



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

18 April 2024*

(Reference for a preliminary ruling – Taxation – Excise duties – Directive 2008/118/EC – Article 7(4) – Chargeability of excise duty – Release for consumption – Total destruction or irretrievable loss of a product placed under a duty-suspension arrangement – Concept of ‘unforeseeable circumstances’ – Authorisation by the competent authorities of the Member State – Irretrievable loss caused by a non-serious fault committed by an employee of the authorised warehousekeeper)

In Case C-509/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 20 July 2022, received at the Court on 27 July 2022, in the proceedings

Agenzia delle Dogane e dei Monopoli

v

Girelli Alcool Srl,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Fifth Chamber, Z. Csehi, M. Ilešič (Rapporteur) and D. Gratsias, Judges,

Advocate General: A.M. Collins,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 7 June 2023,

after considering the observations submitted on behalf of:

- Girelli Alcool Srl, by P. Castellano, avvocatà,
- the Italian Government, by G. Palmieri, acting as Agent, and by F. Meloncelli, avvocato dello Stato,
- the European Parliament, by E. Paladini and A. Tamás, acting as Agents,

* Language of the case: Italian.

– the Council of the European Union, by E. Ursel and G. Ruge, acting as Agents,
– the European Commission, by M. Björkland and F. Moro, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 28 September 2023,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 7(4) 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 The request has been made in proceedings between the Agenzia delle Dogane e dei Monopoli (Customs and Monopolies Agency, Italy; ‘the Customs Agency’) and Girelli Alcool Srl (‘Girelli’) concerning the chargeability of excise duty on a quantity of pure ethyl alcohol that was irretrievably lost during a denaturing operation.

Legal context

European Union law

Directive 2008/118

- 3 Recitals 8 and 9 of Directive 2008/118 state:
 - ‘(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 Community level when excise goods are released for consumption and who the person liable to pay the excise duty is.
 - (9) Since excise duty is a tax on the consumption of certain goods, duty should not be charged in respect of excise goods which, under certain circumstances, have been destroyed or irretrievably lost.’
- 4 Article 1(1) of that directive is worded as follows:

‘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 Directive 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 [Council Directive 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)];

...'

5 Under Article 2 of Directive 2008/118:

'Excise goods shall be subject to excise duty at the time of:

- (a) their production, including, where applicable, their extraction, within the territory of the [European] Community;
- (b) their importation into the territory of the Community.'

6 Article 7 of that directive provides:

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

2. For the purposes of this Directive, "release for consumption" shall mean any of the following:

- (a) the departure of excise goods, including irregular departure, from a duty suspension arrangement;
- (b) the holding of excise goods outside a duty suspension arrangement where excise duty has not been levied pursuant to the applicable provisions of Community law and national legislation;
- (c) the production of excise goods, including irregular production, outside a duty suspension arrangement;
- (d) the importation of excise goods, including irregular importation, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement.

...

4. The total destruction or irretrievable loss of excise goods under a duty suspension arrangement, as a result of the actual nature of the goods, of unforeseeable circumstances or *force majeure*, or as a consequence of authorisation by the competent authorities of the Member State, shall not be considered a release for consumption.

For the purpose of this Directive, goods shall be considered totally destroyed or irretrievably lost when they are rendered unusable as excise goods.

The total destruction or irretrievable loss of the excise goods in question shall be proven to the satisfaction of the competent authorities of the Member State where the total destruction or irretrievable loss occurred or, when it is not possible to determine where the loss occurred, where it was detected.

5. Each Member State shall lay down its own rules and conditions under which the losses referred to in paragraph 4 are determined.’

Directive 92/12/EEC

- 7 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 (OJ 1992 L 76, p. 1), provides:

‘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 authorised of the Member State concerned. ...’

Directive 92/83

- 8 Article 27(1) of Directive 92/83 is worded as follows:

‘Member States shall exempt the products covered by this Directive from the harmonised excise duty under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

- (a) when distributed in the form of alcohol which has been completely denatured in accordance with the requirements of any Member State, such requirements having been duly notified and accepted in accordance with paragraphs 3 and 4 of this Article. This exemption shall be conditional on the application of the provisions of Directive [92/12] to commercial movements of completely denatured alcohol;

...’

The Customs Code

- 9 Article 204(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1; ‘the Customs Code’) provides:

‘A customs debt on importation shall be incurred through:

- (a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed,

...

in cases other than those referred to in Article 203, unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.’

10 Article 206(1) of the Customs Code provides:

‘By way of derogation from Articles 202 and 204(1)(a), no customs debt on importation shall be deemed to be incurred in respect of specific goods where the person concerned proves that the non-fulfilment of the obligations which arise from:

- the provisions of Articles 38 to 41 and the second indent of Article 177, or
- keeping the goods in question in temporary storage, or
- the use of the customs procedure under which the goods have been placed,

results from the total destruction or irretrievable loss of the said goods as a result of the actual nature of the goods or unforeseeable circumstances or *force majeure*, or as a consequence of authorisation by the customs authorities.

For the purposes of this paragraph, goods shall be irretrievably lost when they are rendered unusable by any person.’

Italian law

11 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, consolidated text of legislative provisions relating to duties on production and consumption and related criminal and administrative penalties) of 26 October 1995 (GURI No 279 of 29 November 1995, Ordinary Supplement No 143), as amended by decreto legislativo n. 48 – Attuazione della direttiva 2008/118/CE relativa al regime generale delle accise e che abroga la direttiva 92/12/CEE (Legislative Decree No 48 implementing Directive 2008/118/EC concerning the general arrangements for excise duty and repealing Directive 92/12/EEC) of 29 March 2010 (GURI No 75 of 31 March 2010; ‘Legislative Decree No 504’), provides, in Article 2(2), as follows:

‘Excise duty shall be chargeable at the time when the product is released for consumption in the territory of the State. ...’

12 Article 4(1) and (5) of Legislative Decree No 504 is worded as follows:

‘1. In the case of irretrievable loss or total destruction of goods under a duty suspension arrangement, relief shall be granted where the person liable to pay the duty proves, in a manner deemed satisfactory by the tax authority, that the loss or destruction of the goods occurred as a result of unforeseeable circumstances or *force majeure*. With the exception of manufactured tobacco, facts constituting non-serious fault which are attributable to third parties or to the person liable to pay the duty shall be treated as unforeseeable circumstances and *force majeure*.

...

5. For the purposes of the present consolidated text, goods shall be considered totally destroyed or irretrievably lost when they are rendered unusable as excise goods.’

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

- 13 Girelli is an undertaking established in Italy whose business is the denaturing of ethyl alcohol. That is the process by which alcohol is rendered unfit for human consumption. To that end, it has a licensed ethyl alcohol depot and a denaturing and packaging plant.
- 14 On 26 March 2014, while Girelli was filling a tank at the alcohol denaturation plant in the presence of an official from the customs agency, pure ethyl alcohol spilled onto the floor as a result of a leak caused by a valve having been left open by one of its employees. Part of the product was collected and recovered, while the rest was irretrievably lost.
- 15 On 31 March 2014, Girelli applied, pursuant to Article 4(1) of Legislative Decree No 504, for exemption from excise duty in respect of the quantity of pure ethyl alcohol that had been accidentally lost.
- 16 On 5 June 2014, the Customs Agency rejected that application on the ground that the loss in question was due not to unforeseeable circumstances or *force majeure* but to the carelessness and fault of a Girelli employee who, inadvertently, had left the valve of the tank open.
- 17 On 25 July 2014, Girelli submitted observations to the Customs Agency in which it challenged the chargeability of excise duty on the quantity of ethyl alcohol lost, arguing that it was impossible to release it for consumption.
- 18 On 3 October 2014, the Customs Agency rejected those observations and issued a notice for payment of excise duty totalling EUR 17 476.24.
- 19 Girelli brought an action against that decision before the Commissione tributaria provinciale di Milano (Provincial Tax Court, Milan, Italy), in support of which it argued, inter alia, that there was no chargeable event giving rise to the excise duty at issue on the ground that the part of the product which had been lost had not been released for consumption, and that the harmful event could be attributed to unforeseeable circumstances or, in the alternative, to a non-serious fault.
- 20 That court upheld that action, holding in its judgment that the loss of the product in question, caused by a lack of care which could not, however, be classified as ‘serious’, constituted a non-serious fault, which is to be treated, pursuant to Article 4(1) of Legislative Decree No 504, in the same way as unforeseeable circumstances and *force majeure*.
- 21 The Customs Agency brought an appeal against that judgment before the Commissione tributaria regionale della Lombardia (Regional Tax Court, Lombardy, Italy), which took the view that the two conditions for granting the exemption from excise duty applied for, namely that the loss of the goods concerned is irretrievable and due to unforeseeable circumstances or *force majeure*, were satisfied in the present case.
- 22 The Customs Agency brought an appeal on a point of law against the judgment of the Commissione tributaria regionale della Lombardia (Regional Tax Court, Lombardy) in support of which it claimed that, by finding that the negligent conduct of the employee concerned came within the concept of ‘unforeseeable circumstances’ and that, in any event, the fault of that employee had to be classified as ‘not serious’, that court infringed Article 4 of Legislative Decree No 504.

- 23 The Corte suprema di cassazione (Supreme Court of Cassation, Italy), which is the referring court, considers that the dispute pending before it raises the question whether the concepts of ‘unforeseeable circumstances’ and ‘*force majeure*’, within the meaning of EU law, include wrongful conduct and, if so, under what conditions. If it does not, the referring court wonders whether it is compatible with EU law for a Member State to consider that conduct constituting a fault that can be described as ‘not serious’ is covered by those concepts.
- 24 The referring court notes that two different approaches to the interpretation of the concept of ‘unforeseeable circumstances’ can be identified in its case-law. According to the first approach, which is subjective in nature, the person bound by the obligation is required to demonstrate that he or she did not commit any fault and that the damage occurred in a way that could not have been foreseen or forestalled by exercising due care in the light of the specific circumstances of the case. According to the second approach, which is objective in nature, it is irrelevant whether that person had acted diligently or not.
- 25 In that regard, the referring court notes that, in the light of the case-law arising from the judgments of 18 December 2007, *Société Pipeline Méditerranée et Rhône* (C-314/06, EU:C:2007:817, paragraphs 24, 25 and 40), and of 18 May 2017, *Latvijas Dzelzceļš* (C-154/16, EU:C:2017:392, paragraph 61), the concepts of ‘unforeseeable circumstances’ and ‘*force majeure*’, within the meaning of Article 7(4) of Directive 2008/118, inasmuch as they are both characterised by an objective element, relating to abnormal and unforeseeable circumstances, and a subjective element, involving the obligation, on the person concerned, to guard against the consequences of the abnormal event by taking appropriate steps without making unreasonable sacrifices, do not appear to refer to wrongful conduct and, in particular, conduct characterised by mere carelessness, which are foreseeable by nature and easily avoidable.
- 26 That court thus takes the view that legislation of a Member State assimilating slight fault to unforeseeable circumstances and *force majeure* amounts to providing, as a separate ground for exemption from excise duty, for an additional situation, which does not however appear to follow from the provisions of that directive.
- 27 Nevertheless it wonders whether the first subparagraph of Article 7(4) of Directive 2008/118, under which ‘the total destruction or irretrievable loss of ... goods ... as a consequence of authorisation by the competent authorities of the Member State’ is not to be considered a release for consumption, may be interpreted as allowing Member States to define general categories other than unforeseeable circumstances or *force majeure* giving rise to exemption from excise duty.
- 28 In that regard, the referring court considers that the general scheme of that provision, which refers, successively, to the ‘result of the actual nature of the goods’, ‘unforeseeable circumstances’ and ‘*force majeure*’, suggests that the expression ‘as a consequence of authorisation by the competent authorities of the Member State’ is exhaustive and residual, so that it refers to specific events other than those to which unforeseeable circumstances and *force majeure* relate, which are not identifiable a priori but relate to particular facts which, when submitted for prior assessment by the competent authority, may justify the adoption of a decision to destroy the product.
- 29 Lastly, the referring court raises the question whether the concept of ‘unforeseeable circumstances’ may have a different scope from that of ‘*force majeure*’, in particular as regards the condition relating to the characteristic subjective element of those two concepts within the meaning of the case-law referred to in paragraph 25 above.

30 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘(1) First, should the concept of unforeseeable circumstances giving rise to losses under duty suspension arrangements, within the meaning of Article 7(4) of Directive [2008/118], be understood, in the same way as *force majeure*, as abnormal and unforeseeable circumstances extraneous to the authorised warehousekeeper, which, in spite of the exercise of all due care, [could not have been avoided and which] were objectively outside the warehousekeeper’s control?
- (2) Furthermore, to exclude liability in the event of unforeseeable circumstances, is the care exercised in taking the necessary precautions to avoid the harmful act relevant, and if so, to what extent?
- (3) Subject to the first two questions, is a provision such as Article 4(1) of [Legislative Decree No 504], which equates ordinary negligence (by the same person or by third parties) with unforeseeable circumstances and *force majeure*, compatible with the provisions of Article 7(4) of Directive [2008/118], which mentions no other conditions, particularly as regards the “fault” of the perpetrator or active participant?
- (4) Lastly, can the expression “or as a consequence of authorisation by the competent authorities of the Member State”, also contained in Article 7(4) [of Directive 2008/118], be understood as the possibility for the Member State to identify another general category (slight negligence) that might have a bearing on the definition of release for consumption in the event of destruction or loss of the product, or does that expression preclude a clause of that type, it having to be understood, rather, as referring to specific cases that are individually authorised or otherwise identified by precedents in which the objective elements are defined?’

Admissibility of the request for a preliminary ruling

31 Without formally raising a plea of inadmissibility with regard to the request for a preliminary ruling, Girelli calls into question the relevance of the questions referred by the national court, arguing in particular that, in the present case, the condition relating to the release for consumption, to which the chargeability of excise duty under Article 7(1) of Directive 2008/118 is subject, is not satisfied since the product at issue in the main proceedings has been irretrievably lost.

32 In that regard, it should be recalled that, in accordance with settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation or the validity of a rule of EU law, the Court is in principle bound to give a ruling (judgment of 12 October 2023, *KBC Verzekeringen*, C-286/22, EU:C:2023:767, paragraph 21 and the case-law cited).

- 33 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation, or the determination of validity, of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 12 October 2023, *KBC Verzekeringen*, C-286/22, EU:C:2023:767, paragraph 22 and the case-law cited).
- 34 In the present case, it must be noted that the request for a preliminary ruling, which concerns the interpretation of EU law, in the present case Article 7(4) of Directive 2008/118, seeks specifically to determine whether, where a product subject to excise duty has been irretrievably lost in circumstances such as those of the dispute in the main proceedings, that product must be regarded, in accordance with that provision, as not having been ‘released for consumption’ within the meaning of Article 7(2) of that directive. It follows that the doubts expressed by Girelli concern not the admissibility of the questions referred but the substance of those questions.
- 35 Accordingly, the request for a preliminary ruling is admissible.

Consideration of the questions referred

The first question

- 36 By its first question, the referring court asks, in essence, whether Article 7(4) of Directive 2008/118 must be interpreted as meaning that the concept of ‘unforeseeable circumstances’, within the meaning of that provision, must, like that of ‘*force majeure*’, be understood as referring to abnormal and unforeseeable circumstances beyond the control of the party by whom it is pleaded, the consequences of which, in spite of the exercise of all due care, could not have been avoided.
- 37 As a preliminary point, it should be borne in mind that, as stated in Article 1(1) thereof, the purpose of Directive 2008/118 is to lay down the general arrangements for excise duty which is levied directly or indirectly on the consumption of excise goods, which include alcohol and alcoholic beverages.
- 38 Under Article 7(1) of Directive 2008/118/EC, excise duty becomes chargeable at the time of release for consumption and in the Member State where that occurs. Article 7(2) of that directive defines the concept of ‘release for consumption’. That concept includes, inter alia, the irregular departure of excise goods from a duty suspension.
- 39 Article 7(4) of Directive 2008/118 states however that the total destruction or irretrievable loss of excise goods under a duty suspension arrangement, as a result of the actual nature of the goods, of unforeseeable circumstances or *force majeure*, or as a consequence of authorisation by the competent authorities of the Member State, is not to be considered a release for consumption. It follows from that provision, read in conjunction with Article 7(1) of that directive, that excise duty on excise goods is not chargeable in the situations listed in that provision.

- 40 While Article 7(5) of Directive 2008/118 provides that each Member State is to lay down its own rules and conditions under which the losses referred to in Article 7(4) are determined, neither Article 7(5) nor Article 7(4) of that directive refers to the law of the Member States as regards the meaning and scope to be attributed to the concepts of ‘unforeseeable circumstances’ and ‘*force majeure*’.
- 41 Furthermore, recital 8 of Directive 2008/118 states that conditions for chargeability of excise duty must be identical in all the Member States in order to ensure the proper functioning of the internal market. To that end, Article 7 of that directive defines the moment at which excise goods are released for consumption. Inasmuch as the scope of the concepts of ‘unforeseeable circumstances’ and ‘*force majeure*’ are liable to have an effect on whether excise duty is chargeable, those concepts necessarily take on an autonomous nature and their uniform interpretation in all the Member States must be ensured (see, to that effect, judgment of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraph 22).
- 42 For the purpose of interpreting those two autonomous concepts of EU law, it is necessary, in accordance with settled case-law, to take into account not only the wording of the provision of which they form part, but also their context and the objectives pursued by the act of which they form part (see, to that effect, judgment of 16 February 2023, *Lufthansa Technik AERO Alzey*, C-393/21, EU:C:2023:104, paragraph 33).
- 43 As regards, in the first place, the concept of ‘*force majeure*’, it should be noted at the outset that, according to the case-law of the Court, that concept must generally be understood, in the various areas of EU law in which it applies, as referring to abnormal and unforeseeable circumstances outside the control of the party by whom it is pleaded, the consequences of which, in spite of the exercise of all due care, could not have been avoided (see, to that effect, judgments of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraph 23, and of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 53 and the case-law cited). Thus, the concept of ‘*force majeure*’ generally comprises an objective element relating to abnormal and unforeseeable circumstances that are beyond the control of the person concerned, and a subjective element involving the obligation, on that person’s part, to guard against the consequences of the event in question by taking appropriate steps without having to make unreasonable sacrifices (see, to that effect, judgment of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraph 24).
- 44 That being said, it is settled case-law that, since the concept of ‘*force majeure*’ does not necessarily have the same scope in the various spheres of application of EU law, its meaning must be determined by reference to the legal context in which it is to operate (see, to that effect, judgments of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraph 25, and of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 54 and the case-law cited).
- 45 In the context of the rules concerning excise duty, the Court has held, with regard to the concept of ‘*force majeure*’ within the meaning of the first sentence of Article 14(1) of Directive 92/12, that the general scheme and purpose of that directive did not require that the characteristic elements of *force majeure* established by the case-law in other areas of EU law be interpreted or applied in a particular way (see, to that effect, judgment of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraphs 26 to 31).

- 46 More specifically, the Court has held, in essence, that excise goods are subject to excise duty solely on account of their production within or importation into the territory of the European Union, that excise duty is, as a rule, also payable in the case of shortages and losses in respect of which exemptions have not been granted by the competent authorities and that the exemption provided by the first sentence of Article 14(1) of Directive 92/12 for losses attributable to *force majeure* constitutes a derogation from that general rule, which must therefore be interpreted strictly (judgment of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraph 30).
- 47 That interpretation can be applied to Article 7(4) of Directive 2008/118. Indeed, it is apparent from the wording of that provision and from the general scheme of that article, which was examined in paragraphs 38 and 39 above, that Article 7(4) of Directive 2008/118 constitutes a derogation from the general rule that excise duty is in principle chargeable on goods which have been destroyed or lost, with the result that that provision must, like the first sentence of Article 14(1) of Directive 92/12, be interpreted strictly.
- 48 It follows that the concept of '*force majeure*', within the meaning of Article 7(4) of Directive 2008/118, must be understood as meaning abnormal and unforeseeable circumstances extraneous to the party by whom it is pleaded, the consequences of which, in spite of the exercise of all due care, could not have been avoided (judgment of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraph 31).
- 49 As regards, in the second place, the concept of 'unforeseeable circumstances', it, like the concept of '*force majeure*', does not necessarily have the same scope in the various spheres of application of EU law, therefore its meaning must also be determined by reference to the legal context in which it is to operate (see, to that effect, judgment of 18 May 2017, *Latvijas Dzelzceļš*, C-154/16, EU:C:2017:392, paragraphs 60 to 62 and the case-law cited).
- 50 Interpreting the concept of 'unforeseeable circumstances' within the meaning of Article 206(1) of the Customs Code, the Court held that, like the concept of '*force majeure*', it contained an objective element relating to abnormal circumstances beyond the control of the person concerned, and a subjective element involving the obligation, on that person's part, to guard against the consequences of the event in question by taking appropriate steps without having to make unreasonable sacrifices (see, to that effect, judgment of 18 May 2017, *Latvijas Dzelzceļš*, C-154/16, EU:C:2017:392, paragraph 61 and the case-law cited).
- 51 According to that provision, by way of derogation from Article 204(1)(a) of the Customs Code, no customs debt on importation is deemed to be incurred in respect of specific goods where the person concerned proves that the non-fulfilment of the obligations which arise from the use of the customs procedure under which the goods have been placed results from the total destruction or irretrievable loss of those goods as a result of the actual nature of the goods, unforeseeable circumstances or *force majeure* (see, to that effect, judgment of 18 May 2017, *Latvijas Dzelzceļš*, C-154/16, EU:C:2017:392, paragraph 58).
- 52 Having regard to the fact that Article 206(1) of the Customs Code establishes a derogation from the rule laid down in Article 204(1)(a) of that code, according to which the non-fulfilment of an obligation arising from the use of the customs procedure under which goods are placed gives rise to a customs debt, the Court concluded that the concepts of '*force majeure*' and 'unforeseeable

circumstances’, within the meaning of the first of those provisions, must be interpreted strictly (see, to that effect, judgment of 18 May 2017, *Latvijas Dzelzceļš*, C-154/16, EU:C:2017:392, paragraph 62).

- 53 In the present case, it should be noted that the first subparagraph of Article 7(4) of Directive 2008/118 is worded in terms similar to those of Article 206(1) of the Customs Code and that, like that provision, it establishes a derogation from the general rule that excise duty remains chargeable on products which have been destroyed or lost.
- 54 In those circumstances, in view of the similarities between customs duties and excise duties, it is necessary, in order to ensure a consistent interpretation of EU law, to confer on the concept of ‘unforeseeable circumstances’, within the meaning of the first subparagraph of Article 7(4) of Directive 2008/118, a scope identical to that accepted by the Court in respect of Article 206(1) of the Customs Code, referred to in paragraph 50 above (see, by analogy, judgment of 29 April 2010, *Dansk Transport og Logistik*, C-230/08, EU:C:2010:231, paragraph 84).
- 55 In the light of all the foregoing considerations, the answer to the first question is that Article 7(4) of Directive 2008/118 must be interpreted as meaning that the concept of ‘unforeseeable circumstances’, within the meaning of that provision, must, like that of ‘*force majeure*’, be understood as referring to abnormal and unforeseeable circumstances beyond the control of the party by whom it is pleaded, the consequences of which, in spite of the exercise of all due care, could not have been avoided.

The second question

- 56 By its second question, the referring court asks, in essence, whether Article 7(4) of Directive 2008/118 must be interpreted as meaning that, in circumstances giving rise to the total destruction or irretrievable loss of excise goods, recognition of the existence of ‘unforeseeable circumstances’, within the meaning of that provision, requires a finding that the operator concerned exercised sufficient diligence with a view to avoiding the occurrence of the harmful event.
- 57 In that regard, it should be noted at the outset that, as is apparent from the answer to the first question, the concept of ‘unforeseeable circumstances’, within the meaning of Article 7(4) of Directive 2008/118, is characterised both by a subjective element, involving the obligation, on the part of the person concerned, to guard against the consequences of the event in question by taking appropriate steps without having to make unreasonable sacrifices, and by an objective element, relating to abnormal and unforeseeable circumstances that are beyond the control of the person concerned.
- 58 Consequently, recognition of the existence of unforeseeable circumstances, within the meaning of that provision, means not only that the operator concerned must have shown the care normally due in the context of the operator’s business in order to guard against such a risk, which presupposes continuous action aimed at identifying and assessing potential risks and the ability to take appropriate and effective steps in order to avoid such risks (see, to that effect, judgment of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraph 37), but also that the occurrence of that risk is the result of abnormal and unforeseeable circumstances that are beyond the control of that operator.

- 59 It follows that, where the circumstances which gave rise to the total destruction or irretrievable loss of excise goods come within the sphere of responsibility of the authorised warehousekeeper, the condition relating to the existence of circumstances beyond the control of the operator concerned is not satisfied and, accordingly, the objective element constituting the unforeseeable circumstances is absent, thereby preventing a finding of unforeseeable circumstances.
- 60 The irretrievable loss of a liquid product subject to excise duty caused by a leak, itself caused by the inadvertence of an employee who failed to close the valve of a tank at the end of an operation to transfer that liquid, cannot be regarded as an abnormal circumstance outside the control of the operator whose business is the denaturing of ethyl alcohol. On the contrary, such a loss must be regarded as coming within the sphere of responsibility of that operator and as being the consequence of a failure to exercise the care ordinarily due in the context of the operator's business, with the result that both the objective element and the subjective element characterising the concept of 'unforeseeable circumstances', within the meaning of Article 7(4) of Directive 2008/118, are, in such circumstances, absent (see, to that effect, judgment of 18 May 2017, *Latvijas Dzelzceļš*, C-154/16, EU:C:2017:392, paragraph 63).
- 61 In the light of the foregoing considerations, the answer to the second question is that Article 7(4) of Directive 2008/118 must be interpreted as meaning that recognition of the existence of 'unforeseeable circumstances', within the meaning of that provision, requires, first, that the total destruction or irretrievable loss of the excise goods be caused by abnormal and unforeseeable circumstances that are beyond the control of the operator concerned, which is precluded where those circumstances come within the operator's sphere of responsibility, and, second, that the operator must have exercised the care normally due in the context of its business in order to guard against the consequences of such an event.

The third question

- 62 By its third question, the referring court asks, in essence, if Article 7(4) of Directive 2008/118 is to be interpreted as precluding a provision of a Member State's national law that treats acts constituting a non-serious fault which are attributable to the relevant person liable to excise duty in the same way as unforeseeable circumstances and *force majeure*.
- 63 In that regard, it should be noted, first of all, that, as is apparent from the answers given to the first and second questions, the concept of 'unforeseeable circumstances', within the meaning of that provision, is characterised by the existence of abnormal and unforeseeable circumstances that are beyond the control of the operator concerned, the consequences of which could not have been avoided even if that operator had exercised the care normally due in the context of its business.
- 64 A fault, even one not serious in nature, committed by an employee of the operator concerned, in so far as it comes within that operator's sphere of responsibility and constitutes a failure to exercise the care normally due in the context of the operator's business, rules out the possibility of recognising the existence of unforeseeable circumstances within the meaning of Article 7(4) of Directive 2008/118.
- 65 Next, it must be noted that that provision lists exhaustively the situations in which the total destruction or irretrievable loss of excise goods is not to be regarded as a release for consumption, thereby precluding the chargeability of excise duty. That is the case (i) where the total destruction or irretrievable loss results from a cause inherent in the very nature of the goods

at issue, (ii) where the destruction or loss is caused by unforeseeable circumstances or *force majeure*, and (iii) where the destruction or loss occurs as a consequence of authorisation by the competent authorities of the Member State concerned.

- 66 The inevitable conclusion is that the non-serious fault committed by an employee of the operator concerned clearly does not come within either the first or the second scenario, or, in principle, the third.
- 67 Lastly, it must be borne in mind that, as noted in paragraph 47 above, Article 7(4) of Directive 2008/118, in so far as it constitutes a derogation from the general rule that excise duty on goods which have been destroyed or lost remains payable in principle, must be interpreted strictly.
- 68 It follows from paragraphs 65 to 67 above that that provision cannot be read as meaning that the Member States have the option of providing that excise duty is not chargeable in circumstances other than those listed in that provision, in particular where the loss or destruction of the excise goods is attributable to a non-serious fault committed by an employee of the operator concerned.
- 69 Furthermore, a different interpretation would be liable to undermine the objective of standardisation set out in recital 8 of Directive 2008/118, according to which the conditions for chargeability of excise duty must be identical in all Member States in order to ensure the proper functioning of the internal market.
- 70 However, where the acts constituting a non-serious fault, resulting in the total destruction or irretrievable loss of the excise goods, were committed in the context of an operation for denaturing that product which itself had been given prior authorisation by the competent national authorities, the total destruction or irretrievable loss must be deemed to have occurred as a consequence of authorisation by the competent authorities of the Member State concerned, so that that destruction or loss must not be regarded as a release for consumption, provided, *inter alia*, that the total destruction or irretrievable loss of that product has been proved to the satisfaction of the competent national authorities, in accordance with the third subparagraph of Article 7(4) of Directive 2008/118.
- 71 In that regard, it should be noted, first, that, under the second subparagraph of Article 7(4) of that directive, goods are considered to have been totally destroyed or irretrievably lost when they are rendered unusable as excise goods.
- 72 Second, it is apparent from Article 27(1)(a) of Directive 92/83 that denatured alcohol is, in principle, exempt from excise duty.
- 73 As a result, it must be held that a denaturing operation has the effect of rendering alcohol ‘unusable as a product subject to excise duty’ within the meaning of the second subparagraph of Article 7(4) of Directive 2008/118 and, therefore, that such an operation results in the total destruction of that product.
- 74 It follows from the foregoing considerations that, where the acts constituting a non-serious fault resulting in the total destruction or irretrievable loss of the excise goods were committed in the context of an alcohol denaturing operation which had received prior authorisation from the competent national authorities, it must be held that that destruction or loss occurred as a

consequence of authorisation by the competent authorities of the Member State concerned, with the result that that destruction or loss must not be regarded as a release for consumption within the meaning of Article 7 of Directive 2008/118.

- 75 In the light of all the foregoing considerations, the answer to the third question is that Article 7(4) of Directive 2008/118 must be interpreted as precluding a provision of a Member State's national law which treats, in every case, acts constituting a non-serious fault which are attributable to the relevant person liable to excise duty in the same way as unforeseeable circumstances and *force majeure*. However, where the acts constituting a non-serious fault resulting in the total destruction or irretrievable loss of the excise goods were committed in the context of an alcohol denaturing operation which had received prior authorisation from the competent national authorities, it must be held that that destruction or loss occurred as a consequence of authorisation by the competent authorities of the Member State concerned, with the result that that destruction or loss must not be regarded as a release for consumption within the meaning of Article 7 of Directive 2008/118.

The fourth question

- 76 By its fourth question, the referring court asks, in essence, whether Article 7(4) of Directive 2008/118 must be interpreted as meaning that the expression 'as a consequence of authorisation by the competent authorities of the Member State', in the first subparagraph of that provision, must be understood as allowing Member States to provide, generally, that the total destruction or irretrievable loss of excise goods placed under a duty suspension arrangement does not constitute a release for consumption where it is the result of non-serious fault.
- 77 As a preliminary point, it should be noted that, in interpreting a provision of EU law, it is necessary to consider the wording of that provision, the context in which it appears and the objectives pursued by the rules of which it forms part.
- 78 As regards, first of all, the wording of the first subparagraph of Article 7(4) of Directive 2008/118, it should be noted that the expression 'as a consequence of authorisation by the competent authorities of the Member State' refers to the power of the competent national authorities to adopt administrative decisions authorising individual cases, and not to the power of the national legislature to establish by regulation general categories, other than those provided for in Article 7(4) of Directive 2008/118, in respect of which release for consumption and, consequently, the chargeability of excise duties are systematically excluded.
- 79 As regards, next, the context of Article 7(4) of Directive 2008/118, it should be borne in mind that, in view of the fact that that provision must be interpreted strictly, as was noted in paragraphs 47 and 67 above, that expression cannot be construed as meaning that the Member States may provide for situations other than those exhaustively listed in Article 7(4) of Directive 2008/118 in respect of which release for consumption and, consequently, the chargeability of excise duties are systematically excluded.
- 80 Lastly, that interpretation is supported by the objectives pursued by Directive 2008/118, which, in accordance with recital 8 thereof, seeks *inter alia* to harmonise the conditions for chargeability of excise duty in the Member States in order to ensure the proper functioning of the internal market.

- 81 In the light of the foregoing considerations, the answer to the fourth question is that Article 7(4) of Directive 2008/118 must be interpreted as meaning that the expression ‘as a consequence of authorisation by the competent authorities of the Member State’, in the first subparagraph of that provision, cannot be understood as allowing Member States to provide, generally, that the total destruction or irretrievable loss of excise goods placed under a duty suspension arrangement does not constitute a release for consumption where it is the result of a non-serious fault.

Costs

- 82 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 (Fifth Chamber) hereby rules:

1. Article 7(4) 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 meaning that the concept of ‘unforeseeable circumstances’, within the meaning of that provision, must, like that of *force majeure*, be understood as referring to abnormal and unforeseeable circumstances beyond the control of the party by whom it is pleaded, the consequences of which, in spite of the exercise of all due care, could not have been avoided.

2. Article 7(4) of Directive 2008/118

must be interpreted as meaning that recognition of the existence of ‘unforeseeable circumstances’, within the meaning of that provision, requires, first, that the total destruction or irretrievable loss of the excise goods be caused by abnormal and unforeseeable circumstances that are beyond the control of the operator concerned, which is precluded where those circumstances come within the operator’s sphere of responsibility, and, second, that the operator must have exercised the care normally due in the context of its business in order to guard against the consequences of such an event.

3. Article 7(4) of Directive 2008/118

must be interpreted as precluding a provision of a Member State’s national law which treats, in every case, acts constituting a non-serious fault which are attributable to the relevant person liable to excise duty in the same way as unforeseeable circumstances and *force majeure*. However, where the acts constituting a non-serious fault resulting in the total destruction or irretrievable loss of the excise goods were committed in the context of an alcohol denaturing operation which had received prior authorisation from the competent national authorities, it must be held that that destruction or loss occurred as a consequence of authorisation by the competent authorities of the Member State concerned, with the result that that destruction or loss must not be regarded as a release for consumption within the meaning of Article 7 of Directive 2008/118.

4. Article 7(4) of Directive 2008/118

must be interpreted as meaning that the expression ‘as a consequence of authorisation by the competent authorities of the Member State’, in the first subparagraph of that provision, cannot be understood as allowing Member States to provide, generally, that the total destruction or irretrievable loss of excise goods placed under a duty suspension arrangement does not constitute a release for consumption where it is the result of a non-serious fault.

[Signatures]