidis

Delivered in open court in Luxembourg on 26 November 2025.

[Signatures]