

ECJ Advocate General Opines on Chargeability of Excise Duties in Case of Irretrievable Loss Due to Non-Serious Fault of Employees: *Girelli Alcool* (Case C-509/22) (Excise)

28 September 2023

Report from Martha Caziero, VAT Associate, IBFD

On 28 September 2023, Advocate General (AG) Anthony Michael Collins of the Court of Justice of the European Union (ECJ) gave his opinion in the case of *Agenzia delle Dogane e dei Monopoli v. Girelli Alcool Srl* (Case C-509/22) on the chargeability of excise duties on ethyl alcohol irretrievably lost due to an error of an employee of the warehousekeeper, in light of article 7(4) of Excise Directive (2008/118), which provides that the irretrievable loss of excise goods under a duty suspension arrangement due to unforeseeable circumstances or force majeure does not constitute a taxable event.

In this case, the AG concluded that force majeure and unforeseeable circumstances should be interpreted as abnormal and unforeseeable circumstances, extraneous to the operator concerned, the consequences of which, in spite of the exercise of all due care, could not have been avoided. The standard of due care required consists of assessing the risks and preventing them, without making unreasonable sacrifices. Therefore, a negligent behaviour does not constitute force majeure or unforeseeable circumstance that Member States can consider as a ground to exempt a good from excise duties. On these grounds, in the AG's opinion, there is no legal basis to grant an exemption in a situation such as that one of the case at hand as it would be contrary to the objectives of [Excise Directive \(2008/118\)](#).

Therefore, the AG proposed that the ECJ answer the question referred to as follows:

"(1) Article 7(4) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC [[Excise Directive \(2008/118\)](#)]

must be interpreted as meaning that the concept of 'unforeseeable circumstances' in that provision refers, like that of '*force majeure*', to abnormal and unforeseeable circumstances extraneous to the authorised warehousekeeper, the consequences of which, despite the exercise by him or her of all due care, could not have been avoided. The requirement that the circumstances must be extraneous to the authorised warehousekeeper is not limited to those circumstances which are outside his or her control in a material or physical sense, but includes those that are objectively beyond his or her control or sphere of responsibility.

(2) Article 7(4) of Directive 2008/118 [[Excise Directive \(2008/118\)](#)]

must be interpreted as meaning that recognition of unforeseeable circumstances requires an authorised warehousekeeper to have exercised all due care in order to avoid the occurrence of the harmful event.

(3) Article 7(4) of Directive 2008/118 [[Excise Directive \(2008/118\)](#)]

must be interpreted as precluding national legislation whereby facts constituting non-serious fault are to be equated with unforeseeable circumstances and *force majeure*.

(4) Article 7(4) of Directive 2008/118 [[Excise Directive \(2008/118\)](#)]

must be interpreted as meaning that the expression 'as a consequence of authorisation by the competent authorities of the Member State' in that provision does not allow Member States to add a general circumstance based on non-serious fault to the circumstances where the total destruction or irretrievable loss of excise goods is not considered as a release for consumption."

A more substantial report containing details of the AG's reasoning will be published in due course.

European Union; Italy - ECJ Advocate General Opines on Chargeability of Excise Duties in Case of Irretrievable Loss Due to Non-Serious Fault of Employees: Girelli Alcool (Case C-509/22) (Excise) (28 Sep. 2023), News IBFD.

Exported / Printed on 10 Mar. 2024 by hkermadi@deloitte.lu.