Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 11 July 2024[1]

Case C-376/23

SIA 'BALTIC CONTAINER TERMINAL'
v
Valsts ieņēmumu dienests

(Request for a preliminary ruling from the Augstākā tiesa (Senāts) (Supreme Court (Senate), Latvia))

(Request for a preliminary ruling – Union Customs Code – Removal of goods from a free zone – EU-law obligations incumbent on a free zone permit holder – Customs debt incurred through non-compliance – Principle of the protection of legitimate expectations – Protection of legitimate expectations arising from established administrative practice – Extension of the force of *res judicata* attaching to a judgment annulling a penalty imposed for a failure to fulfil obligations under customs law)

I. Introduction

'*You must trust and believe in people or life becomes impossible*' (Anton Pavlovich Chekhov, Russian writer and playwright, 1860 to 1904).

1. Does the trust necessary for life also include trust (a 'legitimate expectation') in consistency of practice on the part of the tax authorities of a Member State of the European Union? How far does the protection of such a legitimate expectation extend? Does it even apply to conduct by the national authorities which is unlawful not only under national law but also under EU law? Where a court has already held by final judgment that a situation does not constitute a failure to fulfil obligations under customs law and has annulled a penalty simultaneously imposed on that ground, does the person concerned have a legitimate expectation that, in another procedure, the State authorities will nevertheless themselves refrain from finding that there has been a failure to fulfil obligations and, therefore, from making an assessment as to liability for customs debts?

2. The Court has the opportunity to address all of these fundamental questions in the present case, which is concerned in essence with the change made to an established administrative practice of the Latvian tax authority. Goods in the free zone concerned had previously always been released from that free zone on the basis of the transport document relating to the goods in question ('the CMR[2] consignment note'), if the tax authorities, after examining the goods, had

[1] Original language: German.

[2] This abbreviation stands for 'Convention relative au contrat de transport international de marchandises par route'.

marked them as 'Union goods' by affixing a stamp and a signature to the CMR consignment note. The free zone permit holder would check that this had been done, record the fact and release the goods from the free zone. It seems that the tax authority changed that established practice in July 2019 and accused the free zone permit holder of having released goods in the period from 2018 to July 2019 without recording a master reference number. It now falls to the Court to decide whether the master reference number should have been recorded in accordance with EU law. This seems not to be clear to the referring court.

3. However, another court (Regional Court, Riga (Division of Criminal Cases), Latvia) had previously held – without referring the matter to the Court of Justice – that the situation in question did not constitute a failure to fulfil obligations under customs law. According to it, the free zone permit holder acted in accordance with the common practice of the tax authorities and the latter was unable to cite any provision of law laying down an obligation to carry out a further examination of the goods marked as 'Union goods' by the tax authority.

4. At the same time, however, the tax authority made an assessment as to liability for import duties and VAT payable by the free zone permit holder, on the ground that the goods in question had been removed from the free zone in breach of the obligations incumbent on the free zone permit holder. The corresponding customs debts are therefore owed by the free zone permit holder (too). It is this decision that the person concerned is challenging.

5. In that context, the person concerned asks how it is supposed to fulfil its obligations as a free zone permit holder when two State courts have already adjudicated differently on the scope of those obligations and this question appears to be so unclear that an interpretation must first be sought from the Court of Justice in Luxembourg. It also asks how it is supposed to be able to foresee a retrospective change of administrative practice. Instead, it relied, and was moreover entitled to rely, on previous practice. Its position, it maintains, is borne out by the fact that the previous practice was confirmed by final judgment of a Latvian court.

II. Legal framework

6. The framework of European Union law material to this case is very complex. It consists of three different legal acts, namely a regulation, a delegated regulation and an implementing regulation.

A. European Union law

1. Regulation (EU) No 952/2013[3] ('the Customs Code')

7. Article 79 of the Customs Code governs the incurrence of a customs debt:

'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; …'

8. Article 158(1) in Chapter 2 (Placing of goods under a customs procedure) of the Customs Code governs the customs declaration of goods and the customs supervision of Union goods:

'1. 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.'

9. The supporting documents required for the customs procedure concerned are governed by Article 163 of the Customs Code:

'1. The supporting documents required for the application of the provisions governing the customs procedure for which the goods are declared shall be in the declarant's possession and at the disposal of the customs authorities at the time when the customs declaration is lodged.

2. Supporting documents shall be provided to the customs authorities where Union legislation so requires or where necessary for customs controls.

3. In specific cases, economic operators may draw up the supporting documents provided they are authorised to do so by the customs authorities.'

10. In accordance with Article 211(1)(b) of the Customs Code, the operation of storage facilities for the customs warehousing of goods in a free zone is subject to the following rules:

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

…

[3] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast), in the version of 14 December 2016 (OJ 2016 L 354, p. 32).

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

The conditions under which the use of one or more of the procedures referred to in the first subparagraph or the operation of storage facilities is permitted shall be set out in the authorisation.'

11. Article 214(1) of the Customs Code governs the records which must be kept in the special customs procedures, including, in accordance with Article 210(b) of the Customs Code, storage in a free zone:

'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 procedure 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 Customs Code governs the discharge of a special procedure such as storage in a free zone:

'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.

2. The transit procedure shall be discharged by the customs authorities when they are in a position to establish, on the basis of a comparison of the data available to the customs office of departure and those available to the customs office of destination, that the procedure has ended correctly.

3. The customs authorities shall take all the measures necessary to regularise the situation of the goods in respect of which a procedure has not been discharged under the conditions prescribed.

4. The discharge of the procedure shall take place within a certain time limit, unless otherwise provided.'

13. In this regard, Article 7(c) of the Customs Code confers the following general power on the Commission:

'The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine the following:

…

(c) the type of information and the particulars that are to be contained in the records referred to in Articles 148(4) and 214(1).'

2. Delegated Regulation (EU) 2015/2446[4] *('the Delegated Regulation')*

14. Article 178(1)(b), (c), (d) and (f), (2) and (3) of the Delegated Regulation provides:

'1. The records referred to in Article 214(1) of the 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 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;

(d) particulars of marks, identifying numbers, number and kind of packages, the quantity and usual commercial or technical description of the goods and, where relevant, the identification marks of the container necessary to identify the goods;

…

(f) customs status of goods;

…

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;

(b) particulars concerning the use or consumption of goods of which the release for free circulation or temporary admission would not entail application of import duty or measures laid down under the common agricultural or commercial policies in accordance with Article 247(2) of the Code.

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.'

[4] 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, in the version of 28 July 2015 (OJ 2015 L 343, p. 1).

3. Implementing Regulation (EU) 2015/2447[5] *('the Implementing Regulation')*

15. The means of proving the customs status of Union goods are laid down in Article 199 et seq. of the Implementing Regulation. Article 200(1), (3) and (4) of the Implementing Regulation provides as follows in this regard:

'1. The competent customs office shall endorse and register the means of proof of the customs status of Union goods referred to in Article 199(1)(b) and (c) of this Regulation, except for cases referred to in Article 128(1) of Delegated Regulation (EU) 2015/2446, and communicate the MRN of those means of proof to the person concerned.

…

3. The means of proof referred to in paragraph 1 shall be presented to the competent customs office where the goods are presented for determining their customs status of Union goods after re-entering the customs territory of the Union, by indicating its MRN.

4. That competent customs office shall monitor the use of the means of proof referred to in paragraph 1 with a view to ensure in particular that the means of proof is not used for goods other than those for which it is issued.'

16. Article 211 of the Implementing Regulation concerns the means of proving the customs status of Union goods for goods the value of which does not exceed EUR 15 000, and reads:

'In case of goods having the customs status of Union goods the value of which does not exceed EUR 15 000, the customs status of Union goods may be proven by the production of the invoice or transport document relating to those goods provided that it relates only to goods having the customs status of Union goods.'

17. Article 226 of the Implementing Regulation explains the MRN and reads:

'Except for the cases where 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 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.'

B. Latvian law

18. Article 153(3) of the Administratīvā procesa likums (Law on Administrative Procedure) 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.'

[5] 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, in the version of 18 April 2018 (OJ 2015 L 343, p. 558).

19. Article 16(3) and (4) of the Likums 'Par tiesu varu' (Law on the Judiciary) provides:

'(3) Under the statutory procedure, a judgment is to be binding on the court when it examines other cases related to that case.

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

20. Paragraph 77 of Ministru kabineta 2017. gada 22. augusta noteikumi Nr. 500 'Muitas noliktavu, pagaidu uzglabāšanas un brīvo zonu noteikumi' (Decree No 500 of the Council of Ministers of 22 August 2017 laying down rules relating to customs warehousing, temporary storage and free zones) provides that anyone in whose free zone non-Union goods are stored must keep a record of goods stored in the free zone. In accordance with paragraph 78, records must include in particular the information mentioned in Article 178(1)(b) and (c) and (2) of Delegated Regulation 2015/2446. In accordance with Article 79, records relating to non-Union goods are to include the number of the customs document or of the consignment note under which the goods entered and exited the free zone.

III. Facts and preliminary ruling procedure

21. The SIA 'BALTIC CONTAINER TERMINAL' ('the applicant') is the holder of a permit to load, unload and store goods in the free zone of the free port of Riga and has a duty to keep a record of goods present in that zone.

22. The Valsts ieņēmumu dienests (Latvian Tax Authority; 'the tax authority') carried out checks on the goods in the applicant's free zone and found that, on three occasions in 2018 and 2019, goods that were in the free zone had exited that zone without being placed under a subsequent customs procedure and that, therefore, the 'free zone' special procedure had not been discharged. The tax authority concluded that those goods had actually been removed from customs supervision and that, therefore, the applicant (too) had incurred customs debts under Article 79(1)(a) and (3)(a) of the Union Customs Code.

23. The goods in question were handed over for exit from the free zone on the basis of CMR consignment notes describing the customs status of the goods as 'Union goods' ('C'). A customs authority official had confirmed their status as such by affixing the customs office stamp and his signature to the consignment notes. This was consistent with a practice, common but not expressly provided for by law, whereby the tax authority would check the customs status of goods before they left the port and would make a note of this on the transport documents. However, after the goods at issue had exited the free zone, customs officials established that they did not have any documents substantiating the change of customs status of those goods from 'non-Union goods' ('N') to 'Union goods' ('C').

24. By decision of the tax authority of 19 July 2019, the applicant was required to pay to the public purse import duties and the applicable late-payment penalty, in addition to value added tax and the applicable late-payment penalty. The applicant challenged that decision before the courts.

25. The Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) dismissed that action. It took the view that the customs status of Union goods of goods which have been imported as non-Union goods cannot be certified simply by stamping and signing the CMR

consignment note. It was not clear from the CMR consignment note alone under which subsequent procedure the goods had been placed. A change to the status of the goods called for a declaration including the master reference number (hereinafter and hitherto, 'MRN') or a CMR consignment note bearing the customs office stamp and the MRN. These were not present, however.

26. The applicant lodged an appeal against that judgment before the Augstākā tiesa (Senāts) (Supreme Court (Senate), Latvia).

27. The applicant takes the view that the condition for the application of Article 79(1)(a) and (3)(a) of the Customs Code is not met and no customs debt has therefore been incurred. It kept the required records in accordance with the permit issued by the tax authority and handed over the goods to the carrier on the basis of the CMR consignment notes. In accordance with the common practice of the tax authority, those notes displayed the status of the goods indicated by the customs official (as Union goods), the signature of the customs authority official and the customs office stamp. It was therefore entitled to assume from this that the goods had been released for free circulation. This also meant that the free zone special procedure had been discharged.

28. At the same time, the applicant is challenging before the Rīgas apgabaltiesas Krimināllietu kolēģija (Regional Court, Riga (Division of Criminal Cases)) an administrative penalty imposed on it on the basis of the same facts. By judgment of 5 February 2021, that court annulled the administrative penalty on the ground that the applicant had not infringed the provisions of the customs procedure and had acted in accordance with the common practice of the customs authorities. In particular, the tax authority had not been able to cite any legal provisions imposing on the applicant an obligation to verify details relating to the validity of the change of status of the goods in question other than by way of the confirmation provided by the customs authorities.

29. The referring court states that, at the time of the facts in the main proceedings, the common practice of the tax authority was for customs officials to check the customs status of goods before they left the free zone and to make the appropriate entries (customs status of the goods, customs checkpoint stamp and signature of the customs official) on the various exit documents (usually, the CMR consignment note). Under the procedure currently followed, too, a change to the customs status of goods is confirmed by the customs official himself or herself and the applicant discharges the 'free zone' special procedure on the basis of the information provided by that official.

30. The Augstākā tiesa (Senāts) (Supreme Court (Senate)) has therefore stayed the proceedings and referred the following five questions to the Court of Justice for a preliminary ruling under Article 267 TFEU:

'(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 master reference number (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' 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?'

31. The applicant, Latvia and the European Commission have submitted written observations in the proceedings before the Court of Justice. The Court decided not to hold a hearing in accordance with Article 76(2) of the Rules of Procedure.

IV. Legal assessment

32. The five questions referred for a preliminary ruling are concerned in essence with two issues. The first three questions relate to the record-keeping and verification obligations incumbent under customs law on the holder of a permit under the 'free zone' special procedure ('the free zone permit holder') who has released from that free zone non-Union goods previously stored there (see in this regard section A). The fifth question, on the other hand, concerns the extension under national law of the force of *res judicata* attaching to a judgment which (possibly in breach of EU law) has held there to be no infringement of a duty of care on the part of the free zone permit holder (see in this regard section B.2.). Preceding this is the fourth question, concerning the protection of the legitimate expectations of a free zone permit holder who has acted on the basis of the previous practice of the tax authority, even if that practice was contrary to EU law (see in this regard section B.1.).

A. Interpretation of the Union Customs Code

33. The applicant was assessed in its capacity as a free zone permit holder as being liable for a debt by way of import duty ('customs debt'). The customs debt of a free zone permit holder is based on Article 79(1)(a) of the Customs Code. It arises from an infringement of the obligations laid down

in customs law with respect to the introduction of non-Union goods into the customs territory of the European Union. The Court is unaware whether it has since been possible to enforce the customs debt incurred by the declarant as a result of the release of the goods for free circulation.

34. It is true that a free zone permit holder is subject to specific obligations [6] the infringement of which may lead to the incurrence of a customs debt. This, however, is only an additional customs debt for which the free zone permit holder is jointly and severally liable (see Article 84 of the Customs Code) by virtue of a failure to fulfil obligations committed by the free zone permit holder himself or herself and which is ultimately intended to ensure the correct collection of the customs debt. The (original) debt of the declarant (Article 77(3) of the Customs Code) remains in being.

1. The obligation to record a master reference number

35. The applicant did not record an MRN and enter it in the electronic records system. By its first question, the referring court wishes to ascertain whether EU law required the MRN to be recorded and entered, so that any non-compliance with that requirement constitutes the failure to fulfil obligations necessary for the applicant to be assessed as being liable for a customs debt.

36. The decisive factor in this regard is whether a free zone permit holder must always record an MRN in order to escape a customs debt incurred by the free zone permit holder himself or herself – in addition to that incurred by the declarant – under Article 79(1)(a) and (3) of the Customs Code. Article 214(1) of the Customs Code governs the records that must be kept under the special customs procedures. In accordance with Article 210(b) of the Customs Code, the special procedures include storage in a free zone.

37. In accordance with Article 214(1) of the Customs Code, the 'holder of the procedure' (in this case, the free zone procedure) must keep appropriate records in a form approved by the customs authorities. The records are to contain the information and the particulars which enable the customs authorities to supervise the procedures concerned. These include in particular the identification of the goods placed under that procedure, their customs status and their movements.

38. In accordance with Article 211(1)(b) of the Customs Code, the operation of storage facilities for the customs warehousing of goods in a free zone requires an authorisation from the authorities. As a rule, that authorisation lays down specific record-keeping obligations in order to make it possible to document and supervise the discharge of that special procedure through the placing of the goods concerned under another customs procedure (often release for free circulation – Article 77(1)(a) of the Customs Code). However, it is not clear from the request for a preliminary ruling what exactly the content of the permit issued to the applicant in this case is or was.

39. In addition to the record-keeping obligations that may be laid down in the aforementioned authorisation, Article 7(c) of the Customs Code empowers the Commission to adopt delegated acts governing the type of information and the particulars that must be contained in the records referred to in Article 214(1) of the Customs Code. Accordingly, Article 178(1)(b) of the

[6] See almost certainly to this effect, judgment of 6 September 2012, *Eurogate Distribution* (C-28/11, EU:C:2012:533, paragraph 27 et seq., concerning the customs warehousing procedure). Similarly, see, in connection with the inward processing procedure, judgment of 6 September 2012, *Döhler Neuenkirchen* (C-262/10, EU:C:2012:559, paragraph 41) – 'the beneficiaries of that procedure are required to comply strictly with the obligations resulting therefrom'.

Delegated Regulation provides that the records referred to in Article 214(1) of the Customs Code must contain '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 Code, information about the manner in which the procedure was discharged'.

40. It is clear from this alone that it is not compulsory for the MRN to be recorded.

41. On the one hand, the first alternative mentioned in Article 178(1)(b) of the Delegated Regulation concerns only the MRN identifying the customs declarations 'by means of which the goods are placed under the special procedure'. The placing of goods in the free zone special procedure does not require a customs declaration (see Article 158(1) of the Customs Code). The abovementioned provision must therefore be intended to refer only to the placing of goods under another special procedure. In this instance, however, the goods were placed not under another special procedure (provided for in Title VII of the Customs Code) but under the 'normal' procedure provided for in Title VI of the Customs Code (release for free circulation). The first alternative mentioned in Article 178(1)(b) of the Delegated Regulation does not require the MRN to be recorded in this instance.

42. On the other hand, Article 178(1)(b) of the Delegated Regulation itself assumes that an MRN is not issued for every customs declaration. This is confirmed by Article 226 of the Implementing Regulation. It is true that, according to this, the customs authorities must in principle provide the customs declarant (not the free zone permit holder) with such an MRN for his or her customs declaration. However, this does not apply to every customs declaration or before the dates on which the AES and NCTS Systems are put into operation, and the national import systems are adapted in accordance with the annex to Implementing Decision 2014/255/EU, respectively. The Court has not been informed whether this was even the case in this instance.

43. Since the tax authority informs the declarant (and not the free zone permit holder) of the MRN, Article 178(1)(b) of the Delegated Regulation expressly requires the free zone permit holder to record that number only where it exists. Otherwise, the free zone permit holder fulfils his or her record-keeping obligations if he or she records another number or a code by which the goods can be identified. The Customs Code and the Delegated Regulation do not therefore make it mandatory to record the MRN, as the Commission also rightly submits. This is particularly true if the goods were not placed under a special procedure.

44. Also relevant here is the provision contained in Article 178(3) of the Delegated Regulation. According to this, the customs authorities may waive the requirement for some of the information referred to in paragraphs 1 and 2 of that article. EU law does not therefore make it mandatory for the MRN to be recorded. The decisive factor is instead whether national law (which is binding on the customs authorities) or the national customs authority itself waived the requirement to record that information. If so, any failure to keep that record cannot give rise to a customs debt.

45. In this case, such a waiver might be seen, for example, not least in the established practice of the Latvian customs authorities that is reported by the referring court. The referring court states, after all, that, at the time of the facts of the dispute in the main proceedings, it was the common practice of the tax authority to have customs officials check the customs status of goods before they left the free zone and make the appropriate entries (customs status of the goods, customs

checkpoint stamp and signature of the customs official) on the various exit documents (usually, the CMR consignment note). This was evidently sufficient to fulfil the previous record-keeping obligations.

46. EU law does not attach any special conditions to such a waiver. Consequently, even an implied waiver of the requirement to keep records is permissible under Article 178(1)(b) of the Delegated Regulation. This is particularly true given that customs law – as a large-scale procedure – is no stranger to implied declarations. Thus, under Article 158(2) of the Customs Code, read in conjunction with Article 135 et seq. and Article 141 of the Delegated Regulation, it is even possible to submit oral or implied customs declarations. Whether the established administrative practice – as described by the referring court – is to be regarded as an express or implied waiver by the tax authority is a matter of factual assessment for which that court alone has jurisdiction.

47. The answer to the first question is therefore that Article 214 of the Customs Code, read in conjunction with Article 178 of the Delegated Regulation, does not make it a mandatory requirement or one that is applicable in every case for a free zone permit holder to record an MRN in order to comply with his or her obligations under that provision. Rather, it allows the customs authorities to grant express or implied authorisation for alternative forms of record keeping.

2. Discharge of the free zone procedure

48. In the first question, the referring court also asks whether Article 214 of the Customs Code allows the free zone special procedure to be discharged without recording an MRN. This concerns the second alternative of the record-keeping obligations referred to in Article 178(1)(b). According to this, information about the manner in which the procedure was discharged must also be recorded.

49. The discharge of a special procedure (in this instance, the free zone special procedure) under Article 215 of the Customs Code must be distinguished from compliance with the record-keeping obligations under Article 214 of the Customs Code. After all, discharge takes place only when the goods have been placed under a subsequent procedure. In this case, the goods were released for free circulation (Title VI of the Customs Code) and their status changed from non-Union goods to Union goods.

50. The tax authority simply does not recall why that happened. The written observations submitted by Latvia likewise do not make it clear why a customs official would have marked with ‘C’ (for Union goods), stamped and signed the CMR consignment note in the first place if those goods were to remain non-Union goods. What is certain is that they were released to someone after being examined. The questions as to whether they were legitimately released (in particular, whether a corresponding customs declaration exists), and whether the customs debt incurred was paid by the declarant, are in any event immaterial to the discharge of the ‘free zone procedure’.

51. However, EU law does not conclusively prescribe how a free zone permit holder must keep the records corresponding to that procedure (see point 35 et seq. above). The question as to whether the free zone special procedure was discharged by the recording of the CMR consignment note marked with the stamp and signature of the tax authority depends ultimately

on the position under national law (content of the permit or waiver by the tax authority of certain record-keeping obligations). It is therefore a question which can be assessed only by the referring court.

52. If it follows from established practice that the goods were released to the declarant and their status as Union goods was confirmed on the CMR consignment note by the stamp and signature of a tax official *and* this occurs only in cases of release for free circulation, then the documenting of that consignment note appears to be sufficient to document also the discharge of the free zone special procedure by the release of the goods concerned for free circulation. This may constitute an express or implied waiver of possible further requirements of proof that is permissible under EU law.

3. Is there an obligation to verify the validity of the customs status of goods and, if so, what is the scope of any such verification (second and third questions)?

53. By its second and third questions, the referring court wishes to ascertain whether Article 214(1) and Article 215(1) of the Customs Code allow a free zone permit holder to discharge the free zone procedure without having personally verified the customs status of the goods in question, and what the scope of any such obligation to verify would be.

54. The background to this question is that goods can be transferred to a free zone without a customs declaration in order then to be placed under further customs procedures, usually by means of a customs declaration lodged by the declarant. In that regard, goods of different types (Union goods and non-Union goods) can be stored in a free zone (see Article 177 of the Delegated Regulation), for example. In most cases, goods stored in a free zone are subsequently placed under further special customs procedures (Title VII of the Customs Code – such as temporary admission or processing, for example) or under the general customs procedure (release for free circulation – Title VI of the Customs Code). This is done by means of a customs declaration (Article 158(1) of the Customs Code) lodged by a third party (that is to say, not usually by the free zone permit holder).

55. At the same time, an important point to bear in mind in the context of the question to be decided here as to whether a free zone permit holder is subject to an obligation to verify and, if so, what the scope of any such verification would be, is that, in accordance with Article 188 of the Customs Code, the customs declaration is verified by the customs authority alone. In accordance with Article 189 of the Customs Code, the customs authority can carry out an examination of the goods. However, the Customs Code does not impose any obligations to verify on the free zone permit holder. In accordance with Article 194 of the Customs Code, even the release of the goods is carried out exclusively by the customs authorities (and not by a private party), where the conditions for placing the goods under the procedure concerned are fulfilled. In that regard, Article 195(1) of the Customs Code provides that goods are not to be released to the declarant until any customs debt incurred has been paid or a security to cover it has been provided. In Latvia (it would seem), the customs authority releases goods in practice by stamping and signing the CMR consignment note.

56. The free zone special procedure, on the other hand, is governed by Article 210 of the Customs Code. However, an obligation to check the substantive accuracy of a customs declaration lodged by a third party cannot be inferred from that section of the Customs Code either. Rather, the record-keeping obligations already addressed above (see in this regard point 35 et seq.) are contained in Article 214 of the Customs Code. Article 215 of the Customs Code governs when a

special procedure (such as the free zone special procedure at issue here) is discharged, the main reason for discharge being likely to be to place the goods concerned under a subsequent procedure.

57. The second sentence of Article 214 of the Customs Code makes it clear in this regard that the records (must) contain the information and details enabling the customs authorities to supervise the procedure concerned. Such information and details include in particular the identification of the goods placed under that procedure, their customs status and their movements. Article 214 of the Customs Code does not, however, refer to the validity of the customs status of goods or a verification of the validity thereof.

58. It also follows from the foregoing that there is a requirement only to keep records on the customs status of goods but not to verify the substantive accuracy of that status. In this regard, everything hangs once again – as the Commission appears to have overlooked – on the obligations to provide proof that apply in Latvia. If the tax authority has (expressly or by implication) waived the requirement to furnish forms of proof additional to the CMR consignment note displaying a stamp attesting to the status of the goods and a signature of the customs official (see Article 178(3) of the Delegated Regulation), then there are, by extension, no further obligations to furnish proof and certainly no further obligations to verify. The referring court alone is able to decide whether that is the case.

59. The applicant was not therefore required to examine why the CMR consignment note was stamped and why the customs authorities declared the goods covered by that note to be Union goods. Indeed, it seems doubtful whether it can effectively carry out that examination.

60. The customs status of goods is determined by a customs declaration lodged by another person which must be examined by the customs authorities. If the goods in question are then released for free circulation on the basis of a decision of the customs authority, the status of those goods changes from non-Union goods to Union goods. In the present case, this appears to have been confirmed by the customs official, in the form of the stamp and signature on the CMR consignment note (see not least the fourth question raised by the referring court). It would seem to be neither necessary nor possible for another private party to check this again. It is also the case in the current proceedings, as the referring court and the applicant's written observations state, that the tax authority alone changes the status of the goods concerned in the applicant's electronic records system, the applicant being unable to verify the accuracy of that status.

61. The lawfulness and, even more so, the validity of an official decision is usually reviewed by another (higher) authority or a court, but not by a private party. If there is nothing to indicate that the form of proof furnished – in this instance, proof of the status of the goods concerned – has been falsified, the Customs Code does not impose on the free zone permit holder any obligation to verify that the customs status of the goods in question is indeed 'valid' other than those relating to record keeping.

62. The answer to the second and third questions must therefore be that the discharge of the 'free zone' special procedure does not require the free zone permit holder to conduct an independent verification of the validity of the status of the goods as certified by the tax authority. The position may be otherwise if there are indications that the certificate has been falsified. What form that certificate must take and how the status of the goods released is to be proved are matters determined ultimately by national law – since Article 178(3) of the Delegated Regulation allows the customs authorities to waive the requirement to provide some information.

B. In the alternative: The protection of legitimate expectations and the extension of the force of res judicata (fourth and fifth questions)

63. By the fourth and fifth questions, the referring court asks, in essence, whether (if the goods in question were not Union goods and the applicant should have verified this before releasing the goods from the free zone) the applicant benefits from at least some protection of legitimate expectations. This proposition is supported on the one hand by the fact that the tax authority confirmed the status of the goods as Union goods by stamping and signing the CMR consignment note. On the other hand, another national court has already held by final judgment that the situation in question does not constitute an infringement of Article 79 of the Customs Code. Such an infringement is, however, a precondition for the incurrence of an (additional) customs debt by the free zone permit holder. Consequently, the force of *res judicata* attaching to that decision might also preclude an assessment as to liability for a customs debt.

64. However, these two questions arise only if an infringement of the requirements to furnish proof that are laid down in Article 214 of the Customs Code, read in conjunction with Article 178 of the Delegated Regulation, is present in the first place. In the light of Article 178(3) of the Delegated Regulation, this in turn depends on the decision taken by the Latvian customs authority at the time in question with respect to the scope of the obligations to furnish proof. Since, as explained above (point 44 et seq.), it has been the established practice of the customs authorities to waive the requirement for further proof, the applicant is more likely not to have incurred an additional customs debt.

65. The above questions would arise only in the event that the Court were to come to a contrary conclusion or the referring court were nevertheless to find that the applicant had failed to fulfil obligations under customs law. They are therefore examined only in the alternative.

1. Protection of legitimate expectations in the event of an administrative practice that is contrary to EU law

66. 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.[7] It follows that, when implementing the provisions of the Customs Code and the Delegated Regulation, national authorities must observe the principle of the protection of legitimate expectations.

67. However, the principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of EU law.[8] Such an unambiguous provision from which it necessarily follows that the applicant was required to record the MRN and that the stamp and signature of the tax authority are not sufficient is not in evidence here. Neither is there any unambiguous provision to the effect that the free zone permit holder must verify a change to the status of goods (see point 35 et seq. above). What is more, one national court has already held that no such obligations exist, and another, being unsure, is asking the Court of Justice for

[7] Settled case-law: See judgment of 14 July 2022, *Sense Visuele Communicatie en Handel* (C-36/21, EU:C:2022:556, paragraph 26). See also in this regard judgments of 26 April 1988, *Krücken* (316/86, EU:C:1988:201, paragraph 22), and of 7 August 2018, *Ministru kabinets* (C-120/17, EU:C:2018:638, paragraph 48).

[8] Settled case-law: See judgments of 26 April 1988, *Krücken* (316/86, EU:C:1988:201, paragraph 24); of 20 June 2013, *Agroferm* (C-568/11, EU:C:2013:407, paragraph 52); of 20 December 2017, *Erzeugerorganisation Tiefkühlgemüse* (C-516/16, EU:C:2017:1011, paragraph 69); and of 14 July 2022, *Sense Visuele Communicatie en Handel* (C-36/21, EU:C:2022:556, paragraph 28).

interpretative assistance. Consequently, even if the Court of Justice were to come to a different conclusion, there could not in any way be said to be an 'unambiguous provision' within the meaning of the aforementioned case-law.

68. It follows that the protection of legitimate expectations in this case may be contrary to EU law. What is more, the protection of legitimate expectations presupposes that the conduct of the administrative authorities has given rise to a reasonable and legitimate expectation in the mind of a reasonably prudent economic agent.[9]

69. This too seems to be the case here. The applicant appears to have formed the expectation that it had fulfilled its record-keeping obligations by recording the CMR consignment note on which the customs authority had marked the status of the goods by affixing its stamp and signature to it, resulting in the goods in question being placed under a subsequent customs procedure (in this instance, release for free circulation). In its view, the free zone procedure was thereby duly discharged. That expectation is founded on – what the referring court describes as – the established practice of the Latvian tax authorities, a practice which presumably owed its existence to the needs of a large-scale procedure. An established administrative practice which – as stated above – is not manifestly contrary to EU law may give rise to a reasonable and legitimate expectation that there will be no retroactive departure from that practice.

70. The answer to the fourth question must therefore be that an established administrative practice whereby the customs authority, after examining the goods in question, marks their status on the CMR consignment note by affixing a stamp and signature to it, and which, in the past, has always enabled the free zone procedure to be effectively discharged, may warrant the protection of legitimate expectations. This is the case even if the reason for the change of status is not specified on the consignment document. In any event, the foregoing is not manifestly contrary to EU law, since the latter allows national customs authorities to impose divergent requirements on the furnishing of proof (see point 44 et seq. above).

2. Extension of the force of res judicata *attaching to a decision that is contrary to EU law*

71. By the fifth question, which is also to be answered only in the alternative, the referring court asks in essence whether, in this instance, the force of *res judicata* is capable of precluding an assessment as to liability for a customs debt under Article 79(1)(a) and (3) of the Customs Code.

72. The background to this question is that, in proceedings concerning the imposition of an administrative penalty on the applicant, it was found by final judgment that the situation in question did not constitute a failure to fulfil obligations under customs law. It appears that the tax authority was also a party in those proceedings. Under the applicable national law, facts which have been established in the grounds of a judgment having the force of *res judicata* do not have to be proved again in the context of the examination of an administrative case involving the same parties (Article 153(3) of the Law on Administrative Procedure). Furthermore, a judgment is binding on the court when it examines other cases related to that case (Article 16(3) and (4) of the Law on the Judiciary). Because the previous court held by final judgment that the situation in question did not constitute a failure to fulfil obligations under the Customs Code, the referring court considers itself to be prevented from finding there to be a customs debt liability which presupposes a failure to fulfil obligations under the Customs Code.

[9] See judgment of 14 September 2006, *Elmeka* (C-181/04 to C-183/04, EU:C:2006:563, paragraph 32 and the case-law cited), and my Opinion in *Agroferm* (C-568/11, EU:C:2013:35, point 59).

73. The principle of *res judicata* is important both for the EU legal order and for the national legal systems. In order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that decisions of courts or tribunals which have become definitive after all rights of appeal have been exhausted or after expiry of the time limits provided for in that connection can no longer be called into question. [10]

74. Therefore, EU law does not require a national court to disapply domestic rules of procedure conferring finality on a judgment, even if to do so would make it possible to remedy a domestic situation which is incompatible with EU law. [11]

75. 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. However, those rules must not be less favourable than those governing similar domestic actions (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 EU law (principle of effectiveness). [12] The latter is relevant here only to a limited extent, however. In this case, after all, the extension of the force of *res judicata* to a judgment (which may be contrary to EU law) against the Member State would not have the effect of making it more difficult for an individual to exercise his or her rights.

76. However, the principle of effectiveness would stand in the way of the principle of *res judicata* under national law if a final decision contrary to EU law were binding even in respect of further periods not even forming the subject of the final judgment, because, in those circumstances, a correction of the situation contrary to EU law would not be possible in the future either. [13]

77. However (contrary to what the Commission appears to believe), that is not the issue here. The force of *res judicata* attaching to a judgment is not extended to further periods in the future, thus making it impossible to correct the situation contrary to EU law in the future. Rather, the force of *res judicata* attaching to a judgment concerning the legal assessment of a certain act (failure to discharge a duty of care as a free zone permit holder) is transferred, within the same period, only from the law governing penalties to customs law. What we have here, therefore, is a legal assessment of an identical act (in an identical period of time) that is critical both to the imposition of an administrative penalty and to the assessment as to liability for a customs debt.

78. The obligation under EU law incumbent on Member States to provide for dissuasive administrative penalties does not result in the force of *res judicata* being disregarded either. [14] A criminal judgment of acquittal which has the force of *res judicata* in relation to proceedings for the imposition of an administrative penalty concerning the same act as that at issue in the criminal judgment is just as unobjectionable under EU law [15] as a judgment of acquittal in respect of an administrative penalty such as that at issue here. In the present case too, the obligation to

[10] Judgments of 3 September 2009, *Fallimento Olimpiclub* (C-2/08, EU:C:2009:506, paragraph 22); of 11 September 2019, *Călin* (C-676/17, EU:C:2019:700, paragraph 26); of 4 March 2020, *Telecom Italia* (C-34/19, EU:C:2020:148, paragraph 64); of 16 July 2020, *UR (VAT liability of lawyers)* (C-424/19, EU:C:2020:581, paragraph 22); and of 9 April 2024, *Profi Credit Polska (Reopening of proceedings closed by a final judgment)* (C-582/21, EU:C:2024:282, paragraph 37).

[11] Judgments of 11 September 2019, *Călin* (C-676/17, EU:C:2019:700, paragraph 27 and the case-law cited), and of 16 July 2020, *UR (VAT liability of lawyers)* (C-424/19, EU:C:2020:581, paragraph 23).

[12] Judgments of 3 September 2009, *Fallimento Olimpiclub* (C-2/08, EU:C:2009:506, paragraph 24); of 10 July 2014, *Impresa Pizzarotti* (C-213/13, EU:C:2014:2067, paragraph 54); of 4 March 2020, *Telecom Italia* (C-34/19, EU:C:2020:148, paragraph 58); and of 16 July 2020, *UR (VAT liability of lawyers)* (C-424/19, EU:C:2020:581, paragraph 25).

[13] Judgment of 16 July 2020, *UR (VAT liability of lawyers)* (C-424/19, EU:C:2020:581, paragraphs 31 and 32).

[14] Judgment of 20 March 2018, *Di Puma and Zecca* (C-596/16 and C-597/16, EU:C:2018:192, paragraph 35).

[15] Judgment of 20 March 2018, *Di Puma and Zecca* (C-596/16 and C-597/16, EU:C:2018:192, paragraph 35).

make an assessment as to liability for a customs debt cannot require that the force of *res judicata* attaching to a judgment be disregarded, in so far as the act in question is the same and in so far as national law provides for such an extension of the force of *res judicata*.

79. Since, in both situations, a court of a Member State decides in adversarial proceedings on the existence of a failure to fulfil obligations under customs law and both cases probably involve the same parties (the applicant and the tax authority), a view to the contrary might lead to problems with the *ne bis in idem* principle (Article 50 of the Charter of Fundamental Rights). [16]

80. The Court's decision in the judgment in *Avio Lucos*, [17] on the other hand, concerned a completely different situation. Here, the Court found there to be an infringement of the principle of effectiveness in the fact that a judicial decision against the applicant in administrative proceedings was also extended (to his or her detriment) to the civil proceedings and to all decisions concerning the same legal relationship.

81. The Court's decision in the judgment in *CRPNPAC and Vueling Airlines*, in which it was found that the force of *res judicata* attaching to a criminal judgment against a private party that was contrary to EU law could not be extended to relationships with other persons in civil law, likewise concerned a different scenario. [18] After all, this case does not concern a private party being bound by a judgment against him or her (to his or her detriment) that was contrary to EU law.

82. Consequently, EU law does not preclude the national principle of *res judicata* from preventing an assessment as to liability for a customs debt on the ground of a failure to fulfil obligations under Article 79(1)(a) of the Customs Code, where a national court, in the course of proceedings for the imposition of a penalty, has already found by final judgment within the same period that the situation in question does not constitute a failure to fulfil obligations under customs law.

V. Conclusion

83. I therefore propose that the Court answer the questions referred for a preliminary ruling by the Augstākā tiesa (Senāts) (Supreme Court (Senate), Latvia) as follows:

(1) Article 214 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, read in conjunction with Article 178 of 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, does not require a free zone permit holder to record a master reference number in every case in order to comply with his or her record-keeping obligations and discharge the free zone special procedure.

[16] This might arise because the Court considers that principle to be relevant in the relationship between criminal proceedings and tax proceedings – see judgment of 20 March 2018, *Menci* (C-524/15, EU:C:2018:197). On that basis, it does not seem inconceivable that that principle might also be relevant in the relationship between administrative penalty proceedings and tax proceedings.

[17] See the very far-reaching findings in the judgment of 7 April 2022, *Avio Lucos* (C-116/20, EU:C:2022:273, paragraphs 97 and 105).

[18] Judgment of 2 April 2020, *CRPNPAC and Vueling Airlines* (C-370/17 and C-37/18, EU:C:2020:260, paragraph 95 et seq.).

(2) The question as to whether the free zone procedure can be discharged by recording the CMR consignment note displaying the stamp and signature of the tax authority depends on the content of the permit or the tax authority's waiver of certain record-keeping obligations. This can be assessed by the referring court alone.

(3) The discharge of the free zone special procedure does not require the free zone permit holder to conduct an independent verification of the validity of the status of goods as certified by the tax authority, where there is nothing to indicate that the certificate concerned has been falsified. What form that certificate must take and how the status of the goods released is to be proved are matters determined by national law – since Article 178(3) of Delegated Regulation 2015/2446 allows the customs authorities to waive the requirement to provide some information.

(4) An established administrative practice whereby the customs authority, after examining the goods in question, marks their status on the CMR consignment note by affixing a stamp and signature to it, and which, in the past, has always enabled the free zone procedure to be effectively discharged, may warrant the protection of legitimate expectations, even if the reason for the change of status is not specified on the consignment document. In any event, the foregoing is not manifestly contrary to unambiguous provisions of EU law because the latter allows divergent requirements relating to the furnishing of proof.

(5) EU law does not preclude the national principle of *res judicata* from preventing an assessment as to liability for a customs debt on the ground of a failure to fulfil obligations under Article 79(1)(a) of Regulation No 952/2013, where a national court, in the course of proceedings for the imposition of a penalty, has already found by final judgment within the same period that the situation in question does not constitute a failure to fulfil customs obligations.