Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

16 January 2025 *

(Reference for a preliminary ruling – Customs Union – Regulation (EU) No 952/2013 – Union Customs Code – Delegated Regulation (EU) 2015/2446 – Implementing Regulation (EU) 2015/2447 – Free zones – Change of customs status of non-Union goods to Union goods – Records of the holder of an authorisation to carry on activities in a free zone – Legitimate expectations – *Res judicata*)

In Case C-376/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa (Senāts) (Supreme Court, Latvia), made by decision of 14 June 2023, received at the Court on 15 June 2023, in the proceedings

'BALTIC CONTAINER TERMINAL' SIA

v

Valsts ieņēmumu dienests

THE COURT (Fifth Chamber),

composed of I. Jarukaitis, President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Gratsias (Rapporteur) and E. Regan, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– 'BALTIC CONTAINER TERMINAL' SIA, by D. Kiseļevs and A. Zieds, valdes locekļi,

– the Latvian Government, by E. Bārdiņš, J. Davidoviča and K. Pommere, acting as Agents,

– the European Commission, by E. Kalniņš and F. Moro, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2024,

* Language of the case: Latvian.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of:

– Article 79(1)(a) and (3)(a), Article 214(1) and Article 215(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1; 'the Union Customs Code');

– Article 178(1)(b) and (c) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015, supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ 2015 L 343, p. 1), and

– the general principles of the protection of legitimate expectations and *res judicata*.

2 The request has been made in proceedings between 'BALTIC CONTAINER TERMINAL' SIA ('Baltic Container') and the Valsts ieņēmumu dienests (Tax Authority, Latvia) concerning the payment of import duty and value added tax (VAT) on goods that exited the free zone of the Port of Riga (Latvia).

Legal context

European Union law

The Union Customs Code

3 Article 5 of the Union Customs Code, entitled 'Definitions', states:

'For the purposes of the Code, the following definitions shall apply:

…

(12) "customs declaration" means the act whereby a person indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure, with an indication, where appropriate, of any specific arrangements to be applied;

…

(16) "customs procedure" means any of the following procedures under which goods may be placed in accordance with the Code:
(a) release for free circulation;
(b) special procedures;
(c) export;

…

(22) “customs status” means the status of goods as Union or non-Union goods;

(23) “Union goods” means goods which fall into any of the following categories:
(a) goods wholly obtained in the customs territory of the [European] Union and not incorporating goods imported from countries or territories outside the customs territory of the Union;
(b) goods brought into the customs territory of the Union from countries or territories outside that territory and released for free circulation;

…

(24) “non-Union goods” means goods other than those referred to in point 23 or which have lost their customs status as Union goods;

…’.

4 Article 79 of that code, entitled ‘Customs debt incurred through non-compliance’, provides:

‘1. For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

(a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;

…

3. In cases referred to under points (a) and (b) of paragraph 1, the debtor shall be any of the following:

(a) any person who was required to fulfil the obligations concerned;

…’.

5 Article 158(1) of the code, entitled ‘Customs declaration of goods and customs supervision of Union goods’, provides:

‘All goods intended to be placed under a customs procedure, except for the free zone procedure, shall be covered by a customs declaration appropriate for the particular procedure.’

6 Article 188 of that code, entitled ‘Verification of a customs declaration’, states:

‘The customs authorities may, for the purpose of verifying the accuracy of the particulars contained in a customs declaration which has been accepted:

(a) examine the declaration and the supporting documents;

(b) require the declarant to provide other documents;

(c) examine the goods;

(d) take samples for analysis or for detailed examination of the goods.'

7 Article 201 of the Union Customs Code, entitled 'Scope and effect', which is part of Title VI, itself headed 'Release for free circulation and relief from import duty', states:

'1. Non-Union goods intended to be put on the Union market or intended for private use or consumption within the customs territory of the Union shall be placed under release for free circulation.

2. Release for free circulation shall entail the following:

(a) the collection of any import duty due;

(b) the collection, as appropriate, of other charges, as provided for under relevant provisions in force relating to the collection of those charges;

…

3. Release for free circulation shall confer on non-Union goods the customs status of Union goods.'

8 Title VII of the code concerns special customs procedures. Chapter 1 of Title VII, which includes Articles 210 to 255 of the code, lays down general provisions relating to such special customs procedures.

9 Article 210 of that code, entitled 'Scope', provides:

'Goods may be placed under any of the following categories of special procedures:

…

(b) storage, which shall comprise customs warehousing and free zones;

…'.

10 Article 211(1)(b) of that code is worded as follows:

'An authorisation from the customs authorities shall be required for the following:

…

(b) the operation of storage facilities for the customs warehousing of goods, except where the storage facility operator is the customs authority itself.'

11 Article 214 of the Union Customs Code, entitled 'Records', provides:

'1. Except for the transit procedure, or where otherwise provided, the holder of the authorisation, the holder of the procedure, and all persons carrying on an activity involving the storage, working or processing of goods, or the sale or purchase of goods in free zones, shall keep appropriate records in a form approved by the customs authorities.

The records shall contain the information and the particulars which enable the customs authorities to supervise the procedures concerned, in particular with regard to identification of the goods placed under that procedure, their customs status and their movements.

…'.

12 Article 215 of the code, entitled 'Discharge of a special procedure', states:

'1. In cases other than the transit procedure and without prejudice to Article 254, a special procedure shall be discharged when the goods placed under the procedure, or the processed products, are placed under a subsequent customs procedure, have been taken out of the customs territory of the Union, or have been destroyed with no waste remaining, or are abandoned to the State in accordance with Article 199.

…'.

13 Article 247 of that code, entitled 'Non-Union goods in free zones', states:

'1. Non-Union goods may, while they remain in a free zone, be released for free circulation or be placed under the inward processing, temporary admission or end-use procedure, under the conditions laid down for those procedures.

In such cases the goods shall not be regarded as being under the free zone procedure.

…'.

Delegated Regulation 2015/2446

14 Article 1 of Delegated Regulation 2015/2446, entitled 'Definitions', states:

'For the purposes of this Regulation, the following definitions shall apply:

…

(22) "Master Reference Number" (MRN) means the registration number allocated by the competent customs authority to declarations or notifications referred to in Article 5(9) to (14) of the [Union Customs] Code, to TIR operations or to proofs of the customs status of Union goods;

…'.

15 Section 3 of Chapter 1 of Title V of that delegated regulation, which includes Articles 123 to 127 thereof, lays down rules on the proof of the customs status of Union goods. Those articles state that proof of the customs status of Union goods may be provided by means of a 'T2L' or 'T2LF' document; an invoice or a transport document indicating the code 'T2L' or 'T2LF' with the signature of the consignor or, failing that, of the person concerned; a maritime manifest; TIR or ATA carnets or 'forms 302' on the transport of goods in accordance with the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, signed in London on 19 June 1951.

16 Article 178 of that delegated regulation, entitled 'Records', provides:

'1. The records referred to in Article 214(1) of the [Union Customs Code] shall contain the following:

…

(b) the MRN or, where it does not exist, any other number or code identifying the customs declarations by means of which the goods are placed under the special procedure and, where the procedure has been discharged in accordance with Article 215(1) of the [Union Customs Code], information about the manner in which the procedure was discharged;

(c) data that unequivocally allows the identification of customs documents other than customs declarations, of any other documents relevant to the placing of goods under a special procedure and of any other documents relevant to the corresponding discharge of the procedure;

…

2. In the case of free zones, the records shall, in addition to the information provided for in paragraph 1, contain the following:

(a) particulars identifying the transport documents for the goods entering or leaving the free zones;

…

3. The customs authorities may waive the requirement for some of the information provided for in paragraphs 1 and 2, where this does not adversely affect the customs supervision and controls of the use of a special procedure.

…'.

Implementing Regulation (EU) 2015/2447

17 Article 226 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ 2015 L 343, p. 558), which is entitled 'Master Reference Number' and lays down rules for applying Article 172 of the Union Customs Code, itself headed 'Acceptance of a customs declaration', provides:

'Except for the cases where [the] customs declaration is lodged orally or by an act deemed to be a customs declaration, or where the customs declaration takes the form of an entry in the declarant's records in accordance with Article 182 of the [Union Customs Code], the customs authorities, shall notify the declarant of the acceptance of the customs declaration and shall provide him with a MRN for that declaration and the date of its acceptance.

This article shall not apply until the respective dates of deployment of the [Automated Export System (AES)], [New Computerised Transit System (NCTS)] and the upgrading of the national import systems referred to in the Annex to [Commission] Implementing Decision 2014/255/EU [of

29 April 2014 establishing the Work Programme for the Union Customs Code (OJ 2014 L 134, p. 46)] are operational.'

Latvian law

Decree No 500 of the Council of Ministers relating to customs warehousing, temporary storage and free zones

18 Paragraph 77 of the Ministru kabineta noteikumi Nr. 500 'Muitas noliktavu, pagaidu uzglabāšanas un brīvo zonu noteikumi' (Decree No 500 of the Council of Ministers relating to customs warehousing, temporary storage and free zones) of 22 August 2017 (*Latvijas Vēstnesis*, 2017, No 173), provides:

'Any person in whose free zone non-Union goods are stored, processed, sold or purchased must keep a record of and identify the goods stored in the free zone.'

19 Paragraph 79 of that decree states:

'The person concerned shall present a monthly report, within the time period specified in the approval, on the non-Union goods brought into and taken out of the free zone and entered into the records in the course of the preceding month, indicating the number of the customs document or the number of the consignment note under which the goods entered the free zone and left it, or shall provide online access to the system for recording goods to officials of the tax authority.'

The Law on Administrative Procedure

20 Article 153(3) of the Administratīvā procesa likums (the Law on Administrative Procedure) of 25 October 2001 (*Latvijas Vēstnesis*, 2001, No 164) provides:

'Facts that are established in the grounds of a judgment which has acquired the force of *res judicata* do not have to be established again when an administrative case involving the same parties is examined.'

Law on the Judiciary

21 Article 16(3) and (4) of the Likums 'Par tiesu varu' (Law on the Judiciary) of 15 December 1992 (*Latvijas Vēstnesis*, 1993, No 1/2) provides:

'(3) Under the conditions laid down by law a judgment shall be binding on a court when it examines other cases related to that case.

(4) Such judgments shall have the force of law, be binding *erga omnes* and shall be treated with the same respect as statutes.'

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

22 The applicant in the main proceedings, Baltic Container, is the holder of an authorisation to carry on the activities of loading, unloading and storing goods in the free zone of the Port of Riga. The tax authority has approved the records, for the purposes of Article 214 of the Union Customs Code, in which Baltic Container registers goods placed in the free zone.

23 As part of a check on the records of goods placed in the free zone, the tax authority found that certain non-Union goods, within the meaning of Article 5(24) of the Union Customs Code, namely plastic rattan baskets, which had arrived at the free zone by sea in three containers on 2 October 2018, 18 December 2018 and 15 January 2019, and which were entered in Baltic Container's records, had exited the Riga free zone on 2 October 2018, 18 December 2018 and 17 January 2019, without the application of a subsequent customs procedure. Consequently, the special customs procedure of storage in a free zone had not been discharged. The tax authority found that the goods at issue had been removed from customs supervision, which, according to the authority, had led to Baltic Container incurring a customs debt under Article 79 of the Union Customs Code.

24 By decision of 19 July 2019, the tax authority ordered Baltic Container to pay import duty and VAT as well as late-payment penalties in respect of those two charges.

25 By judgment of 9 July 2021, the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) dismissed an action brought by Baltic Container against that decision in so far as it concerned the import duty and VAT. The court found that the goods at issue had been taken out of the free zone concerned on the basis of three consignment notes drawn up in accordance with the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol of 5 July 1978, in which the customs status of the goods was indicated by the letter 'C', used to designate 'Union goods' within the meaning of Article 5(23) of the Union Customs Code, which had been certified by the stamp of the customs office and the signature of a customs official ('the CMR consignment notes'). However, after the goods had exited the free zone, the customs officials found that they did not possess documents that justified their change of customs status from 'non-Union goods' to 'Union goods'.

26 It was apparent from the applicable rules that a CMR consignment note may provide proof of the customs status of Union goods only as regards goods which already have that status and not as regards goods which obtain it following a change. Such a change in customs status may be proved by means of a customs declaration referring to a MRN or by a consignment note also referring to a MRN allocated to such a customs declaration. Accordingly, a written reference to 'C status', a signature and a stamp placed on a CMR consignment note cannot, in the absence of a reference to a MRN establishing the application of a customs procedure that confers that customs status on non-Union goods, provide proof of a change of that status to 'Union goods'.

27 Baltic Container lodged an appeal on a point of law against the judgment of 9 July 2021, referred to in paragraph 25 above, with the Augstākā tiesa (Senāts) (Supreme Court, Latvia), which is the referring court.

28 In support of that appeal Baltic Container argues that it has not breached any legal obligation as a holder of an authorisation to carry on activities in a free zone ('the holder'), that it did not knowingly take part in the unlawful exit of the goods at issue from the free zone concerned and that it was not aware, nor could it have been aware, of the unlawful nature of that exit. It had in

fact entered those goods in its records in accordance with the approval delivered by the tax authority, and had transferred them to the transporter in accordance with the CMR consignment notes, which had carried a customs stamp and a reference, signed by a customs official, showing that the customs status of those goods was that of Union goods, which was in line with customs practice. Baltic Container was therefore entitled to expect that there had been discharge of the special customs procedure of storage in a free zone under which those goods had been placed.

29 Baltic Container also relies on a judgment of the Rīgas apgabaltiesas Krimināllietu tiesas kolēģija (Regional Court, Riga (Division of Criminal Cases), Latvia) of 5 February 2021, by which that court annulled the administrative penalties imposed on the applicant in the main proceedings in the form of fines on the basis of the same circumstances as those at issue in the case at hand. That judgment states that Baltic Container had not infringed Article 215(1) of the Union Customs Code since it had not allowed the goods at issue to be taken out of the free zone concerned before applying a subsequent customs procedure. In particular, that court found that there was no reason to consider that a CMR consignment note with a reference to 'C status' and bearing the customs office's stamp and the signature of a customs agent, did not suffice for those goods to be placed under a subsequent customs procedure. That court also found that there existed a customs practice whereby goods were placed under a subsequent customs procedure when the related CMR consignment note carried a reference to 'C status', as certified by the stamp of the customs office.

30 The tax authority argues that when the goods at issue left the free zone concerned Baltic Container had not ensured that they had been placed under a subsequent customs procedure nor had it entered the details provided for under Article 178(1)(b) of Delegated Regulation 2015/2446 in its records. According to the tax authority, non-Union goods may only have their customs status changed to Union goods by the application of a subsequent customs procedure following the making of a customs declaration identified by a MRN. Baltic Container should thus have referred in its records to a MRN which allowed the identification of the customs declaration which had caused the change in customs status of the goods in question from non-Union to Union goods; the reference to 'C status' on the CMR consignment notes was not sufficient for that purpose.

31 The referring court doubts whether Baltic Container is able to check the customs status of the goods at issue on the basis of a MRN on the CMR consignment notes and to verify the authenticity of a T2L document, on the basis of which a customs authority of another Member State may have changed that status, since it is not clear that that company had access to the data bases required for that purpose. Furthermore, at the time of the operations at issue in the main proceedings, the tax authority's practice was to carry out further customs checks on all Union goods before their exit from the port zone concerned, while CMR consignment notes carried, as proof of the customs status of Union goods, a reference to that status signed by the customs official and bearing the stamp of the customs checkpoint.

32 The referring court also explains that the document issued by the Latvian customs authorities to approve the form of the records held by Baltic Container states that the latter must hold those records in an online system and allow the customs authorities to have access to that system. According to that approval document, Baltic Container should keep the originals or copies of the transport documents accompanying goods entering and exiting the free zone concerned. If those goods are brought into or taken out of that free zone on the basis of a customs declaration or a re-export declaration with a MRN, Baltic Container, as a holder, is not required to keep copies of that MRN for the goods in question. In order to avoid the duplication of information in the

customs and terminal data bases, that approval document was subsequently modified so as to provide that where a consignment has been declared or placed under a customs procedure and a MRN has been allocated to it, there is no need to keep copies of the transport documents.

33 The referring court considered that it was necessary in those circumstances to ask the Court of Justice about the interpretation of Union customs legislation on the conditions for discharging the customs procedure of storage in a free zone and on the obligations falling on a company such as Baltic Container with regard to the information to be kept in its records and with regard to the possible verification of a change of customs status. If Union customs rules were to be interpreted as meaning that a change in customs status may not be carried out in accordance with the methods put into effect by Baltic Container, the referring court also enquires whether the latter may base a legitimate expectation on the practice of the customs authorities of indicating the customs status of goods leaving a free zone on the CMR consignment notes.

34 The referring court also asks whether the principle of *res judicata*, recognised in national and EU law, prevents it from reaching a different conclusion to that arrived at by the Rīgas apgabaltiesas Krimināllietu tiesas kolēģija (Regional Court, Riga (Division of Criminal Cases)), in a judgment of 5 February 2021, which has become final, which states that Baltic Container is not guilty of non-compliance, for the purposes of Article 79 of the Union Customs Code, with the obligations falling on it under Union customs legislation.

35 In those circumstances, the Augstākā tiesa (Senāts) (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Under Article 178(1)(b) and (c) of Delegated Regulation 2015/2446, in conjunction with Article 214(1) of the Union Customs Code, is it possible to discharge the “free zone” special procedure without having included in the electronic records system the [MRN] which identifies the customs declaration by which the goods are placed under the subsequent customs procedure?

(2) Under Articles 214(1) and 215(1) of the Union Customs Code and Article 178(1)(b) and (c) of Delegated Regulation 2015/2446, is it possible for the holder of the “free zone” special procedure to discharge that procedure relying solely on a note concerning the customs status of the goods made by a customs authority official on the transport document for the goods (CMR), without checking for itself the validity of the customs status of those goods?

(3) If the answer to question 2 is negative, what level of verification in accordance with Articles 214(1) and 215(1) of the Union Customs Code and Article 178(1)(b) and (c) of Delegated Regulation 2015/2446 is sufficient in order to consider the “free zone” special procedure to have been correctly discharged?

(4) Was the holder of the “free zone” special procedure entitled to have a legitimate expectation as a result of the confirmation by the customs authorities that the customs status of the goods had changed from “non-Union goods” to “Union goods”, even though that confirmation did not indicate the reason for that change of status of the goods or any information which allowed that reason to be verified?

(5) If the answer to question 4 is negative, may the fact that, in other proceedings brought before a national court, it was ruled, by final judgment, that, in accordance with the procedures laid down by the customs authorities, the holder of the customs procedure had not committed any infringement with regard to the [free zone special] customs procedure constitute a ground for exemption from the customs debt arising under Article 79(1)(a) and 3(a) of the Union Customs Code, in the light of the principle of *res judicata* laid down in national law and EU law?'

Consideration of the questions referred

The first question

36 By the first question, the referring court asks in essence whether Article 214(1) of the Union Customs Code and Article 178(1)(b) and (c) of Delegated Regulation 2015/2446 must be interpreted as not precluding the holder from showing in its records that the free zone customs procedure under which the goods concerned were placed has been discharged, without referring, in those records, to the MRN that identifies the customs declaration that corresponds to the placing of those goods under a subsequent customs procedure.

37 The first subparagraph of Article 214(1) of the Union Customs Code obliges the holder to keep appropriate records in a form approved by the customs authorities. In accordance with the second subparagraph of Article 214(1), those records are to contain the information and the particulars which enable the customs authorities to supervise the procedure concerned, in particular with regard to identification of the goods placed under that procedure, their customs status and their movements.

38 The scope of that obligation is clarified in Article 178(1) of Delegated Regulation 2015/2446, which lists the information that those records are to contain and which sets out, inter alia, the circumstances in which the holder is required to include a MRN in those records.

39 As regards, more specifically, Article 178(1)(b), it lays down two distinct obligations, namely that the records must contain, first, the MRN or, where it does not exist, any other number or code identifying the customs declarations by means of which the goods are placed under the special procedure and, second, where the procedure has been discharged, information about the manner in which the procedure was discharged.

40 However, as regards the first of those obligations, it should be observed, as did the Advocate General in point 41 of her Opinion, that, in accordance with Article 158(1) of the Union Customs Code, the placing of goods under the free zone special customs procedure does not require a customs declaration, with the result that no MRN is provided at the time of that placing.

41 As regards the second of those obligations, it concerns discharge of the special procedure under which the goods concerned have been placed. In accordance with Article 215(1) of the code, the free zone special customs procedure may be discharged in four different ways. First, when the goods subject to that procedure are placed under a subsequent customs procedure, second, when they have been taken out of the customs territory of the Union, third, when they have been destroyed with no waste remaining, and fourth, when they are abandoned to the State.

42 In the case at hand, the referring court has stated that the three cargoes at issue in the main proceedings were placed under the free zone special customs procedure as non-Union goods and left it shortly thereafter as Union goods. Such a change in the customs status of the goods at issue may only occur following their placing under the customs procedure of release for free circulation.

43 Indeed, in accordance with Article 201(3) of the Union Customs Code, non-Union goods which are released for free circulation acquire the customs status of Union goods. It is apparent, moreover, from Article 247(1) of the code, that non-Union goods may be released for free circulation while they remain in a free zone.

44 To that end, the goods concerned are to be covered by a customs declaration, in accordance with Article 158(1) of the Customs Code, to which a MRN is allocated, with the meaning of Article 1(22) of Delegated Regulation 2015/2446, under the conditions set out in Article 226 of Implementing Regulation 2015/2447.

45 In accordance with the first paragraph of Article 226 of Implementing Regulation 2015/2447, except for where the customs declaration is lodged orally or by an act deemed to be such a declaration, or where it takes the form of an entry in the declarant's records, the customs authorities are to provide the latter person with a MRN for that declaration.

46 It is true that the second paragraph of Article 226 states that that article is not to apply until the dates, respectively, of deployment of the AES, NCTS and the upgrading of the national import systems referred to in the Annex to Implementing Decision 2014/255.

47 However, it is common ground that the first question is based on two implicit premisses. The first is that the facts of the main proceedings do not fall within one of the three specific cases set out in the first paragraph of Article 226, in which no MRN is allocated. The second implicit premiss is that those facts are subsequent to the date of deployment of the AES and NCTS and that of the upgrading of the Latvian import systems referred to in the Annex to Implementing Decision 2014/255.

48 Consequently, this question should be answered by departing from the premiss that, in contrast to the initial placing of the goods concerned under the free zone special procedure, the subsequent placing of those goods under the customs procedure of free circulation should have given rise to a customs declaration and that, as a result, at the time of discharge of the free zone procedure, the declarant should have been in possession of a MRN identifying that declaration.

49 That said, it should be observed that the second obligation under Article 178(1)(b) of Delegated Regulation 2015/2446 merely requires that the records of the holder contain information about the manner in which the procedure was discharged, without requiring the inclusion of a MRN in those records.

50 Similarly, as regards Article 178(1)(c) of that delegated regulation, it requires that the holder's records contain data that unequivocally allows the identification of the documents covered by that provision, without requiring the inclusion of a MRN therein.

51 It follows that that provision does not oblige the holder to refer in its records to the MRN that identifies the customs declaration giving rise to the discharge of the special customs procedure of storage in a free zone by means of the placing of the goods concerned under the customs procedure of release for free circulation.

52 The answer to the first question is therefore that Article 214(1) of the Union Customs Code and Article 178(1)(b) and (c) of Delegated Regulation 2015/2446 must be interpreted as not precluding the holder from including information in its records about the manner in which the free zone customs procedure was discharged and data that allows the identification of any documents, other than a customs declaration, relevant to discharge, without referring, in those records, to the MRN that identifies the customs declaration that corresponds to the placing of the goods concerned under a subsequent customs procedure.

The second and third questions

53 By the second and third questions, which should be examined together, the referring court asks in essence whether Article 214(1) and Article 215(1) of the Union Customs Code and Article 178(1)(b) and (c) of Delegated Regulation 2015/2446 must be interpreted as:

– precluding the holder from entering, in its records, the discharge of the free zone special customs procedure with respect to certain goods and, at that time, from confining itself to including information therein relating solely to a CMR consignment note accompanying those goods on their exit from the free zone concerned, which indicates the customs status of those goods, certified by the stamp of the customs office and signed by a customs official;

– requiring that holder to verify the accuracy of that indication.

54 In the first place, it is apparent from the information provided by the referring court that CMR consignment notes which refer in writing to 'C status', certified by the customs office's stamp and signed by a customs agent, do indeed indicate that the customs status of the goods concerned has changed from that of 'non-Union goods' to that of 'Union goods'. However, those consignment notes do not contain sufficiently precise information on the exact manner in which the free zone special customs procedure has been discharged. It follows that the inclusion in the holder's records of a reference to such consignment notes does not satisfy either the second obligation laid down in Article 178(1)(b) of Delegated Regulation 2015/2446, to include information in the records about the manner in which the procedure at issue was discharged, nor the obligation set out in Article 178(1)(c) of Delegated Regulation 2015/2446, to include data in those records which allows the identification of any documents relevant to the corresponding discharge.

55 That said, account must be taken of the fact, as pointed out by the Advocate General in point 44 of her Opinion, that Article 178(3) states that the customs authorities may waive the requirement for some of the information provided for in paragraphs 1 and 2 of Article 178, where this does not adversely affect the customs supervision and controls of the use of a special procedure. Accordingly, the referring court must assess whether the Latvian customs authorities have, in accordance with that Article 178(3), waived the requirement, for the holder, to include information in its records about the manner in which the free zone special customs procedure has been discharged as well as data which allows the identification of any documents relevant to that discharge.

56 It thereby follows that the holder is able to comply with its obligations to keep records concerning the discharge of the free zone special customs procedure under which non-Union goods have been placed by including information, in its records, that relates to a CMR consignment note accompanying those goods on their exit from the free zone concerned, showing their customs status in the form of a reference affixed by the customs authorities, in so far as those authorities

have waived the requirement to provide more specific information on the manner in which discharge of that special customs procedure is carried out, pursuant to Article 178(3) of Delegated Regulation 2015/2446, which it is for the referring court in the main proceedings to ascertain.

57 In the second place, as regards verification of the customs status indication given on CMR consignment notes, it should be observed, as stated by the Advocate General in point 55 of her Opinion, that the Customs Code does not refer to any particular obligation, for the holder, to verify the accuracy of the particulars or other indications on the documents that are communicated to it.

58 It is true that, as a professional operator, the holder must display a minimum level of vigilance. However, in so far as it is not evident to any professional operator, on examining a consignment note, that the indication which is given by it may be suspect, which, in the main proceedings, it is for the referring court to determine, while taking account of the fact that the reference to the status of the goods concerned on the CMR consignment notes was in addition certified by the stamp of the customs office and signed by a customs official, the holder cannot be criticised for not verifying the accuracy of that reference.

59 Consequently, the answer to the second and third questions is that Article 214(1) and Article 215(1) of the Union Customs Code and Article 178(1)(b) and (c) of Delegated Regulation 2015/2446 must be interpreted as:

– not precluding the holder from entering, in its records, the discharge of the free zone special customs procedure with respect to certain goods and, at that time, from confining itself to including information therein relating solely to a CMR consignment note accompanying those goods on their exit from the free zone concerned, which indicates the customs status of those goods, certified by the stamp of the customs office and signed by a customs official, in so far as the customs authorities have authorised that method of discharge pursuant to Article 178(3);

– not requiring that holder to verify the accuracy of that indication.

The fourth question

60 By the fourth question, the referring court asks in essence whether the principle of the protection of legitimate expectations must be interpreted as meaning that a customs status indication as Union goods given on a CMR consignment note accompanying those goods on their exit from a free zone, certified by the stamp of the customs office and signed by a customs official, may cause the holder to entertain such an expectation as to the validity of a change in the customs status of those goods under customs legislation, even though that note does not state the basis for that change.

61 It should be observed as a preliminary point that this question is raised if the referring court were to find, in the light of the answer to the second and third questions, that the Latvian customs authorities have not adopted a formal act, pursuant to Article 178(3) of Delegated Regulation 2015/2446, to waive the requirements set out in Article 178(1)(b) and (c) with respect to the information and data that unequivocally allow the identification of documents relating to the discharge of the special customs procedure which must be held in the holder's records.

62 In addition, since, as stated in paragraph 57 above, the Customs Code does not refer to any particular obligation for the holder to verify the accuracy of the particulars contained in the documents communicated to it, the referring court is asking, in essence, about the circumstances in which the holder may rely on a legitimate expectation that its records comply with the obligations flowing from Article 178 of Delegated Regulation 2015/2446.

63 In those circumstances, as the Advocate General observed in point 69 of her Opinion, the question arises, in particular, as to the circumstances in which an established administrative practice, consisting of affixing a signed reference and a stamp on CMR consignment notes accompanying goods on their exit from a free zone, which indicate that those goods have acquired the customs status of Union goods, may lead to a legitimate expectation on the part of the holder as to the fact that the customs authorities, pursuant to Article 178(3) of Delegated Regulation 2015/2446, have waived the requirement to supply some of the information provided for in paragraphs 1 and 2 of that article, and that the inclusion of information in the holder's records that relates solely to CMR consignment notes, thus labelled by the customs authorities, is sufficient.

64 In accordance with established case-law, the principle of the protection of legitimate expectations forms part of the EU legal order and is binding on every national authority responsible for applying EU law (judgment of 14 July 2022, *Sense Visuele Communicatie en Handel*, C-36/21, EU:C:2022:556, paragraph 26 and the case-law cited).

65 Accordingly, when implementing the provisions in the Customs Code, the national authorities are required to observe that principle. The right to rely on that principle extends, as a corollary of the principle of legal certainty, to any individual in a situation where an authority has caused him or her to entertain legitimate expectations. In whatever form it is given, information which is precise, unconditional and consistent and comes from authorised and reliable sources is capable of giving rise to such expectations. However, a person may not plead breach of the principle of the protection of legitimate expectations unless he or she has been given precise assurances by the authorities (see, to that effect, judgment of 4 October 2024, *Lithuania and Others* v *Parliament and Council, (Mobility package)*, C-541/20 to C-555/20, EU:C:2024:818, paragraph 616). Furthermore, the conduct of a national authority responsible for applying EU law, which acts in breach of a provision of that law or of national law passed pursuant to the latter, cannot give rise to a legitimate expectation on the part of a trader (see, to that effect, judgment of 14 July 2022, *Sense Visuele Communicatie en Handel*, C-36/21, EU:C:2022:556, paragraphs 27 and 28 and the case-law cited).

66 In that regard, it must be stated that Article 178(3) of Delegated Regulation 2015/2446 does not lay down any specific procedure by which the customs authorities may waive the requirement for some of the information provided for in paragraphs 1 and 2 of that article. In those circumstances, an established administrative practice – whereby the inclusion of information in the holder's records related to a CMR consignment note accompanying the goods concerned on their exit from a free zone, carrying an indication of the customs status, certified by the stamp of the customs office and signed by a customs official, is considered to be sufficient for the purpose of discharging the special customs procedure – does not infringe Article 178(1)(b) and (c) and 178(3) of Delegated Regulation 2015/2446.

67 Therefore, where such a practice exists, the holder may rely on a legitimate expectation that its records are in compliance with Article 178 of Delegated Regulation 2015/2446. That may be the case, inter alia, if the customs authorities have previously shown the holder, in a precise,

unconditional and consistent manner, that the inclusion of data in its records allowing the identification of a CMR consignment note carrying that indication was sufficient to consider that it had complied with its obligations under that article. In such a situation, the holder may have a legitimate expectation that the customs authorities have, in accordance with Article 178(3) of Delegated Regulation 2015/2446, waived the requirement to provide some of the information in paragraph 1 of that article.

68 Consequently, the answer to the fourth question is that the principle of legitimate expectations must be interpreted as meaning that the holder may base such an expectation, that its records comply with Article 178(1)(b) and (c) of Delegated Regulation 2015/2446, on an established administrative practice of the customs authorities from which it is apparent, in a precise and unconditional manner, that the inclusion in those records solely of information related to a CMR consignment note accompanying the goods concerned on their exit from a free zone, carrying a written indication of customs status, certified by the stamp of the customs office and signed by a customs agent, is sufficient to comply with the obligations flowing from that provision.

The fifth question

69 By the fifth question, the referring court asks in essence whether EU law precludes the application of a national provision on the authority of *res judicata* which obliges a Member State court to annul a customs debt owed by the holder pursuant to Article 79 of the Union Customs Code on the ground that the court of that Member State with jurisdiction to review the lawfulness of an administrative penalty imposed on that holder, for the same customs operations and the same reasons as those which led to that debt, has found, in a court ruling that has become final, that the holder has not failed to fulfil the obligations on it under Union customs law.

70 It should be pointed out at the outset that the answer to this question is being given if the referring court were to consider, first, that the customs authorities have not formally waived the holder's relevant obligations, pursuant to Article 178(3) of Delegated Regulation 2015/2446, and, second, that the holder may not, in the circumstances of the present case, rely on a legitimate expectation that its records comply with Article 178(1)(b) and (c) of Delegated Regulation 2015/2446.

71 Having clarified that point, it should be observed that the principle of *res judicata* is of importance both in the EU legal order and in national legal systems. In order to ensure stability of the law and legal relations and the sound administration of justice, it is important that judicial decisions which have become final after all rights of appeal have been exhausted or after expiry of the time limits provided for in that regard can no longer be called into question (see, to that effect, judgment of 7 April 2022, *Avio Lucas*, C-116/20, EU:C:2022:273, paragraph 92 and the case-law cited).

72 Therefore, EU law does not require a national court to disapply domestic rules of procedure conferring the authority of *res judicata* on a ruling, even if to do so made it possible to remedy a domestic situation which is incompatible with EU law. EU law does not therefore require a national judicial body, in order to take account of the interpretation of a relevant provision of EU law adopted by the Court, automatically to revisit a decision that has acquired the authority of *res judicata* (judgment of 2 April 2020, *CRPNPAC and Vueling Airlines*, C-370/17 and C-37/18, EU:C:2020:260, paragraphs 89 and 90 and the case-law cited).

73 In the absence of EU legislation in this area, the rules implementing the principle of *res judicata* are a matter for the national legal order, in accordance with the principle of the procedural autonomy of the Member States. Those rules must not, however, be less favourable than those

governing similar domestic situations (the principle of equivalence) nor may they be framed in such a way as to make it in practice impossible or excessively difficult to exercise the rights conferred by the EU legal order (the principle of effectiveness) (judgment of 7 April 2022, *Avio Lucos*, C-116/20, EU:C:2022:273, paragraph 100 and the case-law cited).

74 In addition, every case in which the question arises as to whether a national procedural provision makes the application of EU law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its operation and its particular features, viewed as a whole, before the various national bodies. For those purposes, account must be taken, where appropriate, of the basic principles of the domestic judicial system, such as protection of the rights of the defence, the principle of legal certainty and the proper conduct of procedure (judgment of 2 April 2020, *CRPNPAC and Vueling Airlines*, C-370/17 and C-37/18, EU:C:2020:260, paragraph 93).

75 It has thus been held that the principle of effectiveness precludes an interpretation of the principle of *res judicata* which would oblige a national court to repeat an erroneous interpretation and application of EU law owing merely to the fact that, even though the subject matter differs, the case before it concerns the same legal relationship or the same fundamental issue decided by a ruling that has become final. Such obstacles to the effective application of the rules of EU law cannot reasonably be justified by the principle of legal certainty and must therefore be considered to be contrary to the principle of effectiveness (see, to that effect, judgments of 3 September 2009, *Fallimento Olimpiclub*, C-2/08, EU:C:2009:506, paragraphs 29 to 31; of 2 April 2020, *CRPNPAC and Vueling Airlines*, C-370/17 and C-37/18, EU:C:2020:260, paragraphs 94 to 96; and of 7 April 2022, *Avio Lucos*, C-116/20, EU:C:2022:273, paragraphs 102 to 104).

76 However, the referring court is not being asked to repeat an erroneous interpretation and application of EU law resulting from a judicial decision that has ruled with final effect on a legal relationship or fundamental issue that is at stake in proceedings that have a different subject matter.

77 First, the case decided by the Rīgas apgabaltiesas Krimināllietu tiesas kolēģija (Regional Court, Riga (Division of Criminal Cases)) and the case in the main proceedings relate to the same customs operations.

78 Second, it is indeed true that non-compliance with a customs obligation may lead to several legal consequences, such as a main customs debt, composed of import duty and VAT, and also of the related penalties. It nevertheless remains the case, as is apparent from the request for a preliminary ruling, that both the main debt and the related late-payment penalties have been incurred by the holder on the basis of one and the same decision by the tax authority and, in any event, have arisen from alleged non-compliance with obligations, related to the holder's records, that are the same as those concerned by the case adjudicated by the Rīgas apgabaltiesas Krimināllietu tiesas kolēģija (Regional Court, Riga (Division of Criminal Cases)).

79 In those circumstances, in so far as Latvian law lays down a rule that administrative courts are bound by the decisions of criminal courts, a challenge to that alleged non-compliance, raised in court actions concerning the same customs operations, should in principle be decided in a uniform manner. Thus the principle of effectiveness cannot prevent observance of the *res judicata* force of a judicial ruling that has become final on condition that such observance does

not produce any effects with regard to proceedings other than those brought against the lawfulness of one and the same administrative decision or with regard to the legal classification of facts concerning the same customs operations.

80 Consequently, the answer to the fifth question is that EU law does not preclude the application of a national provision concerning the authority of *res judicata* which obliges a Member State court to annul a customs debt owed by the holder pursuant to Article 79 of the Union Customs Code on the ground that the court of that Member State with jurisdiction to review the lawfulness of an administrative penalty imposed on that holder, for the same customs operations and for the same reasons as those which led to that debt, has found, in a judicial ruling that has become final, that the holder did not fail to fulfil the obligations falling on it under Union customs law.

Costs

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

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

1. **Article 214(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code and Article 178(1)(b) and (c) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code**

   must be interpreted as not precluding the holder of an authorisation to carry on activities in a free zone from including information in its records about the manner in which the free zone customs procedure was discharged and data that allows the identification of any documents, other than a customs declaration, relevant to discharge, without referring, in those records, to the master reference number that identifies the customs declaration that corresponds to the placing of the goods concerned under a subsequent customs procedure.

2. **Article 214(1) and Article 215(1) of Regulation No 952/2013 and Article 178(1)(b) and (c) of Delegated Regulation 2015/2446**

   must be interpreted as

   – **not precluding the holder of an authorisation to carry on activities in a free zone from entering, in its records, the discharge of the free zone special customs procedure with respect to certain goods and, at that time, from confining itself to including information therein relating solely to a consignment note drawn up in accordance with the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol of 5 July 1978, accompanying those goods on their exit from the free zone concerned, which indicates the customs status of those goods, certified by the stamp of the customs office and**

signed by a customs official, in so far as the customs authorities have authorised that method of discharge pursuant to Article 178(3);

– **not requiring that holder of an authorisation to carry on activities in a free zone to verify the accuracy of that indication.**

3. **The principle of legitimate expectations**

must be interpreted as meaning that the holder of an authorisation to carry on activities in a free zone may base such an expectation, that its records comply with Article 178(1)(b) and (c) of Delegated Regulation 2015/2446, on an established administrative practice of the customs authorities from which it is apparent, in a precise and unconditional manner, that the inclusion in those records solely of information relating to a consignment note drawn up in accordance with the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol of 5 July 1978, accompanying the goods concerned on their exit from a free zone, carrying a written indication of customs status, certified by the stamp of the customs office and signed by a customs agent, is sufficient to comply with the obligations flowing from that provision.

4. **EU law does not preclude the application of a national provision concerning the authority of *res judicata* which obliges a Member State court to annul a customs debt owed by the holder of an authorisation to carry on activities in a free zone pursuant to Article 79 of Regulation No 952/2013 on the ground that the court of that Member State with jurisdiction to review the lawfulness of an administrative penalty imposed on that holder of an authorisation to carry on activities in a free zone, for the same customs operations and for the same reasons as those which led to that debt, has found, in a judicial ruling that has become final, that the holder did not fail to fulfil the obligations falling on it under Union customs law.**

[Signatures]