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Judgment of the General Court in Case T-534/24 | [Gotek] ¹

Nine months after jurisdiction to rule on references for a preliminary ruling was conferred on it, the General Court of the European Union delivers its first preliminary ruling

National legislation under which excise duty is chargeable on the basis of a fictitious supply of excise goods appearing on falsified invoices is not compatible with EU law

On 1 October 2024, jurisdiction to give preliminary rulings was transferred to the General Court in six specific areas. ² Since that date, 55 preliminary ruling cases have been transmitted to the General Court.

This first preliminary ruling case concluded by the General Court by means of a judgment, less than nine months after the Court of Justice transmitted the request for a preliminary ruling, concerns a question regarding the interpretation of certain provisions of the Excise Duty Directive. ³

Following a tax inspection, the Croatian authorities found that a trader had erred in deducting value added tax (VAT) on the basis of falsified invoices relating to supplies of petroleum products which had, in fact, never taken place.

In accordance with national legislation, the customs authorities required the excise duty to be paid. Those authorities took the view that the trader had committed an abuse of rights in moving excise goods.

The Croatian court, before which the trader brought an action, wishes to know whether the national legislation, as interpreted by the national authorities, which provides that excise duty is chargeable on the basis of a fictitious supply of excise goods appearing on falsified invoices, is compatible with EU law.

In its judgment, the General Court answers in the negative. It points out, in particular, that excise duty becomes chargeable when the goods are released for consumption, and the directive lays down an exhaustive list of those release situations. In the present case, excise duty was imposed on account of an abuse of rights, involving the use of falsified invoices even though the petroleum products were not supplied, which does not fall within those situations. In addition, the General Court finds that even though the Member States have a legitimate interest in taking appropriate steps to protect their financial interests, the fact remains that their regulatory power cannot be exercised so as to infringe the provisions of the directive.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice of the European Union concerning the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the

event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Preliminary rulings by the General Court may, exceptionally, be reviewed by the Court of Justice, on a proposal from the First Advocate General, where there is a serious risk of the unity or consistency of EU law being affected. If no such proposal is made within one month of the ruling by the General Court, that ruling will become final. However, if the First Advocate General makes a proposal for review, it will be necessary to wait for the outcome of the proceedings before the Court of Justice either in order for the ruling by the General Court to become final or in order for the ruling by the Court of Justice to be substituted for the ruling by the General Court.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court.

Unofficial document for media use, not binding on the General Court.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.

² [Regulation \(EU, Euratom\) 2024/2019](#) of the European Parliament and of the Council of 11 April 2004 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (see press release [No 125/24](#), [No 154/24](#) and [No 179/24](#)).

³ [Council Directive 2008/118/EC](#) of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC.