



C/2024/7018

2.12.2024

**Request for a preliminary ruling from the Curtea de Apel Cluj (Romania) lodged on 27 August 2024 –  
Ecoserv SRL, through Transilvania Master Insolv IPURL, insolvency administrator v Direcția  
Generală Regională a Finanțelor Publice Cluj, Administrația Județeană a Finanțelor Publice Bistrița-  
Năsăud, and Serviciul Fiscal Orășenesc Năsăud**

**(Case C-570/24, Ecoserv)**

(C/2024/7018)

*Language of the case: Romanian*

**Referring court**

Curtea de Apel Cluj

**Parties to the main proceedings**

*Appellant and applicant at first instance:* Ecoserv SRL, through Transilvania Master Insolv IPURL, insolvency administrator

*Appellants and defendants at first instance:* Direcția Generală Regională a Finanțelor Publice Cluj, Administrația Județeană a Finanțelor Publice Bistrița-Năsăud, and Serviciul Fiscal Orășenesc Năsăud

**Questions referred**

1. Does the scope of Article 8(1)(a)(i) of Council Directive 2008/118/EC concerning the general arrangements for excise duty and repealing [Directive 92/12/EEC], <sup>(1)</sup> read in conjunction with Article 8(2) thereof, concerning the concept of a person liable to pay excise duty, also cover a legal person that, in order to obtain authorisation as a tax warehousekeeper, has been engaged in the production of ethyl alcohol under a technical testing regime subject to the supervision of the local customs authority [and] from whose business assets a quantity of 21 909 litres of ethyl alcohol with an alcoholic strength of 96.16 % has been found to be missing?
2. [Where,] following the issuing of a notice of assessment – by which that legal person has been ordered to pay additional excise duty and VAT in respect of the quantity of ethyl alcohol missing from the business assets – which has not been the subject of an administrative appeal, it has been held in a criminal judicial decision which has become final that the only person responsible for causing damage to the State budget was the de facto manager (managing director) of that company, who, during the period running from February 2013 to June 2013, on the basis of the same criminal intention, sold a quantity of 21 909 litres of double-refined alcohol from the business assets of the company, of which he was an employee, for the amount of 219 090 Romanian lei (RON), committing the crime of embezzlement under Article 295(1) of the Codul penal (Criminal Code), and did not record in the accounts the revenue obtained from the sale of that quantity of alcohol, causing damage to the State budget in the amount of RON 915 562,74, an act which comprises the constituent elements of the crime of tax evasion under Article 9(1)(b) [and] Article 9(2) of [Legea nr. 241 din 15 iulie 2005 pentru prevenirea și combaterea evaziunii fiscale (Law No 241 of 15 July 2005 on preventing and combating tax evasion)], does ... the imposing of those taxes also on the legal person by means of Notice of Assessment No F-BN 77 of 4 March 2016 – a notice that has not been appealed by means of the procedure laid down in the Codul de procedură fiscală (Code of Tax Procedure) – constitute a serious and manifest error in the application of the harmonised European Union law on excise duties and VAT?
3. In the context of a tax dispute concerning excise duties and VAT, does European Union law preclude a national court from applying the principle of res judicata in relation to a criminal judicial decision where the application of that principle would constitute an obstacle to the European Union rules on excise duties and VAT – which also provide for the joint and several liability of legal persons – being taken into consideration, where those rules have not been analysed by the criminal courts in decisions which have become final?

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<sup>(1)</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).