



## Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

7 September 2023 \*

(Reference for a preliminary ruling – Free movement of goods – Excise duties – Directive 92/12/EEC – Article 6(1)(a) – Chargeability of excise duty – Irregular departure from a suspension arrangement – Unlawful act solely attributable to a third party – Falsification of the accompanying administrative document – Article 14(1) – Exemption for losses occurring under the suspension arrangement – Fortuitous events or *force majeure* – Liability of the authorised warehousekeeper)

In Case C-323/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 6 May 2022, received at the Court on 13 May 2022, in the proceedings

**KRI SpA**, legal successor of SI.LO.NE. – Sistema logistico nord-est Srl,

v

**Agenzia delle Dogane e dei Monopoli**,

THE COURT (Tenth Chamber),

composed of D. Gratsias, President of the Chamber, M. Ilešič (Rapporteur) and Z. Csehi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- KRI SpA, by M. Logozzo and F.C. Palermo, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, and by A. Collabolletta, avvocato dello Stato,
- the European Commission, by M. Björkland and F. Moro, acting as Agents,

\* Language of the case: Italian.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 14(1) of 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), as amended by Council Directive 2004/106/EC of 16 November 2004 (OJ 2004 L 359 p. 30) ('Directive 92/12').
- 2 The request has been made in proceedings between KRI SpA, the legal successor of SI.LO.NE. – Sistema logistico nord-est Srl, and the Agenzia delle Dogane e dei Monopoli (Customs and Monopolies Agency, Italy) concerning the recovery of excise duties owed by that company as a result of the alleged breach by the latter of the suspension arrangement under which mineral oils moved.

### **Legal context**

#### ***European Union law***

- 3 The first, fourth and fifth recitals of Directive 92/12 read as follows:

'Whereas the establishment and functioning of the internal market require the free movement of goods, including those subject [to] excise duties;

...

Whereas, in order to ensure the establishment and functioning of the internal market, chargeability of excise duties should be identical in all the Member States;

Whereas any delivery, holding with a view to delivery or supply for the purposes of a trader carrying out an economic activity independently or for the purposes of a body governed by public law, taking place in a Member State other than that in which the product is released for consumption gives rise to chargeability of the excise duty in that other Member State'

- 4 Article 1(1) of that directive provided:

'This Directive lays down the arrangements for products subject to excise duties and other indirect taxes which are levied directly or indirectly on the consumption of such products, except for value added tax and taxes established by the [European] Community.'

- 5 In accordance with Article 3(1), that directive applied at Community level, inter alia, to mineral oils.

6 Article 4 of that directive provided:

‘For the purpose of this Directive, the following definitions shall apply:

- (a) *authorised warehousekeeper*: a natural or legal person authorised by the competent authorities of a Member State to produce, process, hold, receive and dispatch products subject to excise duty in the course of his business, excise duty being suspended under tax-warehousing arrangement;
- (b) *tax warehouse*: a place where goods subject to excise duty are produced, processed, held, received or dispatched under duty-suspension arrangements by an authorised warehousekeeper in the course of his business, subject to certain conditions laid down by the competent authorities of the Member State where the tax warehouse is located;
- (c) *suspension arrangement*: a tax arrangement applied to the production, processing, holding and movement of products, excise duty being suspended;
- (d) *registered trader*: a natural or legal person without authorised warehousekeeper status, authorised by the competent authorities of a Member State to receive, in the course of his business, products subject to excise duty from another Member State under duty-suspension arrangements. This type of trader may neither hold nor dispatch such products under excise duty-suspension arrangements;

...’

7 The first subparagraph of Article 5(1) of Directive 92/12 provided:

‘The products referred to in Article 3(1) shall be subject to excise duty at the time of their production within the territory of the Community as defined in Article 2 or of their importation into that territory.’

8 Article 6(1)(a) of that directive provided:

‘1. Excise duty shall become chargeable at the time of release for consumption or when shortages are recorded which must be subject to excise duty in accordance with Article 14(3).

Release for consumption of products subject to excise duty shall mean:

- (a) any departure, including irregular departure, from a suspension arrangement’.

9 Article 13 of that directive provided:

‘An authorised warehousekeeper shall be required to:

- (a) provide a guarantee, if necessary, to cover production, processing and holding and a compulsory guarantee to cover movement, subject to Article 15(3), the conditions for which shall be set by the competent authorities of the Member State in which the tax warehouse is authorised;

- (b) comply with the requirements laid down by the Member State within whose territory the tax warehouse is situated;
- (c) keep, for each warehouse, accounts of stock and product movements;
- (d) produce the products whenever so required;
- (e) consent to all monitoring and stock checks.

The requirements must respect the principle of non-discrimination between national and intra-Community transactions.’

10 According to Article 14 of that directive:

‘1. Authorised warehousekeepers shall be exempt from duty in respect of losses occurring under suspension arrangements which are attributable to fortuitous events or *force majeure* and established by the [authorities] of the Member State concerned. They shall also be exempt, under suspension arrangements, in respect of losses inherent in the nature of the products during production and processing, storage and transport. Each Member State shall lay down the conditions under which these exemptions are granted. These exemptions shall apply equally to the traders referred to in Article 16 during the transport of products under excise duty suspension arrangements.

2. Losses referred to in paragraph 1 occurring during the intra-Community transport of products under excise duty suspension arrangements must be established according to the rules of the Member State of destination.

3. Without prejudice to Article 20, the duty on shortages other than the losses referred to in paragraph 1 and losses for which the exemptions referred to in paragraph 1 are not granted shall be levied on the basis of the rates applicable in the Member States concerned at the time the losses, duly established by the competent authorities, occurred, or if necessary at the time the shortage was recorded.

...’

11 Article 15 of Directive 92/12 provided:

‘1. Without prejudice to Articles 5(2), 16, 19(4) and 23(1a), the movement of products subject to excise duty under suspension arrangements shall take place between tax warehouses.

...

2. Warehousekeepers authorised by the competent authorities of a Member State in accordance with Article 13 shall be deemed to be authorised for both national and intra-Community movement.

3. The risks inherent in intra-Community movement shall be covered by the guarantee provided by the authorised warehousekeeper of dispatch, as provided for in Article 13, or, if need be, by a guarantee jointly and severally binding both the consignor and the transporter. The competent authorities in the Member States may permit the transporter or the owner of the products to

provide a guarantee in place of that provided by the authorised warehousekeeper of dispatch. If appropriate, Member States may require the consignee to provide a guarantee.

If mineral oils subject to excise duty are transported within the Community by sea or by pipeline, Member States may relieve authorised warehousekeepers of dispatch of the obligation to provide the guarantee referred to in the first subparagraph.

The detailed rules for the guarantee shall be laid down by the Member States. The guarantee shall be valid throughout the Community.

4. Without prejudice to the provision of Article 20, the liability of the authorised warehousekeeper of dispatch and, if the case arises, that of the transporter may only be discharged by proof that the consignee has taken delivery of the products, in particular by the accompanying document referred to in Article 18 under the conditions laid down in Article 19.

...'

12 Article 18 of that directive provided:

'1. Notwithstanding the possible use of computerised procedures, all products subject to excise duty moving under duty-suspension arrangements between Member States, including those moving by sea or air directly from one Community port or airport to another, shall be accompanied by a document drawn up by the consignor. This document may be either an administrative document or a commercial document. The form and content of this document, and the procedure to be followed where its use is objectively inappropriate, shall be established in accordance with the procedure laid down in Article 24.

...

3. ...

This document must give:

- the address of the office concerned of the tax authorities in the Member State of destination,
- the date and reference of payment or of the acceptance of the guarantee of payment by this office.

...'

13 Article 19(1) of that directive provided:

'The tax authorities of the Member States shall be informed by traders of deliveries dispatched or received by means of the document or a reference to the document specified in Article 18. This document shall be drawn up in quadruplicate:

- one copy to be kept by the consignor,
- one copy for the consignee,

- one copy to be returned to the consignor for discharge,
- one copy for the competent authorities of the Member State of destination.

...'

14 Article 20(1) to (3) of that directive was worded as follows:

'1. Where an irregularity or offence has been committed in the course of a movement involving the chargeability of excise duty, the excise duty shall be due in the Member State where the offence or irregularity was committed from the natural or legal person who guaranteed payment of the excise duties in accordance with Article 15(3), without prejudice to the bringing of criminal proceedings.

Where the excise duty is collected in a Member State other than that of departure, the Member State collecting the duty shall inform the competent authorities of the country of departure.

2. When, in the course of movement, an offence or irregularity has been detected without it being possible to determine where it was committed, it shall be deemed to have been committed in the Member State where it was detected.

3. Without prejudice to the provision of Article 6(2), when products subject to excise duty do not arrive at their destination and it is not possible to determine where the offence [or] irregularity was committed, that offence or irregularity shall be deemed to have been committed in the Member State of departure, which shall collect the excise duties at the rate in force on the date when the products were dispatched unless within a period of four months from the date of dispatch of the products evidence is produced to the satisfaction of the competent authorities of the correctness of the transaction or of the place where the offence or irregularity was actually committed. Member States shall take the necessary measures to deal with any offence or irregularity and to impose effective penalties.'

15 Directive 92/12 was repealed and replaced, as from 1 April 2010, by 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). However, in view of the date of the facts of the main proceedings, this reference for a preliminary ruling is examined by reference to the provisions of Directive 92/12.

### *Italian law*

16 The decreto legislativo n. 504 – Testo unico delle disposizioni legislative concernenti le imposte sulla produzione e sui consumi e relative sanzioni penali e amministrative (Legislative Decree No 504, approving the consolidated text of the provisions on taxes on production and consumption and related criminal and administrative penalties), of 26 October 1995 (GURI No 279, of 29 November 1995, p. 5), as amended by the legge n. 342 – Misure in materia fiscale (Law No 342, on taxation), of 21 November 2000 (GURI No 194, of 25 November 2000, p. 5) ('Legislative decree No 504/1995'), provides, in Article 2, paragraphs 1, 2 and 4:

'1. For products subject to excise duty, the chargeability for tax shall arise at the time of manufacture or importation.

2. Excise duty shall become due at the time of the release of the products for consumption. The following shall also be regarded as a release for consumption:

- (a) cases where there are shortages that exceed the quantities authorised [or] where the conditions for granting the exemption referred to in Article 4 are not satisfied;
- (b) cases where there is a departure from a suspension arrangement, even if that departure is irregular;
- (c) manufacture or importation, even if irregular, which takes place outside the suspension arrangement.

...

4. The proprietor of the tax warehouse from which the release for consumption occurs and, jointly and severally, the guarantor for payment or the person fulfilling the conditions for the liability to tax, are liable to pay the excise duty. In the case of imported products, the taxpayer is identified on the basis of customs legislation.

...'

17 Article 4 of Legislative Decree No 504/1995, entitled, 'Exemptions for losses and waste', provides:

'1. In the event of the loss or destruction of products that are under a suspension arrangement, exemption from tax is granted if the taxable person proves that the loss or destruction of those products was the result of fortuitous events or *force majeure*. Acts of third parties resulting from intentional fault or gross negligence and not attributable to the taxable person and acts of minor negligence attributable to the taxable person shall be treated as fortuitous events or *force majeure*. If, following the commission of criminal offences by third parties, criminal proceedings are brought, the procedure for the collection of excise duties shall be suspended until an order of no case to answer, or a decision that is not open to appeal has been delivered in accordance with Article 648 of the Code of criminal procedure. In that case, the procedure for the collection of value added tax on the excise duties themselves shall also be suspended. Where it is not established that the taxable person was involved in the facts and that the persons actually responsible have been identified, or where those persons are unknown, exemption from excise duties shall be granted to the taxable person and any recovery shall be made from the person actually responsible.

2. For losses of products under a suspension arrangement occurring during the production or processing to which they are subject, if the tax debt has already arisen exemption is granted to the extent that the waste may be technically admitted, as determined by the Finance Minister by a decree to be adopted in accordance with Article 17(3) of Law No 400 of the 23 August 1988.

3. For natural and technical waste, the provisions laid down in the customs legislation shall apply.

4. The legislation on transport waste shall also apply to the transport of products under an excise duty suspension arrangement from Member States of the European Union.'

18 Article 7 of that legislative decree, entitled ‘Irregularities in the movement of products subject to excise duty’, provides:

‘1. In the event of an irregularity or offence, in respect of which Article 4 does not provide for an exemption from excise duties, committed whilst the products moved under a suspension arrangement, the following provisions, without prejudice to provisions governing the exercise of criminal proceedings, shall apply if the facts complained of constitute an offence:

- (a) excise duty shall be paid by the natural or legal person who is the guarantor of the transport;
- (b) excise duty shall be collected in Italy if the irregularity or offence was committed in the territory of the State;
- (c) if a finding is made of an irregularity or offence in the territory of the State and it is not possible to establish the place in which it was actually committed, it shall be deemed to have been committed in the territory of the State;
- (d) where products dispatched from the territory of the State do not reach their destination in another Member State and it is not possible to establish the place in which they were released for consumption, the irregularity or offence shall be deemed to have been committed in the territory of the State and the excise duty shall be collected at the rate in force on the date of the dispatch of the products, unless, within a period of four months with effect from the date of dispatch, the regularity of the transaction is proven, or the irregularity or the offence is proven actually to have been committed outside the territory of the State.

...’

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 19 SILO.NE., a company established under Italian law, operates a business for the storage and transport of petroleum. It was the subject of a merger carried out by Shell Italia SpA, which became KRI.
- 20 Between 22 August 2005 and 30 June 2006, SILO.NE., in its capacity as authorised warehousekeeper, made, from its tax warehouse situated in Italy, 196 consignments of mineral oils (diesel oil and petrol) under an excise duty suspension arrangement to BMB Projekt d.o.o, a company established in Slovenia, a registered trader authorised to receive those products. The related amount of excise duties on those consignments was EUR 2 816 426.10.
- 21 For the purposes of movement under an excise duty suspension arrangement, SILO.NE. drew up, for each consignment, an accompanying administrative document (‘AAD’) in quadruplicate. Copy 1 was intended to be retained by the consignor. Copy 2 was intended to accompany the products and be retained by the consignee. Copy 3 was intended to accompany the products and be returned by the consignee to the consignor with certification of receipt of the products. Copy 4 was intended to accompany the products and be sent by the consignee to the competent tax authority at the place of destination.



- 22 Copy 3 of the AAD of each of those consignments was returned by the Slovenian operator to SI.LO.NE., bearing a certification of receipt of the products and a stamp apparently affixed by the Slovenian customs authority.
- 23 On 10 July 2008, following a request for information sent by the Italian customs authorities to the Slovenian customs authorities in the context of a procedure for administrative assistance for taxation, the Slovenian authorities stated that the declarations made on the reverse of Copy 3 of the AAD were false as regards 161 of those consignments, since only 35 of those consignments had in fact been brought into Slovenian territory.
- 24 On the basis of the falsifications found, the Italian customs authorities considered that it was not proven that the products at issue had been released for consumption outside the Italian territory. Therefore, they considered that the discharges made by SI.LO.NE. for the 161 consignments were irregular. Being unable to determine the place where the products at issue had irregularly been released for consumption, those authorities also considered that those irregularities had been committed within Italian territory.
- 25 In those circumstances, they decided that it was for the Italian State to recover the excise duties due on the products at issue.
- 26 On 13 October 2008, criminal proceedings were initiated against the legal representatives of SI.LO.NE. for the falsification of customs transport documents. The judicial authority with territorial jurisdiction decided to dismiss charges in those proceedings as it was not possible to show that the legal representatives of that company participated in the conduct seeking to evade excise duties, since the falsification of documents was attributed solely to illegal acts by a third party.
- 27 On 15 July 2009, the Customs and Monopolies Agency issued a notice of payment, addressed to SI.LO.NE., for the recovery of excise duties on the petroleum products that were the subject matter of the 161 consignments vitiated by irregularities, in a total sum of EUR 2 668 179.
- 28 SI.LO.NE. brought an action against that notice of payment before the Commissione tributaria provinciale di Udine (Provincial Tax Court, Udine, Italy) relying on Article 4 of Legislative Decree No 504/1995 which provided for the exemption from tax in the event of loss or destruction of products resulting from fortuitous events or *force majeure*.
- 29 That court upheld SI.LO.NE.'s action by a judgment of 19 January 2011. The Customs and Monopolies Agency then brought an appeal against that judgment before the Commissione tributaria regionale per il Friuli-Venezia Giulia (Regional Tax Court, Friuli-Venezia Giulia, Italy).
- 30 By a judgment of 6 July 2012, that court reversed that decision and upheld the Customs and Monopolies Agency's appeal.
- 31 The appeal court observed that Article 4 of Legislative Decree No 504/1995 provided for the exemption from tax only in the case of loss or destruction of the products subject to excise duty, and not in a case, as in the present case, of an irregular removal or departure from a suspension arrangement. It therefore found that SI.LO.NE. was required to pay the excise duty to which the products at issue were subject owing to their irregular departure from a suspension arrangement, pursuant to the national legislation relating to the irregular removal or departure from a suspension arrangement.

- 32 That court agreed, in essence, with the position of the Customs and Monopolies Agency concerning SI.LO.NE.'s liability for payment of the tax, observing that, as regards the irregular release for consumption of petroleum, under a suspension arrangement, the warehousekeeper was necessarily liable for payment of the evaded excise duty and that the unlawful act of a third party did not have the effect of extinguishing that obligation, as the warehousekeeper was under a strict liability.
- 33 Shell Italia brought an appeal against that judgment before the Corte suprema di cassazione (Supreme Court of Cassation, Italy), which is the referring court, submitting that, on the contrary, the national legislation on exemption from tax must be applied in this case.
- 34 In the light of the case-law of the Court of Justice as well as its own case-law, the referring court has doubts as to the meaning of Article 14 of Directive 92/12 and, in particular, as to the scope of application of the concepts of 'fortuitous events' and '*force majeure*' in a situation where an unlawful act of a third party could give rise to a legitimate expectation for the authorised warehousekeeper itself, where it was not at fault.
- 35 That court observes that, on the one hand, one line of case-law appears, by virtue of the strict liability mechanism, to be oriented towards a finding that the intentionally unlawful act of a third party does not exonerate the taxable person from its tax obligation. On the other hand, there is another line of case-law that, on the contrary, tends towards a finding that the intentionally unlawful act of a third party may exonerate the taxable person from its tax obligation, where, in cases of fraud by the counterfeiting of customs documents, it is established that the guarantor warehousekeeper was totally unaware of that fraud, and therefore had no reason to believe that the products did not move entirely in conformity with the rules under the suspension arrangement.
- 36 According to the referring court, the judgment of 24 March 2022, *TanQuid Polska* (C-711/20, EU:C:2022:215), does not remove all doubt as to the interpretation of Article 14 of Directive 92/12, since, in the case giving rise to that judgment, the consignee of mineral oils moving under a suspension arrangement had denied having received them, whereas, in the present case, the consignee of the products sent Copy 3 of each AAD, thus leading the warehousekeeper to believe that the products at issue had arrived at the intended destination.
- 37 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must the first sentence of Article 14[(1)] of [Directive 92/12] be interpreted as meaning that in the event of irregular departure of the product subject to excise duty, the liability of the warehousekeeper guaranteeing payment of the duty is strict, with there being no possibility of exemption from that liability and from payment of the sums corresponding to the related financial penalties, even where that departure results from an unlawful act attributable – exclusively – to a third party; or, can it be interpreted as meaning that the exemption from the tax and from the corresponding penalties is to be granted – as a fortuitous event or *force majeure* – to the guarantor warehousekeeper who not only has nothing whatsoever to do with the unlawful act of the third party but also had a legitimate and good faith expectation that the movement of the product under the duty suspension arrangement was regular?'

## Consideration of the question referred

- 38 By its question, the referring court asks, in essence, whether the first sentence of Article 14(1) of Directive 92/12 must be interpreted as meaning that the exemption from tax that it lays down in respect of losses occurring under a suspension arrangement as a result of fortuitous events or *force majeure* applies to the warehousekeeper, which is liable for the payment of duty, in the case of a departure from the suspension arrangement owing to an unlawful act solely attributable to a third party, where the warehousekeeper was wholly uninvolved in that unlawful act and where it had a legitimate expectation that the products moved in accordance with the rules under the arrangement for the suspension of duty.
- 39 As a preliminary matter, it should be recalled that Directive 92/12 establishes a certain number of rules regarding the holding, movement and monitoring of products subject to excise duty, such as mineral oils referred to in Article 3(1) thereof; and it does so, as is apparent inter alia from the fourth recital thereof, in order to ensure that the chargeability of excise duty is identical in all the Member States. That harmonisation makes it possible, in principle, to avoid double taxation in relations between Member States (see, inter alia, judgment of 24 February 2021, *Silcompa*, C-95/19, EU:C:2021:128, paragraph 44 and the case-law cited).
- 40 Products subject to excise duty become taxable for the purposes of Directive 92/12, in accordance with the first sentence of Article 5(1) thereof, upon their being produced within the territory of the European Union or imported into that territory.
- 41 By contrast, pursuant to Article 6(1) of Directive 92/12, excise duty becomes chargeable, inter alia, at the time of release for consumption of products subject to excise duty. Under point (a) of the second subparagraph of Article 6(1) of that directive, that concept encompasses, in the same way, any departure – including irregular departure – from a suspension arrangement, defined in Article 4(c) of that directive.
- 42 It is a feature of that arrangement that the excise duty on the products covered by it is not yet payable, despite the fact that the chargeable event for taxation purposes has already taken place. Consequently, as regards the products subject to excise duty, that arrangement postpones the chargeability of excise duty until one of the conditions of chargeability, such as the one described in the preceding paragraph, is met (judgment of 24 March 2022, *TanQuid Polska*, C-711/20, EU:C:2022:215, paragraph 42 and the case-law cited).
- 43 That condition for chargeability is satisfied in a case in which the products at issue depart, even if irregularly, from the suspension arrangement, as such a departure must be regarded, according to Article 6(1)(a) of Directive 92/12, as a release for consumption.
- 44 For that reason, it is necessary to examine the conditions to which Article 14(1) of that directive renders the benefit of the exemption subject, in order to determine whether those conditions could have been satisfied in a situation such as that at issue in the main proceedings.
- 45 The first sentence of Article 14(1) of Directive 92/12 provides that authorised warehousekeepers are to be exempt from duty in respect of losses occurring under suspension arrangements which are attributable to fortuitous events or *force majeure* and established by the authorities of the Member State concerned.

- 46 In accordance with settled case-law, the terms of a provision of EU law which does not contain any express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given, throughout the European Union, an autonomous and uniform interpretation which must be determined according to the usual meaning of those terms in everyday language, taking into account the context in which they are used and the objectives pursued by the legislation of which they form part (see, to that effect, judgment of 10 June 2021, *Commissioners for Her Majesty's Revenue and Customs (Innocent agent)*, C-279/19, EU:C:2021:473, paragraph 23 and the case-law cited).
- 47 The wording of the first sentence of Article 14(1) of Directive 92/12 indicates that the warehousekeeper is exempt where two conditions are met. The latter must establish, in the first place, that there was a 'loss' that occurred under the suspension arrangement and, in the second place, that that 'loss' was due to fortuitous events or *force majeure*.
- 48 In accordance with the usual meaning in everyday language of the word 'loss', the loss suffered by the authorised warehousekeeper refers to the fact of being deprived, wholly or in part, of something that it used or possessed. It follows that the disappearance of a product in the course of its production, processing, storage or movement constitutes a 'loss' within the meaning of the first sentence of Article 14(1).
- 49 Since the exemption provided for in the second sentence of Article 14(1) of Directive 92/12 is separate from the exemption provided for in the first sentence of that paragraph, the first exemption cannot be interpreted broadly (see, to that effect, judgment of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraph 43). Furthermore, the exemption provided for in the first sentence of Article 14(1) of Directive 92/12 for losses attributable to fortuitous events or *force majeure* is a derogation from the general rule, which must therefore be interpreted strictly (see, to that effect, judgment of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraph 30).
- 50 Thus, the disappearance of a product which is under a suspension arrangement can mean only the material impossibility for that product to be released for consumption, or even to enter into commercial channels of the European Union.
- 51 However, a product which, in circumstances such as those in the main proceedings, departs irregularly from a suspension arrangement nevertheless remains within the commercial channels of the European Union.
- 52 Therefore, such an irregular departure from a suspension arrangement of a product subject to excise duty cannot satisfy the first of those two cumulative conditions referred to in paragraph 47 of this judgment for an exemption from the payment of tax to be granted to the authorised warehousekeeper.
- 53 Therefore, in the absence of a 'loss', an exemption from tax under the first sentence of Article 14(1) of Directive 92/12 cannot be granted to the authorised warehousekeeper in the case of an irregular departure from a suspension arrangement, even when that departure is the result of an unlawful act solely attributable to a third party and that warehousekeeper has a legitimate and good faith expectation that the product is moving in accordance with the rules governing the arrangement for the suspension of duty.

- 54 That interpretation of that provision is supported both by the context in which they occur and by the objectives pursued by Directive 92/12.
- 55 In particular, it is apparent from the scheme of Directive 92/12 and, in particular, from Article 13, Article 15(3) and (4) and Article 20(1) thereof that the legislature conferred a central role on the authorised warehousekeeper in the context of the procedure for movement of products subject to excise duty under a suspension arrangement (judgment of 2 June 2016, *Kapnoviomichania Karelia*, C-81/15, EU:C:2016:398, paragraph 31).
- 56 That warehousekeeper, in its capacity as the natural or legal person authorised by the competent authorities of a Member State to produce, process, hold, receive and dispatch products subject to excise duty in the course of its business, is, consequently, designated as liable for the payment of excise duties in cases where an irregularity or offence has been committed involving the chargeability of such duties in the course of the movement of those products. That liability is, moreover, strict and is based not on the proven or presumed fault of the warehousekeeper, but on its participation in an economic activity (see, to that effect, judgment of 24 February 2021, *Silcompa*, C-95/19, EU:C:2021:128, paragraph 52).
- 57 Furthermore, as is clear from the first and fourth recitals of Directive 92/12, one of the objectives pursued by that directive is to ensure that the chargeability of excise duties is identical in all the Member States, in order to ensure the establishment and functioning of the internal market, which involves the free movement of goods, including those subject to excise duties. Those objectives also include, moreover, the prevention of possible tax evasion, avoidance and abuse (see, to that effect, judgment of 10 June 2021, *Commissioners for Her Majesty's Revenue and Customs (Innocent agent)*, C-279/19, EU:C:2021:473, paragraph 31).
- 58 An interpretation of the concept of 'loss', within the meaning of the first sentence of Article 14(1) of that directive, that includes the irregular departure from a suspension arrangement of a product subject to excise duty would not be consistent with the objectives recalled in the preceding paragraph of this judgment. First, that interpretation would weaken the strict nature of the liability that that directive confers on the warehousekeeper under the suspension arrangement and, therefore, the central role the latter has as regards ensuring the chargeability of excise duty and, ultimately, the free movement of goods subject to excise duties. Second, that weakening of liability would also undermine the objective of the prevention of possible tax evasion, avoidance and abuse by making more difficult in practice the recovery of excise duties from such a warehousekeeper in the event of an irregularity or offence (see, to that effect, judgment of 10 June 2021, *Commissioners for Her Majesty's Revenue and Customs (Innocent agent)*, C-279/19, EU:C:2021:473, paragraph 34).
- 59 In the light of all the foregoing considerations, the answer to the question referred is that the first sentence of Article 14(1) of Directive 92/12 must be interpreted as meaning that the exemption from tax laid down in that provision does not apply to the warehousekeeper, which is liable for the payment of duty, in the case of a departure from the suspension arrangement owing to an unlawful act solely attributable to a third party, even where the warehousekeeper was wholly uninvolved in that unlawful act and had a legitimate expectation that the goods moved in accordance with the rules under the arrangement for the suspension of duty.

## Costs

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

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

**The first sentence of Article 14(1) of 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**

**must be interpreted as meaning that the exemption from tax laid down in that provision does not apply to the warehousekeeper, which is liable for the payment of duty, in the case of a departure from the suspension arrangement owing to an unlawful act solely attributable to a third party, even where the warehousekeeper was wholly uninvolved in that unlawful act and had a legitimate expectation that the goods moved in accordance with the rules under the arrangement for the suspension of duty.**

[Signatures]