

# The regulation for excise duties: when is it too much or still reasonable to collect?

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## Abstract

The exemption from excise duty covers both ethyl alcohol that is intended for use, and ethyl alcohol that has already been used, once ethyl alcohol has been released for consumption in a Member State and that Member State has correctly applied the exemption from excise duty. The EU law, the principles of effectiveness and proportionality, permit a Member State to impose procedural requirements on a trader in excise goods that had obtained the benefit of an exemption from excise duty in the Member State where those goods had been produced and released for consumption only where those procedural requirements are strictly necessary to ensure the correct and straightforward application of the exemption in question and to prevent any evasion, avoidance or abuse.

**Keywords:** Excise duty; principle of effectiveness; principle of proportionality; national procedural; requirements.

TABLE OF CONTENTS: 1. Introduction – 2. The European Union law and the domestic regulation applicable for excise exemptions in Romania and Ireland – 3. The pending case and the admissibility of the preliminary ruling – 4. Legal interpretation of the relation EU law – domestic regulation – 4.1 The first question – 4.2 The second question – 4.3 The third question – 4.4 The fourth question – 5. Instead of conclusions, some final remarks

## 1. Introduction

In terms of regulation for establishing the regime of excises, there is always the irreconcilable divergent position manifested by the public budgetary institutions with the tendency to collect more against the pertinent argumentation of the taxpayer that the excise are taxation tools meant to function by a precise mechanism and they should not be applicable as a compensation tool when the budget is unbalanced.

Yet, the efficiency of the collection and the pressure on the public budget during periods of crises determine the fiscal authorities to make use of the excise duties as one of the most convenient procedures to get easy and sufficient public income.

This is the context in which the CJEU was invested by the Romanian judiciary to analyze and interpret the applicability of the European law in the situation of production of flavours for the preparation of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume. The question is colliding with the freedom of circulation on the internal European market, especially

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when the goods are produced and respectively consumed in different countries, and it is legitimate to ask about the recognition by the Member State of destination of an exemption granted by the Member State of production.

The topic was thoroughly investigated by the advocate general Collins in his opinion, delivered on 14 July 2022, in Case C-332/21 concerning the taxpayer Quadrant Amroq Beverages SRL and the Romanian National Fiscal Authority, represented by the General Direction for Big Taxpayers.

The case involves the applicant purchase of flavours for use in the preparation of soft drinks in Romania from a producer in Ireland. The ethyl alcohol used to produce the flavours had been released for consumption in Ireland and had been exempted from excise duty under the Irish legislation, implementing Article 27(1)(e) of Directive 92/83. That provision of EU law exempts from excise duty ethyl alcohol 'used for the production of flavours for the preparation of non-alcoholic beverages with an alcohol strength not exceeding 1.2% vol. Ireland exempts ethyl alcohol that is intended for use, or that has already been used, in the production of such flavors, while Romanian tax regulation exempts only ethyl alcohol that is intended for use in the production of flavors.

The issue presented in front of the CJEU is whether the scope of the exemption granted by Article 27(1)(e) of Directive 92/83, the circumstances in which a Member State of destination must recognize an exemption that another Member State has granted under that provision and the extent to which a Member State to which goods are dispatched may impose procedural requirements on traders that have obtained the benefit of that exemption.

## **2. The European Union law and the domestic regulation applicable for excise exemptions in Romania and Ireland**

Directive 92/83 was adopted to harmonize the structures of excise duties on alcohol and alcoholic beverages, establishing under Article 19(1) thereof, that Member States are to apply excise duty to ethyl alcohol in accordance with Directive 92/83. The first indent of Article 20 of Directive 92/83 defines ethyl alcohol as 'all products with an actual alcoholic strength by volume exceeding 1.2% volume which fall within CN codes 2207 and 2208, even when those products form part of a product which falls within another chapter of the CN. Under Article 27(1)(e) of Directive 92/83 '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, when used for the production of flavours for the preparation of foodstuffs and non-alcoholic beverages with an alcohol strength not exceeding 1.2% vol.'

The Directive 2008/118 establishes in Article 7(1) that 'excise duty shall become chargeable at the time, and in the Member State, of release for consumption' and it defines 'release for consumption' as follows:

- 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.'

The Romanian law addresses the excise duties in the Tax Code, respectively the Law No 571/2003 of 22 December 2003 in force until 31 December 2015 and the Law No 227 of 8 September 2015, applicable from 2016. The Romanian Tax Code provide the ethyl alcohol and the other alcoholic

products are exempt from excise duty when they are used to produce food flavorings intended for the preparation of food or non-alcoholic beverages with an alcohol content not exceeding 1.2% volume. In all the situations referred to in the Tax Code, exemption from excise duty shall be granted only to the user, on condition that the supply is made directly from a tax warehouse. When a user makes intra-Community purchases of ethyl alcohol with a view to using it for the purposes under the scope of exceptions of the Tax Code, that user must also be a registered consignee.

An exemption shall be granted directly in the situations referred to in the Tax Code and for authorized warehouse keepers operating within an integrated system. "Integrated system" means the use of ethyl alcohol and other alcoholic products by warehouse keepers to produce finished products intended for consumption as such, without being subject to any further changes. In all situations involving direct exemption, the exemption shall be granted on the basis of an end-user authorisation. That authorisation shall be issued to all users who purchase products that are exempt from excise duty. The prices for delivery of the products shall not include excise duty, and the movement of those products must be accompanied by a printed copy of the electronic administrative document.

When the exemption is granted indirectly, the prices for delivery of the products shall include excise duty, after which economic operators who are users may request compensation or reimbursement of excise duty under the provisions of the Code of Fiscal Procedure. For the reimbursement of excise duty, users shall file with the territorial tax authority, on a monthly basis, on or by the twenty-fifth day of the month following the month in respect of which the reimbursement is sought, a claim for reimbursement of excise duty, accompanied by the following documents:

- a copy of the invoice for the purchase of ethyl alcohol and/or other alcoholic product, in which the excise duty is highlighted separately;
- proof that excise duty has been paid to the supplier, namely a payment document confirmed by the bank with whom the user has opened an account;
- proof of the quantity used for the purpose in respect of which the exemption was granted, namely a summary of the quantities actually used and the documents relating thereto.

In situations involving direct exemption, the Tax Code establishes exemption from excise duty to be granted only to the user, on condition that the supply is made directly from a tax warehouse, from the user's own intra-Community purchases or from the user's own import transactions.

In situations involving indirect exemption, for the products referred to in Article 397(1) of the Tax Code, exemption from excise duty shall be granted only to the user, on condition that the supply is made directly from a tax warehouse, from a registered consignee or from the user's own import transactions. A registered consignee who delivers products which are to be used for a purpose exempt from excise duty shall highlight in the invoice the equivalent value of the excise duty paid to the State budget.

When a user makes intra-Community purchases of ethyl alcohol with a view to using it for the purposes within the exception of the Tax Code, that user must also be a registered consignee. Where ethyl alcohol is imported from a third country with a view to its use for the purposes within the scope of exception of the Tax Code, the importer must also be a user of the raw material. An exemption from excise duty shall be granted directly in the situations referred to by the Tax Code, to produce of sanitary alcohol and only for authorized warehouse keepers operating within an integrated system. In all situations involving direct exemption, the exemption shall be granted based on the end-user authorization.

In Irish law, the Finance Act 2003 transposes Article 27(1)(e) of Directive 92/83 providing that 'Without prejudice to any other relief from excise duty which may apply, and subject to such conditions as the Commissioners may prescribe or otherwise impose, a relief from alcohol products tax shall be granted on any alcohol products which are shown to the satisfaction of the Commissioners to be intended for use or to have been used in the production of flavors for the preparation either of foodstuffs or of beverages not exceeding 1.2% vol.

### 3. The pending case and the admissibility of the preliminary ruling

Concentrate Manufacturing Company Ireland (CMCI) is an Irish subsidiary of PepsiCo, a multinational company that produces foods and beverages. It uses 100% undenatured ethyl alcohol to manufacture flavours with alcohol content between 15% and 62% volume and intended for the preparation of non-alcoholic beverages. CMCI produces the flavours in Ireland and sells them to another Irish subsidiary of PepsiCo, Pepsi Ireland. The latter company sold flavors to the applicant, which uses them to make soft drinks in Romania. CMCI ships the flavours directly from Ireland to the applicant in Romania.

According to the opinion on the law of Ireland, CMCI is an authorised warehouse keeper and authorised receiver for no more than 1 500 000 bulk litres of undenatured ethyl alcohol annually, free of duty, for use in the manufacture of soft drink concentrate. It receives that alcohol into its tax warehouse under duty suspension. The removal of that product from the tax warehouse to produce the flavours constitutes a release for consumption. That release for consumption would require the payment of excise duty were it not for the exemption under the Finance Act 2003, which transposes Article 27(1)(e) of Directive 92/83.

The applicant acquired the flavours from Pepsi Ireland and the ethyl alcohol contained therein had already been released for consumption in Ireland, with exemption from excise duty under the Irish legislation transposing Article 27(1)(e) of Directive 92/83, and no longer subject to duty suspension arrangements or any other administrative formalities related to excise duty. The applicant was required to pay excise duty on the flavours when they entered Romania and it applied for a refund of excise duty under the national legislation implementing the exemption in Article 27(1)(e) of Directive 92/83. The refund was refused for substantive and procedural reasons.

First, the applicant had not purchased ethyl alcohol for the production of flavours, but had purchased flavours, containing ethyl alcohol, for the preparation of non-alcoholic beverages.

Second, the flavours had not been transferred from a tax warehouse and the applicant did not have the status of registered consignee ('the procedural requirements').

The applicant sought the annulment of the decisions of the Romanian National Tax Administration Office to reject its complaint and to refuse the reimbursement of excise duty. In order to resolve that dispute, the referring court considered it necessary to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) the exemption from excise duty in EU law covers only ethyl alcohol-type goods used for the production of flavours intended, in turn, for the production of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume, or that exemption also covers ethyl alcohol-type goods already used for the production of certain favours of that kind which have been or are to be used for the production of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume?
- (2) once ethyl alcohol-type goods intended to be marketed in another Member State have already been released for consumption in a first Member State, exempt from excise duty as they are used to obtain flavours intended to be used for the production of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume, the Member State of destination must treat them in an identical manner within its territory?
- (3) the principles of effectiveness and proportionality should be interpreted as authorising a Member State to impose procedural requirements, which make the application of the exemption subject to the user having the status of registered consignee and of authorised warehouse keeper, on the seller of excise goods, despite the fact that the Member State in which those goods were acquired does

not impose an obligation relating to the status of tax warehouse keeper on the economic operator which markets them?

- (4) do the principles of proportionality and effectiveness preclude the exemption provided for therein from being denied to the taxable person of a Member State of destination who has received ethyl alcohol-type goods and who relied on the fact that those goods were deemed to be exempt on the basis of an official interpretation of those provisions of that directive by the tax authorities of the Member State of origin, given consistently and over a long period of time and transposed into national law and applied in practice, but which subsequently turns out to be incorrect, in the event that, given the circumstances, it is possible to exclude any possibility of fraud or evasion of excise duty?

Romania challenges the admissibility of the request for a preliminary ruling because of the infringement of the rules of Procedure of the Court of Justice. According to the Court's settled case-law, the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court and the national courts, whereby the former provides the latter with the points of interpretation of EU law that they need to decide disputes before them. It is also settled case-law that the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for that court to define the factual and legal context of the questions it is asking or to explain the factual circumstances on which those questions are based. The request for a preliminary ruling should express the precise reasons why the national court is unsure as to the interpretation of EU law. In advocate general Collins view, the referring court has set out sufficiently clearly the reasons that led it to refer questions to the Court on the interpretation of EU law and sufficient information to give the Court and interested persons entitled to submit observations a sufficiently clear understanding of the factual and legal context of the main proceedings, as evidenced by the number of participants in the written procedure. In line with this context, the lack of clarity as regards the nature of the procedural requirements imposed by the Romanian authorities appear to prevent the Court from furnishing a useful answer only with regards to the third question and thus the overall request for a preliminary ruling is admissible.

## **4. Legal interpretation of the relation EU law – domestic regulation**

### **4.1. The first question**

By its first question the referring court wishes to know whether the exemption in EU law applies to ethyl alcohol intended to be used to produce flavours for the preparation of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume only or whether it also applies to ethyl alcohol that has already been used to produce those flavours. The Romanian National Tax Administration Office takes the view that that exemption applies only to ethyl alcohol intended to be used to produce flavours for the preparation of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume. On that basis it refused to refund the excise duty the applicant had paid on the entry of the flavours into Romania. Romania supports that position. The applicant, Ireland, the Republic of Poland and the Commission all take the view that the exemption also applies to ethyl alcohol that had been used to produce the flavours.

Article 20 of Directive 92/83 defines 'ethyl alcohol' as 'all products with an alcoholic strength by volume exceeding 1.2% volume which fall within CN codes 2207 and 2208, even when those products form part of a product which falls within another chapter of the CN.' The opinion on the law of Ireland notes that the ethyl alcohol incorporated into the flavours in question was, at the time when Directive 92/83 was adopted, classifiable within CN code 2207; the flavours themselves fell within CN code 2208. The flavours come within the definition of ethyl alcohol in the first indent of Article 20 of Directive 92/83 and are subject to excise duty. Products covered by that directive are

exempt from harmonised excise duty ‘when used for the production of flavours ...’. It is thus the use of the ethyl alcohol that determines the application of the exemption. However, the text of that provision is not free from ambiguity: it may be interpreted as meaning ‘when intended to be used for the production of flavours’ or ‘when it has been used for the production of flavours’.

Recourse must therefore be had to the other interpretative criteria that the Court usually employs, that is to say, to the purpose and the context of the provision under analysis. The Republic of Poland and the Commission point out that the objective of the exemptions is to neutralise the impact of excise duties on ethyl alcohol when it is used as an intermediate product in other commercial or industrial products. That product is a ‘flavour for the preparation of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume’.

The interpretation presented by Romania would mean that ethyl alcohol intended for the production of such flavours would be exempt from excise duty, whereas ethyl alcohol already incorporated in those flavours would not. The possible absurd result is that the alcohol exempt from duty at the stage when it was intended for use in the production of flavours, it would again become subject to excise duty. Such an outcome would not achieve the objective of neutralising the impact of excise duties on alcohol used for the production of flavours for the preparation of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume.

Therefore, purposive and contextual interpretation of EU law supports the position taken by the applicant, Ireland, the Republic of Poland, the Commission and the non-binding guidelines issued by the Commission’s Committee on Excise Duty. This Committee proposed that Member States grant the exemption where the flavours had been used to prepare non-alcoholic beverages subject to monitoring mechanisms established by the Member States. Yet, on further reflection, the same Committee took account of the fact that the flavours are used predominantly as concentrates for the preparation of soft drinks and since they cannot be consumed undiluted, the alcohol can be regarded as denatured. The flavours are relatively expensive, costing more than the cheapest alcohol marketed in the majority of Member States. Finally, it is expensive to purify flavours in order to extract ethyl alcohol therefrom. In the light of these characteristics, the committee could reasonably conclude that the grant of the exemption at the time of the production of the flavours would not give rise to a risk of tax evasion and, therefore, it should apply from that time. The deliberations of the Committee on Excise Duty also support the conclusion that, contrary to the position adopted by Romania, the exemption covers ethyl alcohol that has been used for the production of flavours.

In the light of the foregoing, the advocate general propose that the EU law is to be interpreted that the exemption from excise duty covers both ethyl alcohol that is intended for use, and ethyl alcohol that has already been used, in the production of flavours that are intended for the preparation of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume.

## **4.2. The second question**

By its second question, the referring court wishes to ascertain whether ethyl alcohol, which has already been released for consumption in a Member State and deemed exempt from excise duty since it has been used to produce flavors for the preparation of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume, must be treated by other member states in an identical manner, when contained in those flavors. The applicant, Ireland and the Commission are of the view that an exemption granted by a Member State where a product is manufactured must be recognised by any Member State to which that product is dispatched. Romania observes that this cannot be the case in all circumstances, while The Republic of Poland made no observations on this question.

In the light of the proposed response to the above question, Member States are required to exempt from excise duty ethyl alcohol that has already been used in the production of flavours that are intended for the preparation of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume.



Furthermore, in its case-law on the interpretation of Article 27(1)(f) of Directive 92/83, which applies by analogy to Article 27(1)(e), the Court emphasises that, as a rule, all Member States must recognise a decision by a Member State to impose excise duty on a product or to exempt it therefrom. Any other interpretation would both compromise the attainment of the objective of Directive 92/83 and hinder the free movement of goods. (Judgment of 9 December 2010, *Repertoire Culinaire* (C-163/09, EU:C:2010:752, paragraphs 41 and 42). It would also be contrary to the principle of sincere cooperation between Member States contained in Article 4(3) TEU. (See, for example, Opinion of Advocate General Saugmandsgaard Øe in *A-Rosa Flussschiff* (C-620/15, EU:C:2017:12, point 60).

Where flavours have been released for consumption in the Member State of production under national legislation transposing Article 7 of Directive 2008/118 and that Member State has applied the exemption to those flavours under its legislation transposing Article 27(1)(e) of Directive 92/83, the Member State of the destination of those products must treat them in the same way upon their arrival on its territory, unless there is good reason to believe that the exemption was granted unlawfully.

The answer to the second question is that, once ethyl alcohol has been released for consumption in a Member State and that Member State has correctly applied the exemption from excise duty under that provision, the Member State of destination must treat it in an identical manner within its territory.

### 4.3. The third question

The third question aims at obtaining the official interpretation of the applicability of the EU law in procedural national tax regulation. In the context of intra-EU acquisitions, Romanian law requires that, to benefit from an exemption, the flavors must be transferred from an authorized warehouse keeper to a registered operator or to a registered recipient. Since it acquired the flavors from an Irish company, which sold them after they had been released for consumption in accordance with Irish law, the applicant asserts that it is unable to meet those conditions. The relevant invoices did not show that excise duty had been paid on the goods, nor did they indicate that a duty suspension arrangement applied to them. The opinion on the law of Ireland states that the Irish company from which the applicant acquired the flavors was not within the scope of any obligation under Irish or EU law to be an authorized warehouse keeper as it did not hold, process, produce or dispatch excise goods.

Ireland considers that no procedural requirements can be imposed on traders in the circumstances set out in the order for reference. According to the Commission, procedural requirements can be imposed only in the circumstances permitted by the Court's case-law. The Republic of Poland and Romania consider that the procedural requirements in question are permitted and justified since they have the objective of ensuring the correct and straightforward application of the exemption and of preventing any evasion, avoidance or abuse. In particular, Romania considers that if the flavours were allowed to circulate outside duty suspension arrangements, there is a risk that they would be converted into alcoholic beverages for consumption on which excise duty would not be paid.

The Directive 92/83, provides that the Member States shall lay down conditions for the purpose of ensuring the correct and straightforward application of the exemptions under that provision and of preventing any evasion, avoidance or abuse. Conditions laid down by Member States by virtue of that power cannot go beyond what is necessary to attain the objective set out in that provision. In the circumstances which gave rise to the dispute before the referring court, it would appear that the exercise of that power is limited to verifying that the flavours are in fact used for the preparation of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume.

Moreover, when exercising their power to lay down the conditions for the exemption from excise duty provided for in Article 27(1)(e) of Directive 92/83, Member States must comply with the general principles of law which form part of the legal order of the European Union. These include, inter alia, the principles of proportionality and of effectiveness. See, by analogy, judgments of 13 July 2017,

Vakarų Baltijos laivų statykla (C-151/16, EU:C:2017:537, paragraph 45 and the case-law cited), and of 7 November 2019, Petrotel-Lukoil (C-68/18, EU:C:2019:933, paragraph 56 and the case-law cited).

The principle of proportionality requires that consideration be given to whether the procedural requirements exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by EU law. When there is a choice between several appropriate measures, recourse must be had to the least onerous and the disadvantages caused thereby must not be disproportionate to the aims pursued. See judgment of 9 March 2010, *ERG and Others* (C-379/08 and C-380/08, EU:C:2010:127, paragraph 86 and the case-law cited). The principle of effectiveness requires that national procedural rules should not render impossible or excessively difficult the exercise of rights conferred by EU law. See judgment of 18 October 2012, *Pelati* (C-603/10, EU:C:2012:639, paragraphs 23 and 25 and the case-law cited).

It is for the national court, before which the dispute in the main proceedings is pending and which must assume responsibility for its final judicial decision, to determine whether the rules that the Romanian fiscal authorities seek to apply meet the requirements described above.

As regards the objective of ensuring the correct and straightforward application of the exemption and of preventing any evasion, avoidance or abuse, account must be taken of the following facts:

- (i) the flavours had been released for consumption in the Member State where they were produced;
- (ii) that same Member State had correctly applied the exemption to the flavours;
- (iii) the Committee on Excise Duty considered that the grant of the exemption at the time of production of the flavours did not give rise to a risk of tax evasion;
- (iv) there is no indication that the applicant sought to obtain the benefit of the exemption fraudulently.

As for the application of the principles of proportionality and of effectiveness, the referring court should consider the applicant's assertion that it is unable to comply with the procedural requirements since the flavours were both manufactured and released into free circulation in the Member State that granted the exemption.

In the circumstances of the case pending before the referring court, it would appear that the application of the procedural requirements upon which the Romanian authorities insist is very likely to lead to the applicant being unlawfully deprived of its entitlement to benefit from an exemption from excise duty correctly granted by another Member State. In that context, the referring court should bear in mind the Court's case-law to the effect that non-compliance with purely formal conditions, unnecessary to ensure that the substantive requirements as to the actual use of the products concerned are met, cannot call into question the applicant's right to benefit from the mandatory exemption.

Therefore, the principles of effectiveness and proportionality permit a Member State to impose procedural requirements on a trader in excise goods that had obtained the benefit of an exemption from excise duty in the Member State where those goods had been produced and released for consumption only where those procedural requirements are strictly necessary to ensure the correct and straightforward application of the exemption in question and to prevent any evasion, avoidance or abuse. When imposing such procedural requirements, Member States must comply with general principles of EU law, including the principles of proportionality and of effectiveness.

#### **4.4. The fourth question**

The fourth question appears to be based upon the supposition that the Member State where the flavours were produced applied the exemption in Article 27(1)(e) of Directive 92/83 incorrectly.



Should the Court answer the first question from the referring court in the manner proposed in the present Opinion, the fourth question would be based on an erroneous hypothesis, such that it does not require an answer.

## 5. Instead of conclusions, some final remarks

In the light of the above argumentation, the interpretation of EU law regarding the regime of the harmonisation of the structures of excise duties on alcohol and alcoholic beverage in Member States regulation should observe the following:

- (1) The exemption from excise duty covers both ethyl alcohol that is intended for use, and ethyl alcohol that has already been used, in the production of flavors that are intended for the preparation of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume.
- (2) once ethyl alcohol has been released for consumption in a Member State and that Member State has correctly applied the exemption from excise duty under that provision, the Member State of destination must treat it in an identical manner within its territory.
- (3) the EU law, the principles of effectiveness and proportionality, permit a Member State to impose procedural requirements on a trader in excise goods that had obtained the benefit of an exemption from excise duty in the Member State where those goods had been produced and released for consumption only where those procedural requirements are strictly necessary to ensure the correct and straight-forward application of the exemption in question and to prevent any evasion, avoidance or abuse.

The case is not closed yet, but based on the large majority of the situation when the final solution is in accordance with the opinion expressed by the advocate general in the respective case, we can observe that when regulating the regime of the excise duties, the Member states should observe not only the scope of the regulation, but also the objectives of the EU law, including the principles of proportionality and of effectiveness.

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