

**Case C-332/21****Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

27 May 2021

**Referring court:**

Tribunalul București (Romania)

**Date of the decision to refer:**

9 December 2020

**Applicant:**

Quadrant Amroq Beverages SRL

**Defendant:**

Agenția Națională de Administrare Fiscală – Direcția Generală de Administrare a Marilor Contribuabili

**Subject matter of the main proceedings**

Action in an administrative and tax dispute, by which the applicant, Quadrant Amroq Beverages SRL, claims that the Tribunalul București (Regional Court, Bucharest), should, ruling against the defendant, the Agenția Națională de Administrare Fiscală – Direcția Generală de Administrare a Marilor Contribuabili (National Tax Administration Office – Directorate-General for the Administration of Large-scale Taxpayers), annul a series of decisions of December 2016 rejecting certain claims for reimbursement of excise duties, annul the decision of 22 June 2017 rejecting a complaint, and order the defendant to reimburse the amount of 3 702 961 Romanian lei (RON) levied on the applicant by way of excise duties on flavouring substances acquired from Pepsi/Cola International, Cork, Ireland.

**Subject matter and legal basis of the request**

An interpretation of Article 27(1)(e) and 27(2)(d) of Directive 92/83/EEC (the ‘directive’) is sought under Article 267 TFEU.

## Questions referred

- I. Must Article 27(1)(e) of Directive 92/83/EEC be interpreted as meaning that the exemption from excise duty 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 as meaning that 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?
- II. Must Article 27(1)(e) of Directive 92/83/EEC, in the context of the objectives and general scheme of that directive, be interpreted as meaning that, 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?
- III. Must Article 27(1)(e) and 27(2)(d) of Directive 92/83/EEC, and the [principles] of effectiveness and [proportionality], 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 warehousekeeper, 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 warehousekeeper on the economic operator which markets them?
- IV. In the light of Article 27(1)(e) of Directive 92/83/EEC, do the principles of proportionality and effectiveness, in the context of the objectives and general scheme of that directive, 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?

## Provisions of EU law cited

Article 19(3)(b) TEU

Article 267 TFEU

Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages: Article 27(1)(e) and 27(2)(d)

Judgment of 9 December 2010, *Repertoire Culinare* (C-163/09, EU:C:2010:752)

### **Provisions of national law cited**

Romanian Constitution, Article 148, which requires the priority application of EU law

Romanian Tax Code (2003), Article 206<sup>58</sup>, which transposes Article 27(1)(e) of Directive 92/83 into Romanian law

Irish Finance Act 2003, section 77(a)(i), which transposes Article 27(1)(e) of Directive 92/83 into Irish law

### **Succinct presentation of the facts and the main proceedings**

- 1 The applicant acquired aromatics (flavouring substances) from Pepsi/Cola International, Cork, Ireland.
- 2 Adopting a different approach to the one taken by the Irish authorities, the Romanian duty and tax authorities subjected those flavouring substances to excise duty as they took the view that they were not covered by the exemption provided for in Article 27(1)(e) of Directive 92/83.
- 3 The Irish legislation transposing that article provides for an exemption from excise duty not only for ethyl alcohol intended for use in the production of non-alcoholic beverages with an alcohol strength not exceeding 1.2% volume, but also for ethyl alcohol already used for the production of such beverages, whereas the Romanian legislation exempts from excise duty only ethyl alcohol 'used for the production of food flavourings intended for the preparation of food or non-alcoholic beverages with an alcohol content not exceeding 1.2% volume'.
- 4 At an initial stage, the Irish tax authorities exempted ethyl alcohol from excise duties when the aromatics (flavouring substances) had been transferred from Pepsi Ireland's warehouse to the premises of the registered consignee.
- 5 At a later stage, the transfer which took place between Pepsi Ireland and Pepsi Romania did not give rise to an obligation to pay excise duty since the ethyl alcohol contained in the aromatics (thus ethyl alcohol already used in the production of flavouring substances) is exempt from excise duty under section 77 of the Irish Finance Act.
- 6 The flavouring substances transferred, in this case from Ireland to Romania, are excise goods which have already been marketed in the Member State in which

they were produced and such marketing does not give rise to an obligation to pay excise duty as a result of the application of the exemption under Irish national legislation.

- 7 As regards the application of the indirect exemption for the alcohol contained in food flavourings used for the production of food flavourings intended for the preparation of non-alcoholic beverages with a content not exceeding 1.2% volume, the Romanian tax authorities required compliance with the procedural requirements laid down in national secondary legislation (that is to say, respectively, supply from a tax warehousekeeper in the case of intra-Community acquisitions and registration of the applicant as a registered consignee).
- 8 The applicant submitted claims for reimbursement of excise duties to the defendant and subsequently lodged a complaint against the decisions rejecting those claims. Following the rejection of that complaint, the applicant brought an action before the referring court, the Tribunalul Bucureşti (Regional Court, Bucharest).
- 9 In the present case, the applicant was permitted to submit the opinion of an Irish expert on the content and application of the Irish tax legislation.

#### **Essential arguments of the parties to the main proceedings**

- 10 As regards the first question, the applicant submits that, unlike Article 206<sup>58</sup> of the Romanian Tax Code, the objective of transposing the wording of the directive into Irish law is to make the exemption applicable not only to the production of the flavours at question, but also to subsequent sales thereof. The applicant considers that the approach taken in Romanian tax legislation does not comply with the directive. On the other hand, any reply from the Court validating the conduct of the Romanian authorities might lead the applicant to contemplate the possibility of an action for damages against Ireland since, in such a situation, it would have been misled by the incorrect transposition and application of the exemption by that State.
- 11 As regards the second question, the applicant submits that the exemption from excise duty on alcohol for the goods in question constitutes the rule and the exceptions to that rule must be interpreted and applied strictly and in the same way in all the Member States. Romania should therefore ensure treatment identical to that already applied to aromatics in Ireland. In that regard, the applicant recalls the judgment in *Repertoire Culinaire*, according to which refusal of the exemption would make it impossible for persons resident in a Member State to benefit from an excise exemption scheme, even though that system is required by EU law and must be applied.
- 12 As regards the third question, the applicant maintains that, because of the procedural requirements laid down in Romanian legislation for the grant of the exemption, the latter is, in practice, never applicable. These requirements cannot

be satisfied since Ireland considers that the specific arrangements regarding surveillance of excise duties does not apply to the goods in question since they are exempt, by operation of the law, from excise duty.

- 13 As regards the fourth question, the applicant argues that, even if the Irish authorities did not correctly transpose the provisions of the directive, the error in the interpretation and application of the directive facing Pepsi Romania was insurmountable as a result of the transposition of the directive into Irish law and the consistent administrative practice followed by Ireland. Denying an individual the benefit of the exemption and placing him in a state of legal uncertainty is unjustified in the light of the principles of proportionality and effectiveness. This is all the more so because there is not the slightest possibility of fraud even if the company were unable to acquire the flavouring substances on the basis of documents complying with the procedural requirements applicable to excise duties, which are impossible to satisfy in this case.

#### **Succinct presentation of the reasons for the request for a preliminary ruling**

- 14 The complexity of the problem posed by the interpretation of Article 27(1)(e) of the directive is clear since there are at least two Member States which interpret it differently, namely Ireland and Romania, and the interpretation deemed to be incorrect under Romanian law, which has been adopted by Ireland, is supported by the findings of the competent body of the European Commission (Committee on Excise Duties).
- 15 The problem of interpretation of EU law in such a scenario is completely new and cannot be answered by the grounds of the judgment in *Repertoire Culinaire*. The points analysed in detail by the Court of Justice in that judgment, although they may provide some indications necessary to resolve the present dispute, do not resolve, beyond all doubt, the question of the applicability of the exemption from excise duty in the present case.