



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

2 June 2016\*

(Reference for a preliminary ruling — Taxation — General arrangements governing excise duty — Directive 92/12/EEC — Manufactured tobacco moving under an excise duty suspension arrangement — Liability of the authorised warehousekeeper — Whether Member States may make the authorised warehousekeeper jointly and severally liable for the payment of sums corresponding to the financial penalties imposed on those engaged in smuggling — Principles of proportionality and legal certainty)

In Case C-81/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the *Symvoulío tis Epikrateias* (Council of State, Greece), made by decision of 21 January 2015, received at the Court on 20 February 2015, in the proceedings

**Kapnoviomichania Karelia AE**

v

**Ypourgos Oikonomikon,**

THE COURT (Sixth Chamber),

composed of A. Arabadjiev, President of the Chamber, C.G. Fernlund (Rapporteur) and S. Rodin, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Kapnoviomichania Karelia AE, by V. Antonopoulos, dikigoros,
- the Greek Government, by K. Paraskevopoulou, K. Nasopoulou and S. Lekkou, acting as Agents,
- the European Commission, by F. Tomat and D. Triantafyllou, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 January 2016,

gives the following

\* Language of the case: Greek.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation 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 92/108/EEC of 14 December 1992 (OJ 1992 L 390, p. 124) ('Directive 92/12').
- 2 The request has been made in proceedings between Kapnoviomichania Karelia AE ('Karelia') and the Ypourgos Oikonomikon (Ministry of Finance, Greece), concerning an attribution measure declaring Karelia to be jointly and severally liable for amounts of tax and excise duties by reason of a smuggling operation.

### Legal context

#### *EU law*

- 3 Articles 1 and 3 of Directive 92/12 provided that that 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 Community' and 'shall apply at Community level to ... manufactured tobacco'.
- 4 Article 4 of that directive defined the concept of 'authorised warehousekeeper' as '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 a tax-warehousing arrangement'.
- 5 According to Article 5(2) of that directive, when products subject to excise duty coming from, or going to, third countries were under a Community customs procedure other than release for free circulation, the excise duty on them was deemed to be suspended.
- 6 In the wording of Article 6(1)(a) of that directive, 'excise duty shall become chargeable at the time of release for consumption', which includes 'any departure, including irregular departure, from a suspension arrangement'.
- 7 Article 13 of Directive 92/12 provided that an authorised warehousekeeper was, inter alia, required to 'provide a guarantee, if necessary, to cover production, processing and holding and a compulsory guarantee to cover movement, the conditions for which shall be set by the tax authorities of the Member States where the tax warehouse is authorised'.
- 8 Article 15(3) and (4) of that directive provided:

'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. If appropriate, Member States may require the consignee to provide a guarantee.

The detailed rules for the guarantee shall be laid down by the Member States. The guarantee must 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 ...'

9 Article 20(1) and (3) of that directive provided:

‘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.

...

3. ... Member States shall take the necessary measures to deal with any offence or irregularity and to impose effective penalties.’

*Greek law*

- 10 Law 2127/1993 on harmonisation with Community law of the fiscal rules applicable to petroleum products, ethyl alcohol and alcoholic beverages and manufactured tobacco, and other provisions (FEK A' 48) transposed Directive 92/12 into Greek law. That law governed, as on the date of the facts at issue in the main proceedings, in addition to the excise duty arrangement and the time at which excise duty becomes chargeable, the matters relating to the suspension arrangement of the tax warehouse and the authorised warehousekeeper.
- 11 Under Article 11(3) of that law, the authorised warehousekeeper is ‘liable to the State for the excise duty corresponding to the goods’ and the warehousekeeper ‘is also liable for any acts of which the staff of its warehouses might be accused by the competent authority’.
- 12 Article 67(5) of that law provides that ‘any form of evasion or attempted evasion of payment of excise and other duties, as well as failure to comply with the formalities provided for by law with a view to evading payment of the aforementioned excise and other duties, shall constitute smuggling within the meaning of Article 89 et seq. of Law 1165/1918 on the Customs Code (‘the Customs Code’), and that ‘those acts shall incur the increased charge laid down in those articles, even if the competent authorities should find that the criteria defining the offence of smuggling punishable under criminal law are not met’.
- 13 Article 97(3) of the Customs Code provides that ‘all persons who are known to have participated in a customs offence within the meaning of Article 89(2) of this Code shall have imposed upon them, in proportion to their individual degree of participation and independently of any criminal proceedings brought against them, an increased charge, for which they shall be jointly and severally liable, ranging from double to ten times the excise and other duties due in respect of the subject-matter of the offence’. According to Article 97(5) of the Customs Code, the ‘director of the competent customs office shall ... draft and issue a reasoned act by which he shall exonerate or identify, as appropriate, the persons liable within the meaning of the present Code, determine the degree of liability attaching to each of them and the customs duties and other charges due or lost in respect of the subject-matter of the smuggling offence, and seek to recover the increased charge within the meaning of the present article and, where appropriate, the customs duties and other charges lost’.
- 14 According to Article 99(2) of the Customs Code, the fact that the persons jointly liable in civil law did not know that it was the intention of the persons identified as the primary perpetrators to commit the offence will not release the former from their liability.

15 Article 108 of the Customs Code provides:

‘The criminal court dealing with the smuggling offence may, when passing sentence, declare the owner or the recipient of the smuggled goods jointly and severally liable along with the sentenced person for payment of the fine imposed, the costs and, at the request of the State in cases where the latter has joined the proceedings as a civil party, for the sum awarded to it in damages; this shall be the case even if the party jointly and severally liable has had no criminal charges brought against him, where the sentenced person had possession of the smuggled goods in his capacity as agent, administrator or representative of the owner or recipient, irrespective of the legal relationship under which the authority to act is presented or concealed. It shall therefore make no difference whether the agent acts in his own name ..., whether he presents himself as the owner of the goods or as having any other legal connection with those goods, or whether the actual representation of the owner is specific or general, unless it can be proved that the aforementioned persons could not in any way have been aware of the likelihood that a smuggling offence would be committed.’

16 Article 109 of the Customs Code provides:

‘In addition to the owner or recipient of the smuggled goods, referred to in the preceding article, the criminal court may also declare jointly and severally liable with the sentenced person for payment of the fine imposed, the costs and, at the request of the State where the latter has joined the proceedings as a civil party, for the sum awarded to it in damages, the owners of vessels, boats, cars, carts, land, sea or air transport companies and the agents and representatives, irrespective of their capacity or designation, of the latter or of the owners of vessels, boats, cars, carts or aeroplanes, as well as the managers of hotels, hostels, cafés or other establishments open to the public, even if they are not criminally liable for the smuggling offence, provided that that smuggling offence was committed within those means of transport or by means of them or within the establishments referred to or through their use, whether to engage in a smuggling offence or to conceal the smuggled goods, unless it can be proved that the aforementioned persons could not in any way have been aware of the likelihood that a smuggling offence would be committed.’

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

17 Karelia is a Greek company, active in the manufacture of tobacco products and holding the status of authorised warehousekeeper. At the date of the facts in the main proceedings, that company had planned to export such products, placed under a suspension arrangement, to Bulgaria, which was not yet a Member State of the European Union.

18 It is apparent from the observations submitted to the Court that, on 9 June 1994, Karelia, having received an order for 760 cartons of cigarettes from Bulgakommerz Ltd, filed an export declaration at the customs office.

19 However, that cargo never reached its destination. The investigation carried out by the customs service revealed that the lorry in which the cargo was to be transported had gone to Bulgaria empty, the cargo having been transferred to another lorry. In the course of that investigation, Karelia’s export manager explained that, following the placement of the order, he had received a sum corresponding to the value of the goods in question, which he had lodged in a Karelia bank account in Greece. The managing director of Karelia maintained that he did not know whether Bulgakommerz actually existed, since attempts to identify that company in Bulgaria had proved unsuccessful.

20 Since no proof of departure of the cargo at issue in the main proceedings had been produced, the bank guarantee which Karelia had provided to cover the amount of excise duty, namely 114 726 750 Greek drachmas (GRD) (EUR 336688.92), was retained.

- 21 The customs authorities subsequently issued a measure attributing liability for payment in respect of the smuggling of the 760 cartons of cigarettes in question. By that measure, they declared that the joint perpetrators of that smuggling were, among others, the persons who had placed the order for those cigarettes, on behalf of Bulgakommerz, with Karelia's export manager. Amounts of increased tax of GRD 573 633 750 (EUR 1683444.60) and of increased excise duty on tobacco of GRD 9 880 000 (EUR 28994.86) were allocated among the perpetrators of the smuggling. By the same measure attributing liability, Karelia was declared jointly and severally liable in civil law for payment of those sums.
- 22 The action brought by that company against that measure was upheld by the Dioikitiko Protodikeio Peiraia (Administrative Court of First Instance, Piraeus, Greece) on the ground that there was no evidence of the existence of any relationship in the form of an agency or representation or of any other legal relationship concealing an authority to act as agent between Karelia and the persons designated as having been the perpetrators of the smuggling offence in question.
- 23 The Ministry of Finance appealed against that judgment. The Dioikitiko Efeteio Peiraia (Administrative Court of Appeal, Piraeus, Greece) upheld the appeal but reduced the amount of the increased tax to GRD 344 180 250 (EUR 336688.91). That court took the view that, in so far as the cigarettes in question had been placed under an excise duty suspension arrangement, the perpetrators of the smuggling offence had acted as agents of Karelia, which, in its capacity as an authorised warehousekeeper, was in possession of the goods and had sole responsibility for their movement up to the time at which they were exported, irrespective of the capacity in which the perpetrators of that smuggling offence had purported to act, namely as drivers, intermediaries, consignees, buyers, and so forth.
- 24 Karelia appealed against the judgment of the Dioikitiko Efeteio Peiraia (Administrative Court of Appeal, Piraeus) to the Symvoulío tis Epikrateias (Council of State, Greece).
- 25 In the order for reference, that latter court found that, according to Article 99(2), Article 108 and Article 109 of the Customs Code, the owners of goods, their consignees and transporters, as well as their agents and representatives, are, inter alia, to be held jointly and severally liable for the financial consequences of smuggling offences, which include the payment of customs duties and charges lost and the corresponding fines, if those offences are committed at a time when the goods concerned are within the sphere of their professional responsibility, by persons with whom they have chosen to cooperate. According to that court, those jointly liable can be released from liability only if they prove that they acted without any negligence, however slight, that exoneration being assessed in the light of the diligence required in their activity and their profession. The civil liability thereby established — which does not constitute, under Greek law, an administrative penalty — seeks not only the recovery of customs duties and charges lost, but also to guarantee, in so far as is possible, the payment and, thus, the effectiveness of the fines imposed. In the referring court's view, the legislature considered that the abovementioned operators, who profit from the economic activity in the context of which the smuggling was carried out, must take all appropriate measures to ensure that they will not be led, by the persons with whom they maintain business relationships, to participate in smuggling offences.
- 26 According to the referring court, that national legislation, interpreted in the light of the provisions of Directive 92/12, makes it possible for the authorised warehousekeeper to be declared jointly and severally liable with the perpetrators of the smuggling offences in respect of goods which passed through the warehouse under an excise duty suspension arrangement and which unlawfully departed from that arrangement.
- 27 The majority opinion within that court is that the joint and several liability of the authorised warehousekeeper extends not only to the payment of excise duties, in accordance with Directive 92/12, but also to the other financial consequences, including the financial penalties imposed on the perpetrators of smuggling offences. This is the position irrespective of any specific agreement between



that warehousekeeper and the purchaser under which ownership of goods placed under an excise duty suspension arrangement is transferred upon delivery of the goods to the purchaser, who is responsible for their transportation. That increased liability on the part of the warehousekeeper serves the objective of preventing tax evasion because it acts as an incentive for that trader to ensure that the export procedure is properly followed and to take appropriate measures in the course of its contractual relations to protect itself against the risk of being held jointly and severally liable for all of the financial consequences of smuggling. Such liability is not contrary to the principle of proportionality, given the opportunity for the authorised warehousekeeper to avoid it by proving that he acted in good faith and took all appropriate measures possible, demonstrating the diligence required of an informed trader.

- 28 The minority opinion within the referring court, by contrast, is that the authorised warehousekeeper can be held jointly and severally liable only for payment of the excise duties, but not for the payment of sums corresponding to the financial penalties imposed on the perpetrators of smuggling offences. According to this opinion, it follows neither from the Greek legislation nor from Directive 92/12 that the authorised warehousekeeper is presumed in law to be the owner of the goods which it holds, which depart from its tax warehouse and are dispatched to a third country under an excise duty suspension arrangement, until they arrive at their proper destination or until they leave the territory of the European Union. Nor does it follow from that legislation or from that directive that, until the departure of the goods from that suspension arrangement, the natural persons involved, in whichever capacity, in the movement of those goods are presumed in law to act as agents or representatives of the authorised warehousekeeper. Thus, the increased liability advocated by the majority opinion within the referring court is not required to ensure the effective application of Directive 92/12 and comes up against various principles of EU law. First, it clashes with the principle of legal certainty, in particular with the principle of clarity and foreseeability of restrictions on the freedom to conduct a business and with the property rights of the authorised warehousekeeper. Second, it is at variance with the principle of proportionality, in so far as it would be manifestly excessive to impose on the authorised warehousekeeper the obligation to pay administrative fines, which, the law provides, amount to at least double the charges due, irrespective of their amount, for offences resulting from intentional criminal conduct on the part of third parties which has none of the characteristics referred to in Article 108 in the Customs Code and over which that warehousekeeper, who has demonstrated the appropriate diligence, cannot have any control.
- 29 It is under those circumstances that the *Symvoulio tis Epikratias* (Council of State) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘May Directive 92/12/EEC, in the light of the general principles of EU law and, in particular, the principles of effectiveness, legal certainty and proportionality thereof, be interpreted, in a case such as this, as precluding the implementation of legal provisions of a Member State, such as Article 108 of the Greek Customs Code, according to which the authorised warehousekeeper of goods moved from the tax warehouse thereof under a duty suspension arrangement, which departed from the arrangements in question irregularly through smuggling, may be declared jointly liable for the payment of administrative fines, on the ground of smuggling, regardless of whether the warehousekeeper had, at the time when the offence was committed, possession of the goods, on the basis of the rules of private law, and, furthermore, regardless of whether the perpetrators of the offence involved in that movement had concluded a particular contractual relationship with the authorised warehousekeeper from which they can be seen to have acted as agents of the authorised warehousekeeper?’

### **Consideration of the question referred**

- 30 By its question, the referring court asks, in essence, whether Directive 92/12, read in the light of the general principles of EU law, in particular the principles of legal certainty and proportionality, must be interpreted as precluding national legislation — such as that at issue in the main proceedings, which

allows, inter alia, the owners of products moving under excise duty suspension to be declared jointly and severally liable for the payment of sums corresponding to the financial penalties imposed in the event of the commission of an offence during the movement of those products under excise duty suspension, in cases where the owners are linked to the perpetrators of the offence by a contractual relationship making them their agents — under which the authorised warehousekeeper is declared jointly and severally liable for payment of those sums, even if, under national law, that warehousekeeper was neither the owner of those products at the time when the offence was committed nor contractually linked to the perpetrators of that offence by a contractual relationship making them his agents.

- 31 In order to answer that question, it is appropriate to note, at the outset, that it is apparent from the scheme of Directive 92/12 and, in particular, from Articles 13, 15(3) and (4) and 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.
- 32 As the Advocate General observed in points 34 to 36 of his Opinion, Directive 92/12 imposes on the authorised warehousekeeper a system of liability for all risks inherent in the movement of products subject to excise duty under such an arrangement, and that warehousekeeper 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 thus strict and is based not on the proven or presumed fault of the warehousekeeper, but on his participation in an economic activity.
- 33 In the present case, it is common ground that an authorised warehousekeeper such as Karelia has strict liability in respect of payment of the excise duties.
- 34 It is appropriate, however, to examine whether Directive 92/12 permits the Member States to burden the authorised warehousekeeper also with joint and several liability for payment of sums corresponding to the financial penalties imposed on the perpetrators of a smuggling offence.
- 35 Under Article 20(3) of Directive 92/12, Member States are required to take the necessary measures to deal with any offence or irregularity and to impose effective penalties.
- 36 In that regard, the Greek Government submits that an obligation can be inferred from that provision requiring Member States to establish additional criminal liability for the authorised warehousekeeper in respect of any irregularity committed during the release for movement of products subject to excise duty.
- 37 It is true, as the Court has held on numerous occasions, that the cigarette market particularly lends itself to the development of unlawful trade (judgment of 13 December 2007 in *BATIG*, C-374/06, EU:C:2007:788, paragraph 34 and the case-law cited). The obligation which stems from Article 20(3) of Directive 92/12, namely to take the necessary measures to deal with any offence or irregularity and to impose effective penalties, must be interpreted in the light of that finding.
- 38 However, it does not follow that Member States are required, pursuant to that provision, to impose additional criminal liability on the authorised warehousekeeper in respect of any irregularity committed during the release for movement of products subject to excise duty.
- 39 In the first place, that provision specifies neither the appropriate penalties nor the categories of persons to be held liable in respect of them.

- 40 In the second place, as the Advocate General observed in point 37 of his Opinion, the system of liability for risk provided for in Directive 92/12 stops at responsibility for the payment of excise duties. Thus, that directive does not impose a system of joint and several liability such as to render the authorised warehousekeeper liable for payment of the sums corresponding to the financial penalties imposed on the perpetrators of a smuggling offence.
- 41 Although Directive 92/12 does not require Member States to make the authorised warehousekeeper jointly and severally liable for payment of the sums corresponding to the financial penalties imposed, the question arises as to whether that directive precludes them from so acting.
- 42 According to settled case-law, it is not contrary to EU law to require an operator to take every step which could reasonably be required of him to satisfy himself that the transaction which he is effecting does not result in his participation in tax evasion (judgment of 21 February 2008 in *Netto Supermarkt*, C-271/06, EU:C:2008:105, paragraph 24 and the case-law cited).
- 43 Therefore, the view must be taken, as the Advocate General observed in point 41 of his Opinion, that Directive 92/12 does not, in principle, preclude the Member States from increasing the liability of the authorised warehousekeeper by making him jointly and severally liable for the financial consequences of offences found to have been committed during the movement of products placed under an excise duty suspension arrangement.
- 44 It is, however, necessary to determine whether increased liability, such as that at issue in the main proceedings, is in conformity with the principles of legal certainty and proportionality.
- 45 In that regard, it is appropriate to recall, in the first place, that Member States, when exercising their powers to choose the appropriate penalties in the transposition of a directive, must observe the principle of legal certainty. EU legislation must be certain and its application foreseeable by those subject to it and that requirement of legal certainty must be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the extent of the obligations which those rules impose on them (judgment of 16 September 2008 in *Isle of Wight Council and Others*, C-288/07, EU:C:2008:505, paragraph 47 and the case-law cited).
- 46 However, in a situation such as that at issue in the main proceedings, it is necessary to point out that the increased liability of the authorised warehousekeeper, bearing in mind that it did not retain ownership of the smuggled goods and was not linked to the smugglers by a contractual relationship making them its agents, is not expressly provided for either by Directive 92/12 or by the provisions of national law.
- 47 It must be stated, in those circumstances, that the penalties that could be imposed on such an authorised warehousekeeper under such legislation do not appear, particularly in view of the diverging interpretations expressed within the referring court, sufficiently certain and foreseeable for the interested parties for the view to be taken that they meet the requirements of legal certainty, this, however, being a matter for that court to verify.
- 48 As regards, in the second place, the principle of proportionality, it is clear from settled case-law that, in the absence of harmonisation of EU legislation in the field of sanctions applicable where conditions laid down by arrangements under that legislation are not complied with, Member States are empowered to choose the sanctions which seem to them to be appropriate. They must, however, exercise their powers in accordance with EU law and its general principles, and, consequently, in accordance with the principle of proportionality (see, inter alia, judgment of 29 July 2010 in *Profaktor Kulesza, Frankowski, Józwiak, Orłowski*, C-188/09, EU:C:2010:454, paragraph 29).



- 49 So far as concerns the measures aimed at preventing tax evasion, the Court has held, in relation to value added tax, that the sharing of the risk, following fraud committed by a third party, will not be compatible with the principle of proportionality if a tax regime imposes the entire responsibility for the payment on suppliers, regardless of whether or not they were involved in the fraud committed by the purchaser (judgment of 21 February 2008 in *Netto Supermarkt*, C-271/06, EU:C:2008:105, paragraphs 22 and 23).
- 50 Moreover, the Court has already taken the view that national measures which bring about, *de facto*, a system of strict joint and several liability go beyond what is necessary to preserve the public exchequer's rights. It thus held that imposing responsibility for paying value added tax on a person other than the person liable to pay that tax, even where that person is an authorised tax warehousekeeper bound by the specific obligations referred to in Directive 92/12, without allowing him to escape liability by providing proof that he had nothing whatsoever to do with the acts of the person liable to pay the tax, must be considered contrary to the principle of proportionality, and it added that it would clearly be disproportionate to hold that person unconditionally liable for the shortfall in tax caused by acts of a third party over which he has no influence whatsoever (judgment of 21 December 2011 in *Vlaamse Oliemaatschappij*, C-499/10, EU:C:2011:871, paragraph 24 and the case-law cited).
- 51 It is appropriate to take the view that compliance with those same requirements is necessary with regard to a measure such as the attribution to the authorised warehousekeeper of liability for the financial consequences of smuggling offences.
- 52 However, as the referring court indicates, the majority opinion within that court is that Article 108 of the Customs Code must be interpreted as meaning that an authorised warehousekeeper who has taken every step which could reasonably be required of him to satisfy himself that the transaction which he is effecting does not result in his participation in tax evasion, escapes that liability only if he can prove that he could not in any way have been aware of the likelihood that a smuggling offence was being committed. If that is the case — and this is a matter for the referring court to verify — it is necessary to consider that that increased liability of the authorised warehousekeeper means that he may be declared jointly and severally liable for payment of sums corresponding to the financial penalties imposed even if the smuggling offence is committed by persons with whom he has not chosen to cooperate, and that that liability brings about, *de facto*, a system of strict joint and several liability which must be regarded as disproportionate.
- 53 It follows from the foregoing that a system of increased liability, such as that at issue in the main proceedings, will be capable of satisfying the requirements resulting from the principles of legal certainty and proportionality only on condition that it is clearly and expressly provided for by national legislation and that it leaves the authorised warehousekeeper a genuine possibility of avoiding liability.
- 54 Consequently, the answer to the question raised is that Directive 92/12, read in the light of the general principles of EU law, in particular the principles of legal certainty and proportionality, must be interpreted as precluding national legislation — such as that at issue in the main proceedings, which permits, inter alia, the owners of products moving under excise duty suspension to be declared jointly and severally liable for payment of sums corresponding to the financial penalties imposed in the event of the commission of an offence during the movement of those products under excise duty suspension arrangements, where those owners are linked to the perpetrators of the offence by a contractual relationship making them their agents — under which the authorised warehousekeeper is declared jointly and severally liable for payment of those sums, with no possibility for him to escape that liability by providing proof that he had nothing whatsoever to do with the acts of the perpetrators of the offence, even if, under national law, that warehousekeeper was neither the owner of those products at the time when the offence was committed nor linked to the perpetrators of that offence by a contractual relationship making them his agents.

## Costs

55 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 (Sixth Chamber) hereby rules:

**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, as amended by Council Directive 92/108/EEC of 14 December 1992, read in the light of the general principles of EU law, in particular the principles of legal certainty and proportionality, must be interpreted as precluding national legislation — such as that at issue in the main proceedings, which permits, inter alia, the owners of products moving under excise duty suspension arrangements to be declared jointly and severally liable for payment of sums corresponding to the financial penalties imposed in the event of the commission of an offence during the movement of those products under excise duty suspension, where the owners are linked to the perpetrators of the offence by a contractual relationship making them their agents — under which the authorised warehousekeeper is declared jointly and severally liable for payment of those sums, with no possibility for him to escape that liability by providing proof that he had nothing whatsoever to do with the acts of the perpetrators of the offence, even if, under national law, that warehousekeeper was neither the owner of those products at the time when the offence was committed nor linked to the perpetrators of that offence by a contractual relationship making them his agents.**

[Signatures]