

ECJ Preliminary Ruling Request (Excise): *Alsen* (Case C-137/23) – Dutch Supreme Court Submits Referral on Exemption from Excise Duties of Mineral Oils Used for Propulsion of Vessels

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On 3 July 2023, a preliminary ruling request, lodged on 7 March 2023, was published in the Official Journal of the European Union. By this, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) made reference to the Court of Justice of the European Union for a preliminary ruling in the case of *X v. Staatssecretaris van Financiën* (C-137/23) concerning the exemption from excise duties to mineral oils used to propel vessels in the European Union waters. More specifically, the referring court is uncertain as to whether the case in question may be covered by the rule laid down in article 14(1)(c) of the [Energy Taxation Directive \(2003/96\)](#) and article 7(2) of the Excise Directive (2008/118), even where the sole reason of the exemption is that the gas oil in question does not contain sufficient identification markings and, if so, whether the excise duty must be paid by the supplier of the fuel or by the boat master transporting the gas oil in question.

In this context, the Hoge Raad der Nederlanden requested the ECJ to answer the following questions:

- "1. Must Article 14(1)(c) of Directive 2003/96/EC [[Energy Taxation Directive \(2003/96\)](#)] be interpreted as meaning that the tax exemption laid down in that provision applies to energy products which are known to be used for the propulsion of vessels in navigating the inland waterways of the European Union, even where those energy products (gas oil in this case) do not, during that use, contain the required minimum content of the marker Solvent Yellow 124, if the tax authorities do not have one or more indications that the owner or operator of the vessel or his or her representative on board the ship (the boatmaster) is involved in excise evasion, avoidance or abuse in respect of the gas oil being held?
2. If Question 1 is answered in the negative, must Article 7(2) of Directive 2008/118/EC [[Excise Directive \(2008/118\)](#)] be interpreted as meaning that, where it is established that the bunker tank of an inland waterway vessel exclusively contains gas oil originating from a fuel supplier which, with the authorisation of the tax authorities, may release that gas oil for consumption exempt from excise duty, the mere fact that the gas oil does not contain the required minimum content of the marker Solvent Yellow 124 means that the excise duty became chargeable only at the time of that earlier release for consumption on the basis of Article 7(2)(a) of that directive?
3. If Question 2 is answered in the negative and Article 7(2)(b) of Directive 2008/118/EC [[Excise Directive \(2008/118\)](#)] is thus also applicable in the case referred to therein, does the EU law principle of proportionality preclude excise duty which has become chargeable pursuant to Article 7(2)(b) of Directive 2008/118/EC [[Excise Directive \(2008/118\)](#)] from being levied on the boatmaster holding the

excise goods, in accordance with Article 8(1)(b) of that directive, even if that person had no reason to doubt that the gas oil was being supplied exempt from excise duty in accordance with EU and national law?

4. Is it relevant for the answer to Question 3 that the boatmaster does not perform his or her duties in an employment relationship but is also the owner of the vessel?"

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