



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

13 January 2022 *

(Reference for a preliminary ruling – Excise duty – Directive 2008/118/EC – Exemption from the harmonised excise duty – Goods intended to be used in the context of diplomatic and consular relations – Conditions for the exemption to apply laid down by the host Member State – Payment by non-cash means)

In Case C-326/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) by decision of 10 July 2020, received at the Court on 22 July 2020, in the proceedings

MONO SIA

v

Valsts ieņēmumu dienests,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third Chamber, J. Passer (Rapporteur), F. Biltgen, L.S. Rossi and N. Wahl, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- MONO SIA, by M. Uļmans,
- the Latvian Government, initially by K. Pommere, V. Soņeca and E. Bārdiņš, and subsequently by K. Pommere and E. Bārdiņš, acting as Agents,
- the Spanish Government, by M.J. Ruiz Sánchez, acting as Agent,
- the European Commission, by C. Perrin and A. Sauka, acting as Agents,

* Language of the case: Latvian.

after hearing the Opinion of the Advocate General at the sitting on 2 September 2021,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 12 of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).
- 2 This request has been made in proceedings between MONO SIA and the Valsts ieņēmumu dienests (Latvian National Tax Authority) ('the National Tax Authority') concerning the exemption from excise duty for goods supplied to the embassies and consular services of various States and to the representation of the North Atlantic Treaty Organisation (NATO) in Latvia.

Legal context

International law

Vienna Convention on Diplomatic Relations

- 3 Article 34 of the Vienna Convention on Diplomatic Relations of 18 April 1961 (*United Nations Treaty Collection*, vol. 500, p. 95) ('Vienna Convention on Diplomatic Relations'), states:

'A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) Indirect taxes of a kind which are normally incorporated in the price of goods or services;

...'

- 4 Article 36(1) of the Vienna Convention on Diplomatic Relations states:

'The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) Articles for the official use of the mission;

(b) Articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.'

Vienna Convention on Consular Relations

- 5 Article 49 of the Vienna Convention on Consular Relations of 24 April 1963 (*United Nations Treaty Collection*, vol. 596, p. 261) ('Vienna Convention on Consular Relations'), entitled 'Exemption from taxation', states in paragraph 1:

'Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

...'

- 6 Article 50 of the Vienna Convention on Consular Relations, entitled 'Exemption from customs duties and inspection', provides in paragraph 1:

'The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the consular post;

(b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilisation by the persons concerned.'

European Union law

Directive 2008/118

- 7 Recitals 2, 8, 10 and 13 of Directive 2008/118 are worded as follows:

'(2) Conditions for charging excise duty on the goods covered by [Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1)], hereinafter "excise goods", need to remain harmonised in order to ensure the proper functioning of the internal market.

...

(8) Since it remains necessary for the proper functioning of the internal market that the concept, and conditions for chargeability, of excise duty be the same in all Member States, it is necessary to make clear at [EU] level when excise goods are released for consumption and who the person liable to pay the excise duty is.

...

(10) Arrangements for the collection and reimbursement of duty have an impact on the proper functioning of the internal market and should therefore follow non-discriminatory criteria.

...

(13) The rules and conditions for the deliveries which are exempt from the payment of excise duty should remain harmonised. For the exempted deliveries to organisations situated in other Member States, use should be made of an exemption certificate.'

8 Article 1(1) of Directive 2008/118 states:

'This Directive lays down general arrangements in relation to excise duty which is levied directly or indirectly on the consumption of the following goods (hereinafter "excise goods"):

...

(b) alcohol and alcoholic beverages covered by [Council Directives 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21)] and 92/84/EEC [of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages (OJ 1992 L 316, p. 29)];

(c) manufactured tobacco covered by [Council Directives 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1995 L 291, p. 40)], 92/79/EEC [of 19 October 1992 on the approximation of taxes on cigarettes (OJ 1992 L 316, p. 8)] and 92/80/EEC [of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes (OJ 1992 L 316, p. 10)].'

9 Article 12 of Directive 2008/118 states:

'1. Excise goods shall be exempted from payment of excise duty where they are intended to be used:

(a) in the context of diplomatic or consular relations;

(b) by international organisations recognised as such by the public authorities of the host Member State, and by members of such organisations, within the limits and under the conditions laid down by the international conventions establishing such organisations or by headquarters agreements;

(c) by the armed forces of any State party to the North Atlantic Treaty [signed in Washington (United States) on 4 April 1949] other than the Member State within which the excise duty is chargeable, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens;

...

2. Exemptions shall be subject to conditions and limitations laid down by the host Member State. Member States may grant the exemption by means of a refund of excise duty.'

10 Article 13 of that directive states:

‘1. Without prejudice to Article 21(1), excise goods moving under a duty suspension arrangement to a consignee referred to in Article 12(1) shall be accompanied by an exemption certificate.

2. The [European] Commission shall, in accordance with the procedure referred to in Article 43(2), lay down the form and content of the exemption certificate.

...’

Implementing Regulation (EU) No 282/2011

11 Article 51 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ 2011 L 77, p. 1) provides:

‘1. ... the [value-added tax (VAT)] and/or excise duty exemption certificate set out in Annex II to this Regulation shall, subject to the explanatory notes set out in the Annex to that certificate, serve to confirm that the transaction qualifies for the exemption under Article 151 of [Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1)].

...

2. The certificate referred to in paragraph 1 shall be stamped by the competent authorities of the host Member State. However, if the goods or services are intended for official use, Member States may dispense the recipient from the requirement to have the certificate stamped under such conditions as they may lay down. This dispensation may be withdrawn in the case of abuse.

Member States shall inform the Commission of the contact point designated to identify the services responsible for stamping the certificate and the extent to which they dispense with the requirement to have the certificate stamped. The Commission shall inform the other Member States of the information received from Member States.

3. Where direct exemption is applied in the Member State in which the supply takes place, the supplier shall obtain the certificate referred to in paragraph 1 of this Article from the recipient of the goods or services and retain it as part of his records. If the exemption is granted by means of a refund of the VAT, pursuant to Article 151(2) of Directive [2006/112], the certificate shall be attached to the request for refund submitted to the Member State concerned.’

Latvian law

12 The likums ‘Par akcīzes nodokli’ (Law on Excise Duty) of 30 October 2003 (*Latvijas Vēstnesis*, 2003, No 161) (‘the Law on Excise Duty’) states in Article 7:

‘The excise duty shall be due from:

(1) the importer;

...'

13 Article 20(1) of the Law on Excise Duty states:

'Without prejudice to paragraphs 2, ... and 5 ... of this article, excise goods shall be exempted from payment of excise duty where they are supplied:

(1) to diplomatic and consular representations;

(2) to diplomatic and consular agents of diplomatic and consular representations, administrative and technical staff and members of the families of the persons referred to in this subparagraph who are not Latvian nationals or permanent residents. ...

(3) to international organisations or their representations recognised as such by the Republic of Latvia, within the limits and under the conditions laid down by the international conventions establishing such organisations or by headquarters agreements;

(4) to staff of international organisations or of the representations of such organisations that have diplomatic status in the territory of the Republic of Latvia who are not Latvian nationals or permanent residents;

...

(6) to the armed forces of any State party to the North Atlantic Treaty other than the Member State within which the excise duty is chargeable, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens;

...

(9) ...

(a) to Allied Headquarters recognised in the Republic of Latvia ...

(b) to members of Allied Headquarters or their dependants who are not Latvian nationals or permanent residents.'

14 Article 20(2) of the Law on Excise Duty states:

'The subjects referred to in paragraph 1 of this article are permitted to receive excise goods, in the Republic of Latvia, from:

...

(2) tax warehouses in the Republic of Latvia, complying with the following conditions:

(a) the consignor of the excise goods uses the document established in Annex II to [Implementing Regulation No] 282/2011 which certifies that the goods are exempt from excise duty;

(b) the consignor of the excise goods draws up a supporting document in accordance with the legislation on the movement of excise goods;

(c) payment for the excise goods is made by non-cash means;

...'

- 15 Article 20(5) of the Law on Excise Duty provides as follows:

'Excise goods intended to meet the needs of the persons referred to in paragraph 1 of this article that are imported into the territory of the Republic of Latvia for release for free circulation, ... from countries that are not Member States or from the territory referred to in Article 2(3) of this law shall be exempt from duty on the following conditions:

(1) the consignor of the excise goods uses the document established in Annex II to [Implementing] Regulation No 282/2011 which certifies that the goods are exempt from duty;

(2) payment for the excise goods is made by non-cash means;

...'

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

- 16 MONO, the applicant in the main proceedings, declared excise goods to the Latvian Customs authorities under the duty suspension arrangement, namely alcohol and cigarettes that it had acquired from a British undertaking and its Latvian branch ('the British undertaking') for release for free circulation to the embassies and consular services of various States and the NATO representation to Latvia.
- 17 Under an assignment agreement between MONO and the British undertaking, assigning MONO's credit claims against its customers to that undertaking, that undertaking received payments from those customers and transferred the amount to MONO, after deducting the amount due on its own sales of the goods to MONO.
- 18 Following an inspection, on 2 November 2018 the National Tax Authority issued a decision requiring MONO to pay excise duty for releasing those goods for free circulation, plus fines and default interest. That decision stated that because the diplomatic representations had not paid MONO for the excise goods by non-cash means, the condition required in order to qualify for the exemption under Article 20(5)(2) of the Law on Excise Duty was not met.
- 19 MONO lodged an appeal with the Administratīvā rajona tiesa (District Administrative Court, Latvia), seeking annulment of that decision. It argued, inter alia, that the condition required in order to qualify for the exemption under Article 20(5)(2) of the Law on Excise Duty was not decisive and had not moreover been established as a condition for exemption from excise duties in the international instruments binding on the Republic of Latvia.
- 20 By judgment of 10 June 2019, that court dismissed the appeal in respect of the obligation to pay excise duty.
- 21 MONO appealed against that judgment to the referring court. That court states that it is not disputed that MONO declared excise goods at a customs warehouse, under the duty suspension arrangement, for release for free circulation to diplomatic agents; that it used the certificate established in Annex II to Implementing Regulation No 282/2011 ('the exemption certificate'); that it issued the supporting documents relating to the deliveries of those goods to the

diplomatic agents of various States and to the NATO representation in Latvia; or, lastly, that the amount payable to it for those goods was paid by the British undertaking under a credit claim assignment agreement.

- 22 However, according to the National Tax Authority, the excise duty exemption does not apply because, under Article 20(5)(2) of the Law on Excise Duty, the excise goods must be paid for by non-cash means by the recipient of the goods.
- 23 Moreover, according to the referring court, it follows from the position adopted by the National Tax Authority that it is not only necessary to prove that the parties to the transaction envisage payment by non-cash means, but also that the goods have actually been paid for by non-cash means and the payment was made by the recipients of the goods supplied. Since the amount payable to MONO for the excise goods delivered to embassies and consular services was paid by the British undertaking under a credit claims assignment agreement, rather than by the embassies and consular services to which the goods were delivered, the National Tax Authority finds it impossible to determine whether the embassies and consular services in question did in fact pay by non-cash means when they received those goods.
- 24 The referring court nevertheless observes that Directive 2008/118 does not stipulate that payment must be by non-cash means in order for goods supplied to diplomatic and consular services to be exempt from excise duty. That condition is contained only in Latvian law.
- 25 That court therefore has doubts as to the interpretation of Article 12(1) and (2) of Directive 2008/118. It notes, on the one hand, that Article 12(2) thereof does indeed establish that the exemptions are subject to the conditions and limitations laid down by the host Member State. However, on the other hand, the fact that Article 20(5)(2) of the Law on Excise Duty requires goods supplied to embassies and consular services to be paid for by non-cash means and that those goods do not qualify for exemption from excise duties as a result of that provision does not, in its view, comply with Article 12(1) of that directive in so far as, under that provision, the goods at issue are exempt from excise duty where they are delivered to embassies and consular services. In this regard, it should be borne in mind that the National Tax Authority does not dispute either that the other conditions laid down in Directive 2008/118 and in the Law on Excise Duty were satisfied or that the goods at issue were actually supplied to the embassies and consular services concerned.
- 26 In those circumstances, the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must Article 12(1) of [Directive 2008/118] be interpreted as meaning that excise goods intended to be used in the context of diplomatic or consular relations are to be exempted from excise duty on the condition that payment for the goods in question is to be made by non-cash means, that payment has actually been made, and that the payment to the supplier was made by the actual recipients of the goods?
- (2) Must Article 12(2) of [Directive 2008/118] be interpreted as meaning that Member States may lay down conditions and limitations which, in the context of diplomatic and consular relations, make the exemption from duty for excise goods subject to the requirement that the purchaser of the goods has actually paid for the goods by non-cash means?’

Questions referred

- 27 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 12 of Directive 2008/118 must be interpreted as meaning that it permits the host Member State, when laying down conditions and limitations on the exemption from excise duty on goods used in the context of diplomatic and consular relations, to establish as a condition for that exemption that the actual recipient of the goods must have paid for them directly to the suppliers using non-cash means of payment.
- 28 It is clear from recitals 2, 8 and 10 of Directive 2008/118 that the directive is intended to establish harmonised general rules for excise duties in order to ensure free movement of the goods concerned and the proper functioning of the internal market. Although all the goods to which that directive refers are, in principle, subject to excise duty, it nevertheless establishes a number of exemptions from that duty, in particular in Article 12, including for diplomatic and consular missions.
- 29 It must be observed, first, that the primary objective of the exemption arrangements established in Article 12 of Directive 2008/118 is to ensure that the recipients of goods in one of the categories identified in Article 12(1) can effectively enjoy that exemption. Accordingly, excise goods are exempt from the corresponding duty where, inter alia, they are intended to be used in the context of diplomatic or consular relations, as can be seen from Article 12(1)(a) of that directive.
- 30 Against that background it must be observed that whilst Article 12(1)(a) does not expressly refer to an exemption from excise duty for goods intended for diplomatic or consular agents for their personal use, there is nevertheless no doubt that the provision does apply to goods intended for those persons for their personal use. That interpretation is in fact in line with Article 36(1)(b) of the Vienna Convention on Diplomatic Relations and Article 50(1)(b) of the Vienna Convention on Consular Relations. It is also confirmed by Article 12(1)(b) of Directive 2008/118, which refers to the ‘members’ of international organisations, and by Annex II to Implementing Regulation No 282/2011, which contains a model exemption certificate whose wording expressly includes goods intended for personal use by members of diplomatic and consular missions and by staff members of international organisations.
- 31 Secondly, even though, as can be seen from Article 12(2) of Directive 2008/118, the Member States have discretion when applying the arrangements for exemption from excise duty, enabling them to lay down conditions and limitations on the exemptions from excise duty, that discretion is tempered in particular by the fact that Article 13 thereof provides for an exemption certificate that serves to regulate application of the exemption and to ensure that the objective referred to in Article 12 of the directive is met, whilst nevertheless ensuring that the goods at issue are actually used by their recipients.
- 32 Thirdly, the prevention of fraud and abuse is in general terms an objective common to both EU law and the law of the Member States. As regards Directive 2008/118 specifically, the Court has already held that the Member States have a legitimate interest in taking appropriate steps to protect their financial interests and that the prevention of possible tax evasion, avoidance and abuse is an objective pursued by that directive (judgment of 29 June 2017, *Commission v Portugal*, C-126/15, EU:C:2017:504, paragraph 59 and the case-law cited).

- 33 In the present case, it follows from the decision to refer and from the observations of the Latvian Government that the requirement under Article 20(5)(2) of the Law on Excise Duty to the effect that the payment must be made by non-cash means, that is to say, by bank transfer, originates in a wish to ensure that the exemption is in practice only granted to those eligible for it and, thereby, to combat fraud and abuse.
- 34 Although, as stated in paragraph 32 of the present judgment, that aim is legitimate, in the exercise of the powers conferred on them by EU law, the Member States must nevertheless comply with the general principles of law among which are, in particular, the principle of proportionality (judgment of 29 June 2017, *Commission v Portugal*, C-126/15, EU:C:2017:504, paragraph 62).
- 35 According to the principle of proportionality, the Member States must employ means which, whilst enabling them effectively to attain the objective pursued by their domestic laws, do not need to go beyond what is necessary and are the least detrimental to the other objectives and the principles laid down by the relevant EU legislation. The case-law of the Court states in that regard that, when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 29 June 2017, *Commission v Portugal*, C-126/15, EU:C:2017:504, paragraph 64 and the case-law cited).
- 36 It would indeed appear that the requirement set out in paragraph 33 of the present judgment, which makes it possible to obtain both information identifying who has made a payment and proof that the payment was actually made, does, in principle, enable verification of compliance with the condition for exemption that the purchaser must belong to the group of persons entitled to the exemption from excise duty, defined in Article 12 of Directive 2008/118.
- 37 Nevertheless, as regards verification of compliance with the conditions to be met in order to qualify for that exemption, it should be recalled that Article 13 of Directive 2008/118 itself provides that excise goods moving under a duty suspension arrangement to a consignee referred to in Article 12(1) of that directive must be accompanied by a certificate of exemption from excise duty.
- 38 That certificate, which is described in Annex II to Implementing Regulation No 282/2011, contains the identity and contact details of the person eligible for the exemption (the eligible organisation or individual), a detailed description of the goods or services concerned (the nature and quantity or number of those goods or services), their unit and total values and the currency used, an express declaration by the beneficiary of the exemption that those goods or services are intended for one of the official uses laid down in Article 12 of Directive 2008/118 or for the private use of that person as a member of a diplomatic or consular mission or as a member of staff of an international organisation, the dated and signed stamp of the organisation in the case of an application for exemption for private use, and the dated and signed stamp of the competent authorities of the host Member State certifying that the transaction meets the conditions for exemption from excise duty, in their entirety or in respect of a given quantity.
- 39 The explanatory notes for the exemption certificate, which are also contained in Annex II to Implementing Regulation No 282/2011, state that the certificate, which is issued in duplicate, one copy being kept by the supplier or warehousekeeper as a supporting document for the exemption, in accordance with the national provisions applicable in that person's Member State, must be completed legibly and in a manner that makes entries indelible, and that no erasures or overwriting are permitted. Where applicable, a translation of the information relating to the

goods or services concerned and any purchase order form relating to them must be provided, in a language recognised in the Member State of the supplier or warehousekeeper. It can also be seen from point 4 of those notes that by stamping the certificate as referred to in the preceding point, the diplomatic or consular mission or international organisation concerned certifies that the eligible individual is a member of its staff and that the goods or services concerned are intended for that person's private use.

- 40 Both the exemption certificate and the explanatory notes therefore set out in detail the steps to be taken and the rules to be observed by the various parties involved in the exemption procedure, that is to say, the supplier, the host Member State, the authorities of the diplomatic or consular mission or international organisation concerned and, in the case of a purchase for private use, the member of that organisation who purchases the exempt goods.
- 41 It is clear from that description of the exemption certificate that, by virtue of the various statements it contains, the detailed description of the goods and services concerned, the capacities in which it is signed and the fact that details are certified by the diplomatic, consular or international organisation concerned and the competent authorities of the host Member State, that certificate, in itself, enables effective verification of compliance with the conditions for exemption set out in Article 12 of Directive 2008/118.
- 42 As regards the position of the Latvian and Spanish Governments to the effect that, by virtue of the banking information it contains, a payment by non-cash means enables the tax authorities to verify that the exemption conditions have been complied with and that the payment transaction actually took place, it must be observed, first, as regards the exemption conditions, that data about the exempt purchaser and detailed information about the goods and services as well as the price appear in the exemption certificate. A non-cash means of payment, that is to say, a bank transfer, therefore does not furnish any information about compliance with the exemption conditions that is not already contained in the exemption certificate.
- 43 Secondly, as regards whether the requirement for a payment by non-cash means may be justified because it enables the authorities to verify whether the commercial transaction for which exemption from excise duty is claimed actually took place, it must be observed that the existence of a sale is, in principle, adequately proved by the paid invoice or the till receipt issued at the time – both accounting documents that may be required by the host Member State to be provided together with the exemption certificate.
- 44 In the light of the foregoing it should be found, subject to verification by the referring court, that the requirement for a payment by non-cash means in order to verify that the transaction concerned actually took place, when applied to the transactions under Article 12 of Directive 2008/118, appears to infringe the principle of proportionality.
- 45 As regards, lastly, the referring court's reference, in its questions, to the conditions according to which the payment to the supplier must actually have been made and must have been made by the actual recipients of the exempt goods, it should be noted that, although there is no doubt that the exemption from excise duty can cover goods only if they are actually sold to purchasers eligible for the exemption, which is sufficiently established by the exemption certificate and a paid invoice or till receipt, it is not apparent either from the case file before the Court or from Article 20(5) of the Law on Excise Duty that the Latvian legislation requires the payment to be made directly by the customer to the supplier.

- 46 It is clear from the foregoing that the answer to the questions referred is that Article 12 of Directive 2008/118 must be interpreted as precluding the host Member State, when laying down conditions and limitations on the exemption from excise duties on goods used in the context of diplomatic and consular relations, from establishing as a condition for that exemption that the purchase price for those goods must be paid by non-cash means.

Costs

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

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

Article 12 of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC must be interpreted as precluding the host Member State, when laying down conditions and limitations on the exemption from excise duties on goods used in the context of diplomatic and consular relations, from establishing as a condition for that exemption that the purchase price for those goods must be paid by non-cash means.

[Signatures]