Reports of Cases

OPINION OF ADVOCATE GENERAL
PIKAMÄE
delivered on 26 September 2024[1]

Case C-596/23 [Pohjanri][i]

B UG
other party to the proceedings:
Veronsaajien oikeudenvalvontayksikkö

(Request for a preliminary ruling from the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland))

(Reference for a preliminary ruling – Excise duty – Directive 2008/118/EC – Article 36 – Online purchase of excise goods in another Member State – Goods dispatched or transported directly or indirectly by the vendor or on the vendor's behalf – Transport by a transport company recommended by the vendor – National rules treating the vendor as liable to pay the excise duty chargeable in the Member State of destination)

1. In the present case, the Court has received a request from the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland) for a preliminary ruling on 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.[2]

2. For the first time, the Court will have the opportunity to rule on the scope of that provision of Directive 2008/118, by indicating the degree of involvement of the vendor in the transport of excise goods that makes it possible to identify 'distance selling' and thus to conclude that the vendor is liable to pay excise duty in the Member State of destination of those goods.

Legal framework

European Union law

3. The following provisions are relevant in the present case: Articles 32, 33, 34 and 36 of Directive 2008/118 and Article 33 of Directive 2006/112/EC.[3]

[1] Original language: French.

[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.

[2] OJ 2009 L 9, p. 12.

[3] Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Finnish law

The legal framework in force in 2020

4. 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 present case, that law applies in the version in force in 2020.

5. The principles underlying the determination of the tax on alcohol and alcoholic beverages which is payable to the State and the amount of that tax are defined in the laki alkoholi-ja alkoholijuomaverosta (1471/1994) (Law relating to tax on alcohol and alcoholic beverages).

6. Under the second subparagraph of Paragraph 1 of the Law on Excise Duty, that law is to apply to the levying of excise duty on, inter alia, alcohol and alcoholic beverages, except where otherwise provided for in a specific law relating to excise matters.

7. Under Paragraph 6(11) of that law, 'distance selling' for the purposes of that law is to mean 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 its behalf.

8. Under Paragraph 6(12) of that law, 'distance seller' is to mean a vendor which sells goods to Finland in accordance with the detailed rules laid down in Paragraph 6(11) of that law.

9. 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 acquired by a private individual for his or her own use and transported to Finland by that private individual.

10. The first subparagraph of Paragraph 74 of that law provides that, where a private individual acquires, otherwise than as provided for in Paragraph 72 of that law or by way 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 operator, he or she is to be liable to pay the excise duty. Anyone having participated in the transport of those goods or holding them in Finland is also to be required to pay the excise duty owed by the private individual who acquired the excise goods as if it were his or her own debt.

11. Under the first subparagraph of Paragraph 79 of the Law on Excise Duty, excise duty is to be levied on goods sold to Finland by way of distance selling. The second subparagraph of that paragraph provides that the distance seller is to be liable to pay that excise duty. If the distance seller has a tax representative, the latter is to be liable to pay that duty instead of the distance seller. The distance seller is to be required to pay the excise duty owed by the tax representative as if it were his or her own debt. Under the third subparagraph of that paragraph, excise duty is to become payable when the excise goods are delivered in Finland. The excise duty is to be payable in accordance with the provisions in force on the day on which the goods are delivered in Finland.

The travaux préparatoires *relating to Paragraph 74 of the Law on Excise Duty*

12. The reasons underlying the adoption of Paragraph 74 of the Law on Excise Duty, as stated in the government proposal for a Law on Excise Duty (HE 263/2009 vp, p. 46), read as follows:

'This article will govern a situation in which a private individual acquires excise goods in another Member State for his or her own use in a manner other than that described in Paragraph 72 or by way of distance selling. In that case, the private individual will not bring the goods to Finland himself or herself; the goods will be transported by another private individual or by a professional operator. That means that a private individual will be able to buy goods in another Member State, for example on the internet, and arrange for the transport of the goods to Finland himself or herself without the vendor, or a person acting on the vendor's behalf, being involved in arranging the transport.

…

The goods will be taxed irrespective of whether they were imported into Finland by a professional operator – such as a carrier or a postal service – or by another private individual. The essential difference from distance selling will be that the vendor or a person acting on behalf of the vendor will not be in any way involved in transporting the goods or in arranging transport. If, on the other hand, the vendor directs the purchaser on its website to make use of particular transport companies, that will constitute distance selling, in which case the distance seller or its tax representative will be liable to pay excise duty in the Member State of destination.'

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

13. The company B UG operated a website, also available in Finnish, through which customers were able to purchase from an online shop various brands of low- or high-strength alcoholic beverages.

14. On 20 April 2020, the customs authorities seized a consignment containing various alcoholic beverages in Finland, which had been dispatched from Germany to Finland by B UG and which was addressed to a private individual. The consigned goods were seized on the basis of Paragraph 103 of the Law on Excise Duty for the purpose of determining whether the provisions of that law had been applied when those beverages were imported.

15. The tax authorities asked the purchaser who had placed the order on B UG's website for information about the ordering procedure and the way in which transport had been organised.

16. According to the explanations provided by the private individual concerned on 25 June 2020, when the order was placed in B UG's online shop, advertisements appeared for the transport services of the companies X, Y and Z. Thus, the basket updated the weight of the order and the carriage charge every time goods were added. Following payment for the alcohol order, a prompt concerning the organisation of transport appeared on B UG's website. That prompt, according to the private individual concerned, contained direct links to the websites of the transport providers. The private individual chose company X to transport his order. By clicking on the link 'X', he was redirected to company X's website. On that website, he entered his details but gave no information about his order, such as the order number. He paid for carriage directly to company X on the latter's website.

17. In support of their arguments, the tax authorities produced a screenshot dated 16 June 2020 containing instructions relating to the delivery method on B UG's website and a screenshot of 24 June 2020 containing the conditions of delivery on that site. They maintained that it follows from those screenshots that B UG does not organise the transport of the goods itself but offers its customers the possibility of collecting the order or choosing a transporter, and certain transporters were mentioned on B UG's website as possible options. In addition, those screenshots reveal that B UG informed its customers that they were responsible for paying taxes in Finland.

18. By decision of 21 August 2020, the tax authorities imposed on B UG, in respect of the alcoholic beverages seized on the previous day, tax on the alcohol and alcoholic beverages and a fiscal penalty in a total amount of EUR 1 645.83. They considered that B UG or a person acting on its behalf had directly or indirectly dispatched or transported the alcoholic beverages in question to Finland and that, consequently, B UG had acted as a distance seller and was liable to pay the excise duty in Finland.

19. B UG lodged a complaint against the taxation decision with the tax authorities. By decision of 1 June 2021, the tax authorities rejected that complaint.

20. B UG brought an action before the Helsingin hallinto-oikeus (Administrative Court, Helsinki) against the tax authorities' decision of 1 June 2021. It claimed that the tax authorities' decision should be annulled and that all the taxes on alcohol and alcoholic beverages imposed on it should be cancelled.

21. The Helsingin hallinto-oikeus (Administrative Court, Helsinki) is uncertain whether B UG participated in the transport of the alcoholic beverages which it sold on its website and had therefore to be regarded as liable to pay the excise duty in Finland as a distance seller of those alcoholic beverages. It states that the private individual who acquired those goods in Germany purchased them from B UG for his own use and paid the transport costs for the goods directly to the transport company.

22. According to that court, the case-law of the Court does not permit an answer to the question of how the expression 'dispatched or transported to another Member State directly or indirectly by the vendor or on his behalf' in Article 36(1) of Directive 2008/118 is to be interpreted.

23. The referring court considers that the present case entails assessing, in particular, the question whether B UG participated in the transport of the goods to another Member State directly or indirectly within the meaning of Article 36(1) of Directive 2008/118, given that its website mentions various transport undertakings and provides information about the transport costs arising for purchasers. In addition, the referring court observes that the vendor's website contained a link to the transport undertakings' website and that, when someone clicked on that link, information concerning the goods to be transported was automatically transmitted to that website from the seller's website.

24. 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 national law 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 arising for 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?'

Analysis

The scope of the questions referred for a preliminary ruling

25. It should be observed at the outset that the second question submitted by the referring court concerns the interpretation of Article 36(1) of Directive 2008/118 in the light of the facts of the case, while the first question, which is narrower in scope, seems to refer to the compatibility of the interpretation of Paragraph 74 of the Law on Excise Duty, as stated in the Finnish Government's proposal for a law, with Article 36(1) of that directive, which Paragraph 74 of the Law on Excise Duty transposes into national law.

26. Since both questions in fact cover the same question concerning the scope of Article 36(1) of Directive 2008/118, and in particular of the expression 'dispatched or transported to another Member State directly or indirectly by the vendor or on his behalf', they should in my view be dealt with together.

Substance

27. Directive 2008/118 aims to ensure the proper functioning of the internal market by the free movement of excise goods within the European Union. To that end, it requires the harmonisation of national legislation governing those types of taxation in order to ensure that the concept, and conditions for 'chargeability', of excise duty are the same in all Member States. [4]

28. The general arrangements for excise duty established by that directive apply only to the goods listed in Article 1(1) thereof, which include alcoholic beverages.

[4] See, in particular, recital 8 of Directive 2008/118.

29. The effectiveness of those arrangements requires that liability to pay the excise duty arises at the time when one of those products appears on the internal market, while chargeability of the excise duty must be as close as possible to the final consumer.

30. The EU legislature implemented those requirements in the following way. Article 2 of Directive 2008/118 provides that the chargeable event is to be the manufacture or importation of those goods within or into the territory of the European Union. Article 7(1) of that directive lays down the general rule that excise duty is to become chargeable at the time, and in the Member State, of release for consumption,[5] and the first paragraph of Article 9 of that directive provides that the chargeability conditions and rate of excise duty to be applied are to be those in force on the date on which duty becomes chargeable in the Member State where release for consumption takes place.

31. The provisions of Chapter V of Directive 2008/118 ('Movement and taxation of excise goods after release for consumption') concern situations in which, following the release of goods for consumption and payment of the applicable excise duty, those goods have been moved within the European Union. 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.

32. While Article 32 of Directive 2008/118 provides that excise duty is to be charged only in the Member State in which the goods are acquired where the goods are purchased by a private individual for his or her own use, and those goods are transported by that person to another Member State, Articles 33 and 36 of that directive contain exceptions to the general rule laid down in Article 7 of that directive, in so far as they establish that the excise duty in respect of goods which have already been released for consumption is to be chargeable at a time *after* that of the release for consumption.

33. Article 33 of Directive 2008/118 provides that, without prejudice to Article 36, where goods which have already been released for consumption in one Member State are held for commercial consumption in another Member State in order to be delivered or used there, excise duty becomes chargeable in that other Member State. In such a situation, the person liable to pay that duty will be the person making the delivery or holding the goods intended for delivery, or to whom the goods are delivered in the other Member State.

34. Article 36 of that directive, which the Court is asked to interpret in the present case, concerns distance selling and provides that 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 on an independent economic activity, and which are dispatched or transported to another Member State directly or indirectly by the vendor or on its behalf are to be subject to excise duty in the Member State of destination. In that case, the person liable to pay the excise duty is to be the vendor.

[5] Article 7(2) of Directive 2008/118 defines 'release for consumption' as follows: '(a) the departure of excise goods, including irregular departure, from a duty suspension arrangement; (b) the holding of excise goods outside a duty suspension arrangement where excise duty has not been levied pursuant to the applicable provisions of Community law and national legislation; (c) the production of excise goods, including irregular production, outside a duty suspension arrangement; (d) the importation of excise goods, including irregular importation, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement.'

35. Article 32 of Directive 2008/118 is not applicable in the present case. While it is common ground that the private individual who purchased the goods in question acquired them for his own use, it is also undisputed that those goods were not transported from Germany to Finland by the purchaser himself. [6]

36. The referring court is required to determine whether the consignment of alcoholic beverages seized by the Finnish customs authorities was the subject of 'distance selling', within the meaning of Article 36(1) of Directive 2008/118, in which case B UG would be required to pay the excise duty, and also the fiscal penalty, resulting from the taxation decision taken by the Finnish tax authorities on 21 August 2020. If that were not the case, it would necessarily be a distance purchase, covered by Article 33 of that directive, with the consequence that B UG's customers, and not B UG, would be liable to pay the excise duty in question.

37. How, then, is the expression 'dispatched or transported directly or indirectly by the vendor or on his behalf', and in particular the *indirect* intervention of the vendor, to be interpreted?

38. There is nothing in the wording of Article 36 of Directive 2008/118 to clarify such a question and the Court has not thus far been called upon to rule on it.

39. It should be noted, however, that in the judgment of 2 April 1998, *EMU Tabac and Others* (C-296/95, EU:C:1998:152), the Court laid down the fundamental principles for the interpretation of that provision. [7]

40. The facts of the case that gave rise to that judgment were that MLB, a company established in the United Kingdom, solicited and fulfilled orders for cigarettes and tobacco placed by private individuals residing in the United Kingdom. MLB purchased those products from EMU, a company established in Luxembourg and belonging to the same group, and arranged for their importation into the United Kingdom by a private carrier on behalf of those private individuals, in return for payment of a fee.

41. In its judgment, the Court considered that such a situation constituted distance selling, and not an acquisition by private individuals, on the grounds, first, that MLB (and not the private individuals whom it represented) took the initiative for the orders placed with the vendor and bore the risks inherent in the fluctuation of exchange rates and, second, that EMU and MLB were part of the same economic entity.

42. That conclusion is explained, according to the Court, by the fact that Article 10(2) of Directive 92/12 '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', and that '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'. [8]

6 See, in that regard, judgment of 23 November 2006, *Joustra* (C-5/05, EU:C:2006:733).

7 In that case, the Court was asked about the interpretation of Article 10(1) 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), and not about Article 36(1) of Directive 2008/118. However, although the latter directive, which alone is applicable *ratione temporis* to the dispute in the main proceedings, repealed and replaced Directive 92/12 with effect from 1 April 2010, it is clear from the wording of Article 36(1) of Directive 2008/118 and of Article 10(1) of Directive 92/12 that the content of those provisions is not essentially different. It must be inferred that the Court's case-law concerning the latter provision remains applicable as regards Article 36(1) of Directive 2008/118. See, to that effect, judgment of 5 March 2015, *Statoil Fuel & Retail* (C-553/13, EU:C:2015:149, paragraph 34).

8 Judgment of 2 April 1998, *EMU Tabac and Others* (C-296/95, EU:C:1998:152, paragraphs 45 and 46).

43. That means that the expression 'dispatched or transported directly or indirectly by the vendor or on his behalf' must be given a broad scope and at the same time that its interpretation must reflect the economic reality of the transaction under consideration, and that any formalism must be disregarded. That finding nonetheless constitutes only the starting point of the exegetical effort required by the referring court.

44. As an aid to interpretation, the European Commission proposes, in its written observations, that the judgment in *KrakVet Marek Batko* should be applied by analogy. [9]

45. In that judgment, the Court ruled, in the area of value added tax (VAT), on the interpretation of a provision very similar to Article 36(1) of Directive 2008/118, namely Article 33(1) of Directive 2006/112. That article provided that the place of the supply of goods 'dispatched or transported by or on behalf of the supplier' from a Member State other than that in which dispatch or transport of the goods to the customer ends is to be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends, where certain conditions are met.

46. The factual situation presented by the referring court was that of goods sold by a supplier in one Member State to purchasers residing in another Member State and delivered to the purchasers by a company recommended by the supplier, but with which the purchasers were free to enter into a contract for the purpose of that delivery. Were those goods to be regarded as dispatched or transported 'by or on behalf of the supplier'?

47. Consideration of the economic and commercial realities, which forms a fundamental criterion for the application of the common system of VAT, leads to the conclusion, according to the Court, that the goods are dispatched or transported on behalf of the supplier where the latter, and not the purchaser, effectively takes the decisions governing how those goods are to be dispatched or transported. The role of the supplier must therefore be '*predominant* in terms of initiating and organising the essential stages of the dispatch or transport of the goods'. [10]

48. The Court then set out four criteria that make it possible to verify whether that is the case.

49. First, account must be taken of the significance of the issue of delivering those goods to the purchasers in the light of the commercial practices which characterise the activity carried on by the supplier concerned. Second, it must be determined to whom the choices relating to the methods of dispatch or transport of the goods concerned may be attributed. Dispatch or transport of the goods on behalf of the supplier of those goods can be identified where the purchasers merely acquiesce to the choices made by the supplier, whether they concern the designation of the company responsible for delivering the goods in question or the manner in which those goods were dispatched or transported. Such a conclusion might be based on, inter alia, factors such as the limited choices of companies recommended by the supplier for the purpose of delivering the goods. Third, it is necessary to consider whether the burden of risk in relation to the dispatch and supply of the goods concerned is borne by the supplier or the purchaser. Fourth, it is necessary to assess the payment arrangements relating both to the supply of the goods and to their dispatch or their transport. A single financial transaction for the acquisition and also for the dispatch and transport of the goods is indicative of the significant involvement of the supplier in the delivery of the goods. [11]

[9] Judgment of 18 June 2020 (C-276/18; 'the judgment in *KrakVet*', EU:C:2020:485, paragraphs 61 to 63).

[10] Judgment in *KrakVet*, paragraph 63 (emphasis added).

[11] Judgment in *KrakVet*, paragraphs 69 to 78.

50. For my part, I note the absence of the premisses necessary for the application by analogy in the present case of the criteria set out in the judgment in *KrakVet*, as the Commission recommended in its written observations.

51. While I have no hesitation in accepting the idea that the provisions of secondary law relating to excise duty and the corresponding provisions relating to VAT may call for the same interpretation, that in my view is not justified in the present case, in the light of the content of Article 33(1) of Directive 2006/112, in the version considered in the judgment in *KrakVet*, and of Article 36(1) of Directive 2008/118. While it follows from the latter article that indirect intervention by the vendor in the dispatch or transport of the goods concerned is sufficient to characterise 'distance selling', that intervention was not a prerequisite for the characterisation of the existence of 'intra-Community distance selling of goods' within the meaning of Article 33(1) before Directive 2006/112 was amended by Article 2 of Directive (EU) 2017/2455. [12]

52. As the Court observed in the judgment in *KrakVet*, that amendment, according to which goods must be regarded as 'dispatched or transported by or on behalf of the supplier', even where the supplier intervenes *indirectly* in their transport or dispatch, was not applicable *ratione temporis* to the dispute in the main proceedings. [13]

53. It follows that the criteria set out by the Court in that judgment cannot be used in the present case, since they were conceived for the purpose of interpreting Article 33(1) of Directive 2006/112 *in the version preceding the amendment introduced by Directive 2017/2455*.

54. However, the elements of interpretation of Article 33(1) of Directive 2006/112, *in the version resulting from that amendment*, may in my view serve to define the scope of Article 36 of Directive 2008/118 by means of reasoning by analogy.

55. Among those elements, account must be taken of the first paragraph of Article 5a of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112, [14] which was added to that implementing regulation specifically in order to clarify and define the criterion of indirect intervention in the context of VAT. [15]

56. That provision indicates the situations in which goods are to be considered to have been dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the dispatch or the transport of the goods. The first three situations are those in which (i) the dispatch or transport of the goods is subcontracted by the supplier to a third party who delivers the goods to the customer; (ii) the dispatch or transport of the goods is provided by a third party but the supplier bears either total or partial responsibility for the delivery of the goods to the customer; and (iii) the supplier invoices and collects the transport fees from the customer and further remits them to a third party who will arrange the dispatch or transport of the goods. The fourth situation, which to my mind is of particular relevance for the purpose of providing an answer to the questions submitted by the referring court, is where 'the supplier

[12] Council Directive of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ 2017 L 348, p. 7).

[13] Judgment in *KrakVet*, paragraphs 55 and 56. See also Opinion of Advocate General Sharpston in *KrakVet Marek Batko* (C-276/18, EU:C:2020:81, point 99), where it is stated that what was being introduced by Directive 2017/2455 'was indeed an amendment; and that it does *not* represent the interpretation that should in any event have been given to the existing text'.

[14] OJ 2011 L 77, p. 1.

[15] See recital 4 of Council Implementing Regulation (EU) 2019/2026 of 21 November 2019 amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods (OJ 2019 L 313, p. 14).

promotes by any means the delivery services of a third party to the customer, puts the customer and a third party in contact or otherwise provides to a third party the information needed for the delivery of the goods to the consumer'.

57. Thus, the EU legislature incorporated in that regulation the guidelines of the VAT Committee concerning the interpretation of the expression 'goods dispatched or transported by or on behalf of the supplier' for the purposes of the application of Article 33 of Directive 2006/112. As is apparent from Working paper No 855 concerning the application of EU VAT provisions on distance selling,[16] those guidelines were provided at the request of the tax authorities of the United Kingdom and of Belgium, which had noticed that some companies had put business arrangements in place with a view to splitting the supply of the goods from their transport and delivery, and avoiding having to declare and pay VAT in the Member State of destination of the goods. The reading suggested by that committee reflected the need to combat *abusive practices*, or more specifically transactions resulting in a tax advantage, such as the application of what is likely to be the lower rate of excise duty of the State of dispatch of the goods concerned or the non-application of the excise duty because of the classification of the transaction as distance selling, and running counter to the objective pursued by the relevant provisions, namely that of preventing distortions of competition created by the application of the State-of-origin principle to cross-border transactions.

58. Inspired by the need to combat abusive practices, that extensive interpretation entailed a reduction in the degree of involvement necessary for a dispatch or a transport to be attributable to the supplier. In other words, the promotion by any means of the delivery services of a third party to the purchaser, the introduction of the purchaser to a third party or the communication to a third party of the information necessary for the delivery of the goods to the purchaser are sufficient to support the conclusion that the goods are dispatched or transported for or on behalf of the supplier.

59. The same scope should in my view be given to the expression 'dispatched or transported to another Member State directly or indirectly by the vendor or on his behalf' in Article 36(1) of Directive 2008/118.

60. The interpretation by analogy which I propose is made possible by the fact that that Article 36(1) of Directive 2008/118 expresses the *same subject-to-tax rule* as that laid down in Article 33(1) of Directive 2006/112 (the vendor is required to pay the excise duty in the Member State of destination of goods in the case of distance selling) and has the *same content* as Article 33(1) of Directive 2006/112 in the light of the version of that article which came after the amendment made to Directive 2017/2455. In addition, that interpretation seems to be justified in the light of the fact that Directive 2008/118 shares with Directive 2006/112 the objective of combating abuse, while the Court has repeatedly recognised that combating abuse, together with combating fraud and tax evasion, is among the objectives of Directive 2008/118, as is apparent from the first paragraph of Article 11 and the first subparagraph of Article 39(3), and also from recital 31, of that directive.[17]

[16] Document taxud.c.1(2015)2158321.

[17] Concerning Directive 2008/118, see, in particular, judgment of 21 December 2023, *CDIL* (C-96/22, EU:C:2023:1025, paragraph 39 and the case-law cited). As regards Directive 2006/112, see judgment of 7 March 2024, *Feudi di San Gregorio Aziende Agricole* (C-341/22, EU:C:2024:210, paragraph 33 and the case-law cited).

61. It follows that indirect intervention within the meaning of Article 36(1) of Directive 2008/118 occurs, in particular, when 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 concerned. In such a situation, it must be concluded that the vendor is liable to pay the excise duty in the Member State of destination of those goods.

62. In the present case, it is apparent from the order for reference that B UG's website, on which alcoholic beverages were sold to purchasers established in Finland, recommends particular transport companies. In addition, that website provides information about the transport costs arising for a purchaser who has chosen one of those companies and contains a link to the website of each of them, to which, once the link has been activated by the purchaser, information about the goods to be transported is transmitted without further intervention by the purchaser.

63. In the light of that information, and subject to verification by the referring court, it would be possible to consider, in my view, that the alcoholic beverages at issue were transported to Finland indirectly by B UG, within the meaning of Article 36(1) of Directive 2008/118, and that B UG is therefore liable to pay excise duty in that Member State.

64. That, moreover, is the only interpretation consistent with economic and commercial realities since, in circumstances such as those of the present case, the possibility that customers will choose a different transport company from those which the vendor recommends to them on its website is low at best and, in reality, probably purely hypothetical.

65. Since that interpretation necessarily entails 'lifting the veil' on the legal form of the transaction in order to prevent any abuse of right, [18] it is self-evident that the fact that the purchaser enters into two separate contracts – with the vendor and with the transport company – is not relevant for the purpose of determining whether the goods concerned must be considered to be dispatched or transported indirectly by or on behalf of the vendor.

66. Last, it must be made clear that the argument put forward by B UG in its written observations, based on the Commission's proposal for Directive 2008/118, [19] cannot call into question the conclusion which I have reached.

67. More specifically, B UG stated that, according to the proposal for a directive relating to excise duty, the provision concerning distance selling 'envisages the procedures applicable to sales by operators who assume responsibility, directly or indirectly, for the transport of the excise goods to private individuals established in another Member State'. That formulation, in B UG's submission, means that the vendor must be considered to be *responsible* for the transport of the excise goods in order for the rule in Article 36(1) of Directive 2008/118 to be applicable.

68. In reality, such a formulation is explained, in my view, solely by the EU legislature's intention to place more focus on one of the elements that distinguish distance selling from distance purchasing, as confirmed in a report published in the context of the legislative procedure that

[18] See, to that effect, Opinion of Advocate General Ruiz-Jarabo Colomer in *EMU Tabac and Others* (C-296/95, EU:C:1997:203, point 88).

[19] Proposal for a Council directive concerning the general arrangements for excise duty (COM(2008) 78 final).

culminated in the adoption of Directive 2008/118,[20] and not by the intention to make the application of Article 36(1) conditional on the existence of a form of liability, in particular civil liability, on the part of the vendor.

69. In the light of the foregoing, I consider that Article 36(1) of Directive 2008/118 should be read as meaning that excise goods must be considered to be 'dispatched or transported to another Member State directly or indirectly by the vendor or on his behalf', so that the vendor is liable for excise duty in that other Member State, in particular where the vendor acts in such a way as to guide the purchaser's choice of the company responsible for the transport of the goods concerned, which it is for the national court to verify. In that respect, relevant factors are the fact that the vendor's website recommends one or more particular transport companies, that it provides information about the transport costs to be borne by the purchaser who has chosen one of those companies and that it contains a link to the website of each of them, to which, once that link has been activated, information about the goods to be transported is transmitted without further intervention by the purchaser. Conversely, the fact that the purchaser enters into two separate contracts with the vendor and with the transport company, respectively, is not a relevant factor for the purposes of that assessment.

Conclusion

70. In the light of the foregoing considerations, I propose that the Court should answer the questions referred for a preliminary ruling by the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland) as follows:

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 excise goods must be considered to be 'dispatched or transported to another Member State directly or indirectly by the vendor or on his behalf', so that the vendor is liable for excise duty in that other Member State, in particular where the vendor acts in such a way as to guide the purchaser's choice of the company responsible for dispatch and/or transport of the goods concerned, which it is for the national court to verify, taking into account all the facts of the dispute in the main proceedings.

[20] Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Articles 7 to 10 of Directive 92/12/EEC (submitted in application of Article 27 of Directive 92/12/EEC) (COM (2004) 227 final).