Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 2 March 2017 [1]

Case C-151/16

'Vakarų Baltijos laivų statykla' UAB
Other party:
Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos(Request for a preliminary ruling

from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania))

(Request for a preliminary ruling — Law on excise duty — Exemption for the supply of energy products — Use as fuel for the purposes of navigation — Requirements laid down by Member States for the purpose of ensuring correct and straightforward application — Insufficient evidence — Proportionality — Application of principles from VAT law)

I. **Introduction**

1. In this case the Court is called upon to deal with a special exemption from excise duty laid down in EU law. The exemption is intended to grant relief from excise duty on fuel for commercial navigation within European Union waters. However, that exemption has not been claimed by a shipping company, but by a ship builder. The ship builder sold a ship together with some fuel to a shipping company. It did not have the necessary licences under national law to be able to supply fuel exempt from duty.

2. Two fundamental questions arise in this regard. First, it is necessary to clarify the scope *ratione personae* of the exemption. It must thus be determined whether a builder or supplier of a ship is also covered by the concession granted to navigation in Article 14(1)(c) of Directive 2003/96/EC. Second, it is necessary to flesh out the significance of evidential requirements in the context of a rule granting a concession in the law on excise duty. In this regard, a tendency can be observed in two judgments of the Ninth Chamber of the Court [2] also to apply the case-law adopted in respect of VAT law to the law on excise duty.

1 Original language: German.

2 Judgments of 2 June 2016, *Polihim-SS* (C-355/14, EU:C:2016:403, paragraph 59 et seq.), and of 2 June 2016, *ROZ-ŚWIT* (C-418/14, EU:C:2016:400, paragraphs 20 and 21, 35 and 36).

II. **Legislative framework**

A. **EU law**

3. Article 7(1) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC ('Directive 2008/118') states:

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

4. Article 41 of Directive 2008/118 provides as follows:

'Until the Council has adopted Community provisions on stores for boats and aircraft, Member States may maintain their national provisions concerning exemptions for such stores.'

5. Article 6 of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, as amended most recently by Council Directive 2004/75/EC of 29 April 2004 ('Directive 2003/96'), includes the following option for the Member States:

'Member States shall be free to give effect to the exemptions or reductions in the level of taxation prescribed by this Directive either:

(a) directly,

(b) by means of a differentiated rate, or

(c) by refunding all or part of the amount of taxation.'

6. Article 14(1)(c) of Directive 2003/96 states:

'1. In addition to the general provisions set out in Directive 92/12/EEC 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. …'

B. **National law**

7. The goods subject to excise duty, the application of excise duty to those goods and the special aspects of the control and transportation of such goods are governed by the Akcizų įstatymas (Lithuanian Law on excise duty), as amended by Law No XI 722 of 1 April 2010. Under Article 19(1)(5) of the Law on excise duty, 'excise goods on which excise duty is payable … shall be

granted an excise duty exemption if they … are supplied for the provisioning of passenger and/or cargo ships … on international routes'. In addition, Article 43(1)(2) of that Law provides that excise relief is also to apply to 'ship fuel supplied for the purposes of navigation within European Union waters (including fishing), other than private pleasure craft'.

III. **The main proceedings**

8. The appellant is an undertaking established in Lithuania which is engaged in, among other things, the construction of various types of seagoing vessels. On 7 October 2009, it entered into a contract to build a cargo ship ('the ship') for a client.

9. While constructing the ship, the appellant purchased 80 600 litres of fuel from a supplier. The supplier delivered the fuel directly into the ship's fuel tanks. It calculated the excise duty for the fuel, which was paid by the appellant when making payments against the VAT invoices issued to it. The appellant consumed some of that fuel when carrying out tests on the ship.

10. On 6 June 2013, the appellant transferred to the client ownership as well as all rights and interests to the ship. The ship was transferred to the client, together with the equipment and stores present on board, including 73 030 litres of fuel remaining after the tests carried out on the ship. The client was obliged under the contract to purchase that fuel at its cost price, which was part of the total purchase price.

11. Following the transfer of ship to the client, the client arranged for it to sail, under its own power and without any (commercial) cargo, from the shipyard to the port of Stralsund in Germany. There the ship took on its first cargo, to be transported for consideration to Santander (Spain).

12. Shortly after the sale of the ship (on 22 July 2013), the appellant presented a request for a refund of the excise duty in respect of the fuel sold to the client with the ship. By the contested decision of 21 August 2013, the tax authority ('the respondent') refused the request for a refund. It based that decision primarily on the ground that the appellant had failed to complete recording documents properly. In addition, the appellant did not have a licence (permit) to supply fuel to ships issued in accordance with the applicable procedure under national law.

13. After reviewing the complaint lodged against the abovementioned decision, in its Decision No S 185 (7 195/2013) of 28 November 2013, the Commission on Tax Disputes annulled the decision by the tax authority. It based its decision, inter alia, on the fact that the non-compliance with the requirements was formal in nature and could not prevent the appellant from being entitled to a refund of duty.

14. The respondent brought an action against that decision at the apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania), which, by judgment of 9 December 2014, upheld the action because the appellant did not have a valid licence/permit to carry out the supply in question. The appellant has now in turn lodged an appeal against that ruling.

IV. **Request for a preliminary ruling and procedure before the Court**

15. On 14 March 2016, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), before which the case is now pending, made reference to the Court for a preliminary ruling on the following questions:

'(1) Should 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, as last amended by Council Directive 2004/75/EC of 29 April 2004, 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?'

16. In the proceedings before the Court, Lithuania, the Republic of Poland and the European Commission submitted written observations.

V. **Legal assessment**

A. **The first question**

17. By its first question the referring court is seeking to ascertain how Article 14 of Directive 2003/96 is to be interpreted in the present case of an 'empty run' of a commercial vessel. However, because the seller of the ship in the preliminary ruling proceedings requests a refund of excise duty, it is necessary to refine the question referred. The referring court is thus seeking to ascertain whether the seller of a ship may claim a refund of excise duty. The question refers to the refund in respect of the fuel used by the purchaser of the ship to head for a port in which the ship received its first cargo.

18. It is thus only material in the present case whether the sale of a ship together with fuel by the builder of the ship (seller) requires a refund of excise duty to the seller where 'only' the purchaser of the ship might use the fuel for the purposes of navigation (in this case for an 'empty run').

19. Such a refund cannot be precluded by national law on the basis of Article 41 of Directive 2008/118 (see section 1 below). However, a ship builder which supplies a ship together with fuel which has already been released for free circulation does not fall within either the scope *ratione personae* (a) or the scope *ratione materiae* (b) of the exemption under Article 14 of Directive 2003/96 (see section 2 below).

1. ***Relationship between Article 41 of Directive 2008/118 and Article 14 of Directive 2003/96***

20. In its observations, the Lithuanian Government takes the view that Article 41 of Directive 2008/118 is potentially applicable and for that reason the exemption could be frustrated by the requirements of national law. On the other hand, Article 14 of Directive 2003/96 lays down a mandatory exemption. It is therefore first necessary to clarify the relationship between these two provisions.

21. Nevertheless, Article 41 of Directive 2008/118 contains 'only' a kind of transitional arrangement for exempt 'stores for boats and aircraft' under national law until the Council has adopted Community provisions for such stores.

22. There may be areas for which EU rules still do not exist. There is nevertheless explicit and mandatory provision for the exemption for 'stores' of energy products for use as fuel for the purposes of navigation in Article 14(1)(c) of Directive 2003/96, to which Article 1 of Directive 2008/118 even refers. For this reason, Article 41 of Directive 2008/118 cannot (any longer) be intended to cover the case of the exempt supply of fuel for use for the purposes of navigation.

23. Rather, as the Lithuanian Government also rightly states, Article 14 of Directive 2003/96 is the more specific provision. Thus, as the Commission submits, Article 41 of Directive 2008/118 is not relevant in the present case, but only Article 14 of Directive 2003/96.

2. ***Scope of the exemption under Article 14 of Directive 2003/96***

24. To qualify for the requested refund, a ship builder would have to fall within the scope of the exemption under Article 14(1)(c) of Directive 2003/96. That is not the case.

(a) ***Scope ratione personae of the exemption***

25. As is clear from Article 7 of Directive 2008/118, excise duty — unlike VAT for example — does not become chargeable at each level of trade, but only upon release for consumption.

26. In this regard, Article 6 of Directive 2003/96 makes clear that Member States are free to give effect to the exemptions prescribed by that directive either directly (point a) or indirectly, by refunding all or part of the amount of taxation (point c). A combined reading of Article 6(a) and (c) of Directive 2003/96 shows that point c means a refund (or more precisely a reimbursement [3]) of duty borne by a third party, for which it is not itself liable. [4]

27. If Article 14(1)(c) of Directive 2003/96 exempts the *supply* of energy products *for use* as fuel, then, having regard to Article 6 of Directive 2003/96, there are thus two possibilities for exemption. There is the option of either a (direct) exemption of the supplier on grounds of release for consumption (*supply*) or an (indirect) exemption of the subsequent *use* of the energy products.

28. The appellant in the main proceedings requests the 'refund' of the excise duty for which the supplier is liable. Only the second possibility of an indirect exemption therefore applies.

3 The terminology in the German rules on tax liability is more precise in this regard. '*Erstattung*' ('refund') usually means repayment of tax to the person liable (two-person relationship), whereas '*Vergütung*' ('reimbursement') describes payment of the amount of tax to a third party who is not liable for the tax but has borne it financially (three-person relationship).

4 The refund of tax payable by the taxable person (here the supplier of the fuel) is already covered as a direct exemption by Article 6(a) of Directive 2003/96.

29. It is not clear from the order for reference whether Lithuania actually availed itself of the possibility of an indirect exemption accorded in Article 6(c) of Directive 2003/96. The Supply Rules mentioned in the order for reference would seem primarily to cover only release for consumption. This is at least suggested by the licence requirements regulated by the Supply Rules.

30. However, it is assumed hereinafter, with regard to the answer to the questions referred, that the exemption provided for in national law also encompasses an indirect exemption (refund of excise duty to the user of the energy products). Otherwise the question would not make any sense. That exemption would then have to provide that the duty paid by the supplier is also reimbursed to a third party (refunded within the meaning of Article 6(c) of Directive 2003/96) if the conditions for exemption under Article 14(1)(c) of Directive 2003/96 are satisfied.

31. In the present case, the supply of fuel to the ship builder by the supplier was treated as taxable. This was correct from the point of view of EU law, as is clear from a comparison of Article 14(1)(c) and Article 15(1)(j) of Directive 2003/96. Accordingly, the supply of fuel for use in the field of the manufacture and testing of ships does not come under use as fuel for the purposes of commercial navigation within Community waters under Article 14(c) of Directive 2003/96. Rather, Member States may exempt the supply of fuel for use in the field of the manufacture and testing of ships under Article 15(1)(j) of Directive 2003/96, but are not required to do so. Lithuania has evidently not availed itself of the possibility for exemption.

32. According to the facts presented, on the sale of the completed ship together with the remaining fuel, duty was not imposed (again) on the supply of the fuel. This too is logical. The fuel was already released for consumption. The exemption is thus claimed not by the person liable to pay the duty, but by a third party.

33. Without the ship builder being itself liable to tax at the time of the supply of the fuel to the purchaser, however, an exemption of the supply is devoid of purpose. Thus, the exemption of a *supply* of fuel is not at issue in this case.

(b) ***Scope ratione materiae***

34. In addition, the seller of a ship together with fuel does not use the fuel for the purposes of navigation for which the concession is granted.

35. As an indirect exemption, Article 14(1)(c) of Directive 2003/96 exempts the supply of energy products only *for use* as fuel for the purposes of navigation within Community waters (including fishing), other than private pleasure craft. This is intended to ensure the competitive position of fuel-intensive commercial maritime navigation within the EU[5] and the competitiveness of European firms vis-à-vis third countries.[6] Furthermore, it is also intended to facilitate the intra-Community movement of goods.[7] It is therefore clear that in the case of an indirect exemption only a person forming part of the navigation for which the concession is granted may claim reimbursement of excise duty.

5 See recital 23 of Directive 2003/96 and also judgments of the Court in connection with the similarly worded exemption in Article 14(1)(b) of Directive 2003/96: judgment of 1 December 2011, *Systeme Helmholz* (C-79/10, EU:C:2011:797, paragraphs 24 and 26); see also judgments of 1 March 2007, *Jan De Nul* (C-391/05, EU:C:2007:126, paragraph 28), and of 29 April 2004, *Commission* v *Germany* (C-240/01, EU:C:2004:251, paragraphs 39 and 44).

6 Proposal for a Council Directive restructuring the Community framework for the taxation of energy products of 12 March 1997, COM(97) 30 final, 97/0111(CNS), p. 7.

7 In this regard, see expressly judgment of 1 March 2007, *Jan De Nul* (C-391/05, EU:C:2007:126, paragraph 24 and 25).

36. Consequently, it is even unnecessary to determine whether an 'empty run' by a shipping company with a cargo ship from the place of manufacture to the place of first loading also falls within the scope of Article 14(1)(c) of Directive 2003/96. This question is answered plausibly in the affirmative by the Commission, the Republic of Poland and also by Lithuania.[8] However, the question would arise only for the shipping company which used the fuel for the 'empty run'. In this case, the seller of a cargo ship requests a refund of excise duty.

37. Article 14 of Directive 2003/96 is not a general exemption[9] and, for that reason, only fuel which is also used for the purposes of navigation is exempt.

38. However, the notion of navigation covers only the provision of services for consideration inherent in the ship's journey.[10] The sale of the ship is not a service for consideration inherent in the ship's journey. The sale of the ship constitutes a supply which permits the purchaser to provide shipping services to its clients for consideration. In this regard, the supply of the ship is at most preliminary (extrinsic) to the activity of the purchaser for which the concession is granted. This does not mean, however, that the seller also carries on an activity for which the concession is granted.

39. Lastly, it is not evident that maintaining the competitiveness of ship builders is an aim of Article 14(1)(c) of Directive 2003/96. Instead, the concession for ship builders is merely mentioned in Article 15 of Directive 2003/96 as an option, which was apparently not taken by Lithuania.

40. Accordingly, the Court has always recognised the exemption under Article 14(1)(b) and (c) of Directive 2003/96 only for those who have used a means of transport mentioned therein themselves for the provision of services for consideration.[11]

41. It would therefore be inconsistent with Article 14(1)(c) of Directive 2003/96 for the seller of a ship to benefit retrospectively from relief from excise duty. The seller neither belongs to the group of persons to whom the concession is granted (commercial navigation) nor is charged excise duty. In this case only the purchaser of the ship is charged because it bore the excise duty through the purpose price.

42. Consequently, Article 14(1)(c) of Directive 2003/96 does not preclude a national rule under which a seller of a ship is denied an exemption in the form of a refund/reimbursement of excise duty in respect of fuel purchased with the ship.

8 In this respect, the first journey to receive a cargo would also appear to come under the notion of (commercial) navigation, even if that journey is not made directly for consideration. The costs of the journey are costs incurred by the shipping company which are allocated to either the first or any further journey (for consideration). The spirit and purpose of the exemption under Article 14 of Directive 2003/96 is just as relevant in the case of a journey to the place of loading as in the case of a journey to the place of unloading (with the cargo). In both cases the ship owner undoubtedly operates for the purposes of (commercial) navigation.

9 See expressly judgment of 1 December 2011, *Systeme Helmholz* (C-79/10, EU:C:2011:797, paragraph 23); to that effect also judgments of 10 November 2011, *Sea Fighter* (C-505/10, EU:C:2011:725, paragraph 21), and of 29 April 2004, *Commission* v *Germany* (C-240/01, EU:C:2004:251, paragraph 23).

10 Judgments of 10 November 2011, *Sea Fighter* (C-505/10, EU:C:2011:725, paragraph 18); of 1 March 2007, *Jan De Nul* (C-391/05, EU:C:2007:126, paragraph 37); and of 1 April 2004, *Deutsche See-Bestattungs-Genossenschaft* (C-389/02, EU:C:2004:214, paragraph 28). The same point is made by the Court with regard to the similar exemption for air navigation; judgment of 1 December 2011, *Systeme Helmholz* (C-79/10, EU:C:2011:797, paragraph 21).

11 See, inter alia, judgments of 1 March 2007, *Jan De Nul* (C-391/05, EU:C:2007:126, paragraph 33 et seq., and of 1 April 2004, *Deutsche See-Bestattungs-Genossenschaft* (C-389/02, EU:C:2004:214, paragraph 28) — in those cases, with the fuel for which an exemption had been requested, the applicant had 'fuelled ships which were directly used for the supply of services for consideration' — confirmed by judgment of 1 December 2011, *Systeme Helmholz* (C-79/10, EU:C:2011:797, paragraph 30), and similarly judgment of 21 December 2011, *Haltergemeinschaft* (C-250/10, not published, EU:C:2011:862, paragraph 24).

B. **The second question**

43. Should the Court nevertheless consider that a seller of a ship should also be exempted from excise duty in accordance with Article 14(1)(c) of Directive 2003/96 where the other party to the contract utilises the object of sale for the purposes of navigation, it would be necessary to answer the second question. By that question, the referring court wishes to know whether a Member State may make the exemption under Article 14(1) of Directive 2003/96 subject to compliance with certain formal requirements.

44. The very wording of Article 14(1) of Directive 2003/96 provides that the Member States must exempt the supply of energy products for use as fuel for the purposes of navigation within Community waters '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'. EU law thus expressly permits Member States to lay down further conditions for exemption.

45. However, the Court has established a settled case-law in the field of VAT. According to that case-law, refusal of exemption (of an intra-Community supply or an export delivery) solely on grounds of insufficient formal evidence is in principle disproportionate.[12]

1. *Application of the case-law from VAT law to a direct exemption in the law on excise duty*

46. VAT is a general excise tax. It is therefore reasonable also to apply the abovementioned principles from VAT law to the special law on excise duty, and thus to the application of Article 14 of Directive 2003/96. The Ninth Chamber of the Court did so in two recent rulings.[13] The Commission also tends towards this view in its observations. This approach is consistent and logical in respect of the *direct* exemption of a supply of fuel on account of the similarity that exists with the VAT system.

47. VAT is levied by way of all-phase taxation, where multi-stage taxation (cumulation of taxes) is avoided by deduction of tax. Through deduction of tax it is ensured that only final consumers bear VAT[14] and it is not imposed on the taxable person (principle of neutrality). In this regard, taxable persons act at all stages merely as tax collectors for the State.[15] This cannot be considered to constitute a concession for the taxable person itself.

48. This role played by taxable persons as tax collectors whose involvement in the process is mandatory and the principle of proportionality establish particular requirements for the State involved. VAT relief thus cannot be simply refused solely by reason of insufficient (formal) evidence if it is objectively established that all its material requirements are met. Otherwise disproportionate advantage would be taken of a private individual for the purposes of the State.

12 See, for example, judgments of 27 September 2007, *Teleos and Others* (C-409/04, EU:C:2007:548, paragraph 45 et seq.); of 27 September 2007, *Collée* (C-146/05, EU:C:2007:549, paragraph 29 et seq.); and of 27 September 2012, *VSTR* (C-587/10, EU:C:2012:592, paragraph 45 et seq.), with regard to the principle of proportionality in VAT law: of 18 December 1997, *Molenheide and Others* (C-286/94, C-340/95, C-401/95 and C-47/96, EU:C:1997:623, paragraph 48), and of 11 May 2006, *Federation of Technological Industries and Others* (C-384/04, EU:C:2006:309, paragraph 29 et seq.).

13 Judgments of 2 June 2016, *Polihim-SS* (C-355/14, EU:C:2016:403, paragraph 59 et seq.), and of 2 June 2016, *ROZ-ŚWIT* (C-418/14, EU:C:2016:400, paragraphs 20 and 21 and 35 and 36).

14 Judgments of 24 October 1996, *Elida Gibbs* (C-317/94, EU:C:1996:400, paragraph 19); and of 7 November 2013, *Tulică and Plavoșin* (C-249/12 and C-250/12, EU:C:2013:722, paragraph 34); and order of 9 December 2011, *Connoisseur Belgium* (C-69/11, not published, EU:C:2011:825, paragraph 21).

15 Judgments of 20 October 1993, *Balocchi* (C-10/92, EU:C:1993:846, paragraph 25), and of 21 February 2008, *Netto Supermarkt* (C-271/06, EU:C:2008:105, paragraph 21).

49. In the law on excise duty the chargeable event (Article 7 of Directive 2008/118) occurs once upon release for consumption. Under Article 8 of Directive 2008/118, the person liable to pay the duty is the person who releases the goods for consumption, even though the consumer is intended to be charged (tax addressee). Here too, the supplier acts only as a tax collector for the State. Consequently, the same strict proportionality requirements must apply here as in VAT law. [16]

2. *No application of the case-law from VAT law to an indirect exemption in the law on excise duty*

50. However, contrary to the view taken by the Commission, the case-law from VAT law cannot also be applied to the *indirect* exemption in the law on excise duty which is relevant here. This is due to the absence of similarity with the VAT system in this regard. The Court itself has rightly rejected the applicability of its case-law with reference to the different organisation of customs law and VAT law. [17]

51. Instead, an *indirect exemption* in the form of a refund/reimbursement to a third party — as provided for in Article 6(c) of Directive 2003/96 — necessarily requires certain evidence. That evidence is used to determine whether the refund can actually be claimed and by whom. Otherwise there would be a risk of a multiple refund or reimbursement of the same duty. In this regard the need for certain formal evidence simply stems from the system of imposition of excise duty, which is organised differently.

52. In the case of an *indirect exemption* there is always a *genuine concession* for the person concerned. Here the user of the fuel is granted the concession for its own sake. There is actually taxable consumption of consumer goods. However, duty is not imposed on this for certain reasons (in this case economic reasons) to the benefit of the consumer. The beneficiary of the refund does not act here as a tax collector for the State, but for its own account.

53. In such a situation it is not disproportionate if, with a view to effective verification, a concession is granted only when the relevant evidence — which is necessary for verification — is available. Unlike a tax collector whose involvement in the process is mandatory, a more stringent duty of cooperation may be imposed on a beneficiary of a tax concession (here the user of the fuel). A limit is probably reached only when correction of incorrect evidence or subsequent submission of that evidence is precluded by national law per se. That is not apparent here, however.

3. *Conclusion*

54. It is not contrary to the principle of proportionality that a claim for a refund or reimbursement arises only when the beneficiary submits evidence necessary for verification.

16 The two judgments of the Ninth Chamber of the Court are thus correct in this regard: judgments of 2 June 2016, *Polihim-SS* (C-355/14, EU:C:2016:403, paragraph 59 et seq.), and of 2 June 2016, *ROZ-ŚWIT* (C-418/14, EU:C:2016:400, paragraphs 20 and 21 and 35 and 36).

17 Judgment of 27 September 2007, *Teleos and Others* (C-409/04, EU:C:2007:548, paragraph 57).

VI. **Conclusion**

55. I therefore propose that the questions referred by the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) be answered as follows:

(1) Article 14(1)(c) of Directive 2003/96 requires, for an indirect exemption, the beneficiary of the refund to have used the fuel for the purposes of navigation. That is not the case if it has merely supplied a ship together with fuel to a shipping company. A ship builder does not, by the sale of a ship together with fuel contained in it, provide any services for consideration for the purposes of (commercial) navigation.

(2) The Member States may lay down the conditions for an exemption under Article 14(1)(c) in conjunction with Article 6(c) of Directive 2003/96. It is not contrary to the principle of proportionality to make the claim by a third party for a refund or reimbursement of the excise duty in question subject to the submission of certain evidence in order to permit effective verification and to prevent double relief or undue non-taxation.