Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

13 July 2017*

(Reference for a preliminary ruling — Directive 2003/96/EC — Taxation of energy products and electricity — Article 14(1)(c) — Exemption of energy products used as fuel for the purpose of navigation within European Union waters and to produce electricity on board a craft — Fuel used by a ship to sail from the place where it was built to the port of another Member State for the purpose of taking on its first commercial cargo)

In Case C-151/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court, Lithuania), made by decision of 8 March 2016, received at the Court on 14 March 2016, in the proceedings

'Vakarų Baltijos laivų statykla' UAB

v

Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, E. Regan, A. Arabadjiev, C.G. Fernlund and S. Rodin, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Lithuanian Government, by D. Kriaučiūnas, K. Dieninis and R. Dzikovič and by D. Stepanienė, acting as Agents,

— the Polish Government, by B. Majczyna, acting as Agent,

— the European Commission, by A. Steiblytė and F. Tomat, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 March 2017,

gives the following

* Language of the case: Lithuanian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 14(1)(c) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51).

2 The request has been made in proceedings between 'Vakarų Baltijos laivų statykla' UAB and Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos (State Tax Inspectorate attached to the Lithuanian Ministry of Finance) ('the State Tax Inspectorate') concerning a decision refusing the reimbursement of excise duty.

Legal context

EU law

3 Recitals 3 to 5 of Directive 2003/96 state:

'(3) The proper functioning of the internal market and the achievement of the objectives of other Community policies require minimum levels of taxation to be laid down at Community level for most energy products, including electricity, natural gas and coal.

(4) Appreciable differences in the national levels of energy taxation applied by Member States could prove detrimental to the proper functioning of the internal market.

(5) The establishment of appropriate Community minimum levels of taxation may enable existing differences in the national levels of taxation to be reduced.'

4 Article 1 of the directive states:

'Member States shall impose taxation on energy products and electricity in accordance with this Directive.'

5 Article 14(1) of that directive provides:

'In addition to the general provisions set out in [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)] on exempt uses of taxable products, and without prejudice to other Community provisions, Member States shall exempt the following from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

…

(c) energy products supplied for use as fuel for the purposes of navigation within Community waters (including fishing), other than private pleasure craft, and electricity produced on board a craft.

For the purposes of this Directive "private pleasure craft" shall mean any craft used by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.'

Lithuanian law

6 Paragraph 43(1)(2) of the Akcizų įstatymas (Law of the Republic of Lithuania on excise duty), in the version applicable to the dispute in the main proceedings, ('the Law on excise duty') transposes the exemption provided for in Article 14(1)(c) of Directive 2003/96 into Lithuanian law.

7 Under Paragraph 43(2) of the Law on excise duty, the establishment of implementing regulations for that exemption is entrusted to the government or a government-authorised body.

8 On the basis of that provision, the Lithuanian Government approved rules governing the provision of stores for ships and aircraft as well as fuel for aircraft manufacturing, repair, testing, operation and maintenance.

9 In accordance with Point 3 of those rules, a person supplying a ship with fuel must hold a licence.

10 Point 10, second paragraph, of those rules provides that a person who has applied Article 43(1)(2) of the Law on excise duty must have documentation proving that the purpose of the supply is such as to qualify that supply for the application of excise exemptions.

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

11 'Vakarų Baltijos laivų statykla' is a Lithuanian undertaking which engages, inter alia, in the construction of seagoing vessels.

12 On 7 October 2009, that undertaking concluded a contract to build a cargo ship ('the ship in question') for an Estonian company ('the client').

13 Under that contract, that undertaking purchased 80 600 litres of fuel, which were poured directly into the fuel tanks of the ship in question, and paid the excise duty in respect of that fuel. Some of that fuel was used when carrying out tests on the ship before it was delivered to the client.

14 By an official declaration of transfer and acceptance dated 6 June 2013, 'Vakarų Baltijos laivų statykla' transferred ownership to the client and all the rights and interests to the ship in question together with the equipment and stores present on board, including the 73 030 litres of fuel remaining after the pre-delivery tests.

15 Following the delivery of the ship, the client arranged for it to sail, without cargo, from the port of Klaipeda (Lithuania) to the port of Straslund (Germany) where it took on its first commercial cargo, which it then transported for consideration to Santander (Spain).

16 On 22 July 2013, 'Vakarų Baltijos laivų statykla' requested the State Tax Inspectorate to refund the excise duty in respect of the fuel poured into the fuel tanks of the ship in question and exported by the client out of Lithuanian territory.

17 By a decision of 21 August 2013, the State Tax Inspectorate refused to accede to that request on the ground that at the time of the delivery of the fuel at issue to the client 'Vakarų Baltijos laivų statykla' had not completed the accounting documents satisfying the formal and substantive conditions under national law and did not have a licence, issued in accordance with the applicable procedure, allowing it to supply fuel to ships.

18 Reviewing the complaint against that decision, the Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės (Commission on Tax Disputes attached to the Government of the Republic of Lithuania), by decision of 28 November 2013, annulled the decision of the State Tax Inspectorate refusing a refund of excise duty, in essence, on the ground that that refusal was based on formal considerations.

19 The State Tax Inspectorate brought annulment proceedings against the decision of 28 November 2013 before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) which, by a judgment of 9 December 2014, allowed that action.

20 'Vakarų Baltijos laivų statykla' appealed to the referring court seeking to have that judgment set aside and the decision of 28 November 2013 maintained.

21 It is in those circumstances that the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court, Lithuania) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Should Article 14(1)(c) of Directive 2003/96 be interpreted as meaning that excise duty may not be levied on the supply of energy products in circumstances, such as those in the present case, in which those products are supplied as fuel for a ship to be used in navigation within [European Union] waters with the objective, not involving direct consideration, of sailing that ship under its own power from the place where it was built to a port in another Member State for the purpose of taking on its first commercial cargo?

(2) Does Article 14(1)(c) of Directive 2003/96 stand in the way of provisions of national legislation of Member States, such as those applicable in the present case, which preclude the benefit of the tax exemption provided for in that provision in the case where the supply of energy products was carried out in breach of the conditions laid down by the Member State, even though that supply satisfies the essential conditions for application of the exemption set out in that provision of Directive 2003/96?'

Consideration of the questions referred

The first question

22 By its first question, the referring court asks, in essence, whether Article 14(1)(c) of Directive 2003/96 must be interpreted as meaning that the exemption laid down in that provision applies to fuel used to sail a ship, without cargo, from a port of a Member State, in the present case that where the ship was built, to a port of another Member State in order to take on cargo to be transported to a port of a third Member State.

23 As is apparent from recitals 3 to 5 of Directive 2003/96, that directive seeks to promote the proper functioning of the internal market by harmonising the minimum levels of taxation of energy products at Union level so as to reduce the differences between the national levels of energy taxation applied by the Member States.

24 According to the case-law of the Court, the provisions of Directive 2003/96 concerning exemptions must receive an autonomous interpretation, based on their wording and on the objectives pursued by that directive (judgments of 1 December 2011, *Systeme Helmholz*, C-79/10, EU:C:2011:797, paragraph 19 and the case-law cited, and of 21 December 2011, *Haltergemeinschaft*, C-250/10, not published, EU:C:2011:862, paragraph 19).

25 It follows from the wording of Article 14(1)(c) of Directive 2003/96 that the exemption laid down by that provision is subject to the requirement that the energy products be used as fuel for the purposes of navigation within European Union waters (see, by analogy, judgments of 10 November 2011, *Sea Fighter*, C-505/10, EU:C:2011:725, paragraph 20, and of 21 December 2011, *Haltergemeinschaft*, C-250/10, not published, EU:C:2011:862, paragraph 21).

26 Concerning the term 'navigation', referred to in Article 14(1)(c) of Directive 2003/96, it is apparent from the case-law of the Court that all navigation activity for commercial purposes comes within the scope of the exemption laid down by that provision, regardless of the purpose of that navigation (see, to that effect, judgments of 1 April 2004, *Deutsche See-Bestattungs-Genossenschaft*, C-389/02, EU:C:2004:214, paragraphs 23, 25 and 29; of 1 March 2007, *Jan De Nul*, C-391/05, EU:C:2007:126, paragraph 36, and of 10 November 2011, *Sea Fighter*, C-505/10, EU:C:2011:725, paragraph 16).

27 Thus, the purpose of a ship's journey within European Union waters is irrelevant for the application of that exemption when that navigation involves the provision of a service for consideration (see, by analogy, judgments of 1 March 2007, *Jan De Nul*, C-391/05, EU:C:2007:126, paragraph 37, and of 10 November 2011, *Sea Fighter*, C-505/10, EU:C:2011:725, paragraph 17).

28 In that regard, the Court has stated that the term 'navigation' requires that the provision of a service for consideration be inherent in the ship's journey (see, to that effect, judgments of 1 March 2007, *Jan De Nul*, C-391/05, EU:C:2007:126, paragraph 40, and of 10 November 2011, *Sea Fighter*, C-505/10, EU:C:2011:725, paragraph 18).

29 It is apparent from the expression 'other than for the carriage of passengers or goods or for the supply of services for consideration', used in Article 14(1)(c), second paragraph, of Directive 2003/96, that the 'navigation' covered by the exemption laid down in Article 14(1)(c) relates to uses where a boat is used directly for the supply of services for consideration (see, by analogy, judgment of 1 December 2011, *Systeme Helmholz*, C-79/10, EU:C:2011:797, paragraph 21).

30 Consequently, navigation operations which are not directly used for the supply of a service for consideration cannot be assimilated to the use of a boat for commercial purposes, within the meaning and for the purposes of the application of that provision, and, accordingly, do not fall within the scope of that exemption (see, by analogy, judgment of 1 December 2011, *Systeme Helmholz*, C-79/10, EU:C:2011:797, paragraph 27).

31 As to the term '[European Union] waters', referred to in Article 14(1)(c) of Directive 2003/96, that term relates to all waters which can be used by all sea-going vessels, including those which have the greatest capacity, capable of travelling maritime routes for commercial purposes (see, by analogy, judgment of 1 March 2007, *Jan De Nul*, C-391/05, EU:C:2007:126, paragraph 32).

32 Moreover, it follows from the purpose of Directive 2003/96, under which the Member States are to tax energy products, that the directive does not seek to establish general exemptions (judgments of 1 December 2011, *Systeme Helmholz*, C-79/10, EU:C:2011:797, paragraph 23, and of 21 December 2011, *Haltergemeinschaft*, C-250/10, not published, EU:C:2011:862, paragraph 23).

33 In particular, the exemption laid down by Article 14(1)(c) of that directive is designed to facilitate trade within the European Union, particularly the movement of goods and the freedom to provide services capable of taking place within European Union waters. By that exemption, the EU legislature intended to promote the equality of certain tax conditions under which the transport undertakings or other services which ply those waters operate (see, by analogy, judgment of 1 March 2007, *Jan De Nul*, C-391/05, EU:C:2007:126, paragraphs 24 and 25).

34 In that context, it emerges from recital 23 of Directive 2003/96 that that exemption is based on compliance with existing international obligations and the maintaining of the competitive position of EU undertakings (see, by analogy, judgment of 1 December 2011, *Systeme Helmholz*, C-79/10, EU:C:2011:797, paragraph 24).

35 As regards the dispute in the main proceedings, it must be observed, first, that the journey of the ship from the port of Klaipeda to that of Straslund constituted the first necessary and indispensable step of a navigation for commercial purposes, since the sole objective of that journey was to collect goods from the latter port to then be transported to the port of Santander and, without that journey, that service of transporting goods could not have been provided.

36 Therefore, a voyage, such as that referred to in the preceding paragraph, must be regarded as constituting a navigation activity used directly for the supply of services for consideration, in the present case the service of transporting goods, so that the fuel used to enable the ship to make that journey was used for 'navigation' within the meaning of Article 14(1)(c) of Directive 2003/96.

37 A contrary interpretation would go against the objective and purpose pursued by that directive, since the taxation of energy products in a situation such as that at issue in the main proceedings might, inter alia, adversely affect the proper functioning of the internal market and the maintaining of the competitive position of EU enterprises.

38 Secondly, the fuel at issue in the main proceedings was used for navigation 'within [European Union] waters', within the meaning of that provision, as it enabled a maritime vessel to sail from a port in Lithuania to a port in Germany.

39 Consequently, a navigation activity such as that at issue in the main proceedings constitutes a 'navigation within [European Union] waters', within the meaning of Article 14(1)(c) of Directive 2003/96.

40 In those circumstances, the answer to the first question is that Article 14(1)(c) of Directive 2003/96 must be interpreted as meaning that the exemption laid down by that provision applies to fuel used to sail a ship, without cargo, from a port of a Member State, in the present case that where that ship was built, to a port of another Member State in order to take on cargo to be transported to a port of a third Member State.

The second question

41 By its second question the referring court asks, in essence, whether Article 14(1)(c) of Directive 2003/96 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which excludes the application of the exemption laid down by that provision on the ground that the supply of energy products for a ship was carried out without complying with the formal requirements laid down by that legislation, even though that supply is in accordance with all the conditions for application laid down by that provision.

42 In that regard, it must be observed that, both the general scheme and the purpose of Directive 2003/96 are based on the principle that energy products are taxed in accordance with their actual use (judgment of 2 June 2016, *ROZ-ŚWIT*, C-418/14, EU:C:2016:400, paragraph 33).

43 In so far as Directive 2003/96 does not lay down any particular control mechanism for the use of fuel for navigation nor measures to combat tax evasion connected with the sale of fuel, it is for Member States to provide such mechanisms and such measures in their national legislation, in conformity with

EU law, and to lay down the conditions for the exemptions set out in Article 14(1) of that directive (see, by analogy, judgments of 2 June 2016, *ROZ-ŚWIT*, C-418/14, EU:C:2016:400, paragraph 23, and of 2 June 2016, *Polihim-SS*, C-355/14, EU:C:2016:403, paragraph 57).

44 That said, the Court has held that the unconditional nature of an obligation to grant an exemption cannot be affected at all by the degree of latitude afforded to Member States by introductory wording such as that contained in Article 14(1), according to which exemptions are granted by those States 'under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse' (judgment of 17 July 2008, *Flughafen Köln/Bonn*, C-226/07, EU:C:2008:429, paragraph 31).

45 Furthermore, the Court has also held that when exercising their power to lay down the conditions for the exemption from excise duty provided for in Article 14(1) of Directive 2003/96, the Member States must comply with the general principles of law which form part of the legal order of the European Union, including, inter alia, the principle of proportionality (judgment of 2 June 2016, *Polihim-SS*, C-355/14, EU:C:2016:403, paragraph 59).

46 Thus, the refusal by the national authorities to exempt energy products from excise duty on the sole ground that certain conditions that must be complied with under national law in order to obtain that exemption are not fulfilled, without it being checked, on the basis of the evidence provided, whether the substantive requirements necessary for those energy products to be used for purposes giving entitlement to exemption are met, goes beyond what is necessary to ensure the correct and straightforward application of those exemptions and to prevent any evasion, avoidance or abuse (see, by analogy, judgment of 2 June 2016, *Polihim-SS*, C-355/14, EU:C:2016:403, paragraph 62).

47 National legislation, such as that at issue in the main proceedings, which makes the application of the exemption laid down by Article 14(1)(c) of Directive 2003/96 conditional on the fuel supplier concerned possessing a licence authorising it to supply fuel to ships and carrying out certain formalities, runs counter to the general scheme and purpose of that directive as it makes the right to that exemption dependant on formal conditions unrelated to the actual use of the energy products concerned.

48 In addition, such conditions appear in no way necessary to ensure the correct and straightforward application of that exemption and to prevent evasion, avoidance or abuse.

49 Furthermore, it is not apparent from the documents before the Court that the energy products at issue in the main proceedings were used for purposes other than those laid down by Article 14(1)(c) of Directive 2003/96 or that they were supplied in order to benefit fraudulently or abusively from that exemption.

50 On the contrary, according to the order for reference those energy products were used for the purposes of navigation between seaports of EU Member States.

51 Therefore, legislation, such as that at issue in the main proceedings, which makes the application of the exemption laid down by Article 14(1)(c) of Directive 2003/96 conditional on compliance with formal requirements unrelated to the actual use of the energy products concerned nor to the substantive requirements of that provision, calls in question the unconditional nature of the obligation to exempt laid down by that provision and infringes the principle of proportionality.

52 In those circumstances, the answer to the second question is that Article 14(1)(c) of Directive 2003/96 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which excludes the application of the exemption laid down by that provision on the

ground that the supply of energy products for a ship was carried out without complying with the formal requirements laid down by that legislation, even though that supply is in accordance with all the conditions for application laid down by that provision.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 14(1)(c) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, must be interpreted as meaning that the exemption laid down by that provision applies to fuel used to sail a ship, without cargo, from a port of a Member State, in the present case that where that ship was built, to a port of another Member State in order to take on cargo to be transported to a port of a third Member State.**

2. **Article 14(1)(c) of Directive 2003/96 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which excludes the application of the exemption laid down by that provision on the ground that the supply of energy products for a ship was carried out without complying with the formal requirements laid down by that legislation, even though that supply is in accordance with all the conditions for application laid down by that provision.**

[Signatures]