JUDGMENT OF THE COURT (Ninth Chamber)

2 June 2016 (*)

(Reference for a preliminary ruling — Indirect taxation — Excise duties — Directive 2008/118/EC — Chargeability of excise duties — Article 7(2) — Concept of 'departure of excise goods from a duty suspension arrangement' — Taxation of energy products and electricity — Directive 2003/96/EC — Article 14(1)(a) — Use of energy products to produce electricity — Purchase and resale by an intermediate purchaser of energy products located in a tax warehouse — Direct delivery of energy products to an operator for the production of electricity — Indication of the intermediate purchaser as the 'consignee' of the products in the tax documents — Infringement of the requirements of national law as regards exemption from excise duty — Refusal of exemption — Proof of the use of the products in circumstances permitting exemption from excise duty — Proportionality)

In Case C-355/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Pleven (Administrative Court, Pleven, Bulgaria), made by decision of 10 July 2014, received at the Court on 21 July 2014, in the proceedings

'Polihim-SS' EOOD

v

Nachalnik na Mitnitsa Svishtov,

intervening party:

Okrazhna prokuratura Pleven,

THE COURT (Ninth Chamber),

composed of C. Lycourgos, President of the Chamber, E. Juhász and C. Vajda (Rapporteur), Judges,

Advocate General: M. Wathelet,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 28 October 2015,

after considering the observations submitted on behalf of:

– 'Polihim-SS' EOOD, by D. Dobrev and L. Angelov, lawyers, and by S. Stefanova,

– the Nachalnik na Mitnitsa Svishtov, by V. Tanov, lawyer, and by S. Yordanova and N. Yotsova-Toteva,

– the Bulgarian Government, by E. Petranova and D. Drambozova, acting as Agents,

– the German Government, by T. Henze and K. Petersen, acting as Agents,

– the European Commission, by M. Wasmeier and D. Roussanov, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1(1) of 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) and Article 14(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51).

2 The request has been made in proceedings between 'Polihim-SS' EOOD ('Polihim') and the Nachalnik na Mitnitsa Svishtov (Customs Director of Svishtov, Bulgaria; 'the NMS') concerning fines imposed on Polihim for having removed energy products from a tax warehouse without having paid the corresponding excise duties.

Legal context

EU law

Directive 2003/96

3 Article 2 of Directive 2003/96 provides:

'1. For the purposes of this directive, the term "energy products" shall apply to products:

...

(b) falling within CN codes 2701, 2702 and 2704 to 2715;

...

3. When intended for use, offered for sale or used as motor fuel or heating fuel, energy products other than those for which a level of taxation is specified in this directive shall be taxed according to use, at the rate for the equivalent heating fuel or motor fuel.

...

4. This directive shall not apply to:

(a) output taxation of heat and the taxation of products falling within CN codes 4401 and 4402;

(b) the following uses of energy products and electricity:

– energy products used for purposes other than as motor fuels or as heating fuels,

– dual use of energy products

An energy product has a dual use when it is used both as heating fuel and for purposes other than as motor fuel and heating fuel. The use of energy products for chemical reduction and in electrolytic and metallurgical processes shall be regarded as dual use,

– electricity used principally for the purposes of chemical reduction and in electrolytic and metallurgical processes,

– electricity, when it accounts for more than 50% of the cost of a product. “Cost of a product” shall mean the addition of total purchases of goods and services plus personnel costs plus the consumption of fixed capital, at the level of the business, as defined in Article 11. This cost is calculated per unit on average. “Cost of electricity” shall mean the actual purchase value of electricity or the cost of production of electricity if it is generated in the business,

– mineralogical processes

“Mineralogical processes” shall mean the processes classified in the NACE nomenclature under code DI 26 “manufacture of other non-metallic mineral products” in Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community [(OJ 1990 L 293, p. 1)].

However, Article 20 shall apply to these energy products.

…’

4 Article 4 of Directive 2003/96 reads as follows:

‘1. The levels of taxation which Member States shall apply to the energy products and electricity listed in Article 2 may not be less than the minimum levels of taxation prescribed by this directive.

2. For the purpose of this directive “level of taxation” is the total charge levied in respect of all indirect taxes (except VAT) calculated directly or indirectly on the quantity of energy products and electricity at the time of release for consumption.’

5 Article 9(1) of that directive provides:

‘1. As from 1 January 2004, the minimum levels of taxation applicable to heating fuels shall be fixed as set out in Annex I, Table C.’

6 Article 14(1)(a) of the directive provides:

‘1. In addition to the general provisions set out in [Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1), as amended by Council Directive 2000/47/EC of 20 July 2000 (OJ 2000 L 193, p. 73)] on exempt uses of taxable products, and without prejudice to other Community provisions, Member States shall exempt the following from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

(a) energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity. However, Member States may, for reasons of environmental policy, subject these products to taxation without having to respect the minimum levels of taxation laid down in this Directive. In such case, the taxation of these products shall not be taken into account for the purpose of satisfying the minimum level of taxation on electricity laid down in Article 10.’

7 Table C of Annex I to that directive, entitled ‘Minimum levels of taxation applicable to heating fuels and electricity’, is set out as follows:

	Business use	Non-business use
…	…	…
Heavy fuel oil (in EUR/1.000 kg) CN codes 2710 19 61 to 2710 19 69	15	15
…	…	…

Directive 2008/118

8 In accordance with recitals 8 and 9 to Directive 2008/118:

‘(8) Since it remains necessary for the proper functioning of the internal market that the concept of and conditions for chargeability of excise duty be the same in all Member States, it is necessary to make clear at Community level when excise goods are released for consumption and who the person liable to pay the excise duty is.

(9) Since excise duty is a tax on the consumption of certain goods, duty should not be charged in respect of excise goods which, under certain circumstances, have been destroyed or irretrievably lost.’

9 Article 1(1)(a) of that directive provides:

‘This directive lays down general arrangements in relation to excise duty which is levied directly or indirectly on the consumption of the following goods (hereinafter “excise goods”):

(a) energy products and electricity covered by Directive 2003/96/EC.’

10 Article 4 of Directive 2008/118 provides:

‘For the purpose of this directive as well as its implementing provisions, the following definitions shall apply:

(1) “authorised warehousekeeper” means a natural or legal person authorised by the competent authorities of a Member State, in the course of his business, to produce, process, hold, receive or dispatch excise goods under a duty suspension arrangement in a tax warehouse;

…

(11) “tax warehouse” means a place where excise goods are produced, processed, held, received or dispatched under duty suspension arrangements by an authorised warehousekeeper in the course of his business, subject to certain conditions laid down by the competent authorities of the Member State where the tax warehouse is located.’

11 Article 7(1) to (3) of Directive 2008/118, which forms part of Section I of Chapter II thereof, entitled ‘Time and place of chargeability’, reads as follows:

‘1. Excise duty shall become chargeable at the time, and in the Member State, of release for consumption.

2. For the purposes of this directive, “release for consumption” shall mean any of the following:

(a) the departure of excise goods, including irregular departure, from a duty suspension arrangement;

(b) the holding of excise goods outside a duty suspension arrangement where excise duty has not been levied pursuant to the applicable provisions of Community law and national legislation;

...

3. The time of release for consumption shall be:

(a) in the situations referred to in Article 17(1)(a)(ii), the time of receipt of the excise goods by the registered consignee;

(b) in the situations referred to in Article 17(1)(a)(iv), the time of receipt of the excise goods by the consignee;

...’

12 Article 15(2) of Directive 2008/118, which forms part of Chapter III thereof, entitled ‘Production, processing and holding’, provides:

‘The production, processing and holding of excise goods, where the excise duty has not been paid, shall take place in a tax warehouse.’

Bulgarian law

13 Under the Zakon za aktsizite i danăchnite skladove (Law on excise duty and tax warehouses; Dv No 91, 15 November 2005; ‘the ZADS’), which transposes Directive 2008/118 into Bulgarian law:

‘The following shall be subject to excise duty:

...

(3) energy products and electricity;

...’

14 Article 4 of that law provides:

‘For the purposes of this law:

...

(14) the “end user exempt from excise duty” is a sole trader or a legal person entitled to receive energy products that are used for purposes exempt from excise duty on the basis of an excise exemption certificate which he has received.’

15 In the version applicable until 16 July 2012, Article 20 of the ZADS provided:

‘(1) The excise debt shall become chargeable when the excise goods are released for consumption.

(2) “Release for consumption” shall mean:

1. the removal of excise goods from a tax warehouse, unless, in the circumstances and under the arrangements laid down by this law, from the time

of their release the goods are being transported under a duty suspension arrangement; that shall also be the case of the release of excise goods of a small, specialised distillery and a small winegrower's wine press;

…'

16 In the version in force with effect from 17 July 2012, Article 20(2) of that law reads as follows:

'(2) "Release for consumption" shall mean:

1. the removal of excise goods from a tax warehouse, unless, in the circumstances and under the arrangements laid down by this law, from the time of their release the goods are being transported under a duty suspension arrangement;

…'

17 Under Article 24 of the law:

'…

(2) The following energy products shall be exempt from excise duty:

…

3. Energy products used for the production of electricity by persons who have acquired an electricity generation licence pursuant to the Zakon za energetikata (Law on energy);

…

(3) The exemption under Article 24(2).1 to 5 shall apply only to end users exempt from excise duty.'

18 Article 24(3) of the ZADS was repealed as from 17 July 2012.

19 Article 24a of that law, in force from 17 July 2012, provides:

'… (1) The exemption from excise duty for energy products under Article 24(2).1 to 5 shall apply only to persons who have obtained a certificate as an end user exempt from excise duty.'

20 Under Article 24e of that law, in force from 17 July 2012:

'(1) On the basis of the certificate, the end user exempt from excise duty shall have the right to receive energy products exempted from excise duty in the facility indicated on the certificate, in which the energy products are received, unloaded and used.

(2) The end user exempt from excise duty may use the received energy products only for the purposes indicated on the certificate for the respective facility.

…'

21 Article 33(1) and (3) of that law, in the version in force at the material time, is worded as follows:

‘(1) The rates of excise duty on energy products used as heating fuel shall be as follows:

…

2. for heavy fuel oils with CN codes 2701 19 61 to 2710 19 69, other heavy fuel oils, other than lubricating oil, included in CN code 2710 19 99 and for energy products with CN codes 2706, 2707 91, 2707 99 11, 2707 99 19, 2710 91 et 2710 99: 50 leva per 1 000 kg;

…

(3) For the purposes of application of the rates referred to in paragraph 1, excise goods released for consumption shall be accompanied by a document in a form defined by the decree implementing the present law.’

22 Article 33(4) of the ZADS in the version in force until 16 July 2012, provided:

‘The rates referred to in paragraph 1 shall apply if the person who has released the goods for consumption holds the document referred to in paragraph 3, certified by the person who will use the goods for the purpose intended, with the exception of bottled LPG for use in heating, removed from a tax warehouse near to a bottle refill point. …’

23 The version of Article 33(4) of that law in force from 17 July 2012 provides:

‘The rates referred to in paragraph 1 shall apply if the person who has released the goods for consumption holds the document referred to in paragraph 3, certified by the person who will use the goods for the purpose intended, with the exception of bottled LPG for heating, removed from a tax warehouse.’

24 Article 112(1) of that law provides:

‘A person who is liable to pay duty but fails to pay it will be fined twice the amount of the duty which was not paid; the fine may not be less than 500 leva.’

25 In accordance with Article 13 of the decree implementing the ZADS, in the version applicable to the facts of the main proceedings (‘the implementing decree’):

‘(1) The exemption from excise duty for energy products under Article 24(2).1 to 5 shall apply only to independent traders or to persons who have obtained a certificate as an end user exempt from excise duty.

…

(5) Where an energy product is included in an operation connected with the generation of heat which is used for private and business purposes, directly or indirectly via a propagation medium, is deemed to be an energy product used as heating fuel.

…’

26 Article 80 of that implementing decree provides:

‘(1) The excise invoice shall be issued by taxable persons, with the exception of the persons referred to in Article 3.2 and 3 of the [ZADS], in the form set out in Annex No 14. The excise invoice shall be issued by end users exempt from excise duty only where the energy products are used for purposes other than those stated in the certificate.

…

(5) The excise invoice shall be issued on the date of the release for consumption of the excise goods, with the exception of the cases referred to in Article 20(2).5, 15, 16, 17 and 18 of the [ZADS].'

27 Article 80a of the implementing decree reads as follows:

'(1) In cases where the excise rates reduced pursuant to Article 33(1) and the rate pursuant to Article 33a(1) of the [ZADS] are applied in connection with lubricating oils which contain, in accordance with their technical specifications, marked gas oil, the person releasing the goods for free circulation shall complete and issue four copies of the document in the form set out in Annex No 14a.

(2) The first copy shall be kept by the issuer, while the second shall be kept by the person who is named as consignee in the excise invoice. The third and fourth copies must be affixed to the goods until they reach the consumer. The fourth copy shall be kept by the consumer of the excise goods used for heating purposes. The third copy shall be returned to the person who released the goods for consumption.

...'

28 Article 82(5) and (6) of the implementing decree provides:

'(5) The excise declaration shall be accompanied by copies of the excise invoices and by the invoice drawn up in accordance with Annex No 14a concerning energy products released for consumption for use as fuel, with the exception of those referred to in Article 33(1).5 and 7 of the [ZADS], and as regards LPG released for consumption in bottles for use as fuel, removed from a tax warehouse near to a bottle refill point.

(6) Only one copy of the excise invoices shall be attached to the excise declaration concerning the energy products released for consumption intended for use by end users exempt from excise duty and concerning LPG released for consumption in bottles for use as fuel, removed from a tax warehouse near to a bottle refill point.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

29 It is apparent from the order for reference that Polihim is an authorised warehousekeeper which manages a tax warehouse in Lukovit (Bulgaria), in which it is authorised to manufacture energy products and store them under a duty suspension arrangement.

30 Under a three-party contract concluded between Polihim, Petros Oyl OOD and TETS Bobov dol EAD, Polihim sold heavy fuel oils to Petros Oyl, which sold them on to TETS Bobov dol, the end-user exempt from excise duty for the purposes of Bulgarian legislation. Those heavy fuel oils were delivered directly by Polihim to TETS Bobov dol from its tax warehouse. It is apparent from the order for reference that TETS Bobov dol used the heavy fuel oils to produce electricity, within the meaning of Article 14(1)(a) of Directive 2003/96.

31 During a tax inspection of Polihim, the Bulgarian customs authorities found that that company had, on its excise declarations drawn up for the tax periods from 1 to 30 June 2012 and 1 to 30 September 2012, declared that it had made eight releases for consumption of heavy fuel oils under CN code 2710 19 64 to Petros Oyl but stated that it was not liable for any excise duty in that regard since those goods were intended for use in the production of electricity within the meaning of Article 24(2).3 of the ZADS.

32 Being of the view that Petros Oyl, which had been declared by Polihim as the consignee of the goods at issue in the main proceedings, did not have the status of end-user exempt from excise duty, within the meaning of national legislation and that, accordingly, the removal of those goods from Polihim's tax warehouse had given rise to

an excise debt owed by Polihim, the Bulgarian customs authorities issued a document finding that there had been an administrative offence.

33 Polihim submitted its written objections to that document, arguing that those goods, once removed from its tax warehouse, had been delivered directly by it to TETS Bobov dol, a company which produces electricity and holds the status of end-user exempt from excise duty.

34 By decision of 27 May 2013, the NMS rejected those objections and imposed fines on Polihim corresponding, in respect of each release for consumption, to twice the amount of the unpaid excise duty, under Article 112(1) of the ZADS. The rate of excise duty taken into consideration in calculating those fines was that applicable to energy products used for purposes other than as motor fuel or as heating fuel.

35 Polihim has brought an action against that decision before the Rayonen sad de Lukovit (District Court, Lukovit, Bulgaria). In its judgment, that court pointed out that the goods at issue in the main proceedings had been removed from Polihim's tax warehouse without Polihim having paid the corresponding excise duty, in breach of Article 20(1) of the ZADS. According to that court, it made little difference, in that regard, that those goods were delivered directly to TETS Bobov dol, since Petros Oyl, declared as consignee of the goods on the tax documents drawn up by Polihim itself, did not have the status of an end-user exempt from excise duty. Nonetheless, that court varied the decision of 27 May 2013, reducing the amount of the fines imposed.

36 Polihim lodged an appeal on a point of law against that judgment before the referring court.

37 Taking the view that, in order to resolve the dispute before it, it was necessary to interpret certain provisions of Directives 2008/118 and 2003/96, the national court decided to stay proceedings and refer to the Court the following questions for a preliminary ruling:

'1. Is the term "[consumption of] energy products" in Article 1(1)(a) of [Directive 2008/118] to be interpreted — in cases involving energy products which have been released for free circulation and are removed from a tax warehouse of an authorised warehousekeeper, sold in a commercial transaction to a purchaser which possesses neither an authorisation for the production of electricity nor a certificate as an end-user exempt from excise duty, and which are then resold by that purchaser to a third party which possesses an authorisation for the production of electricity, a permit from the competent authorities of the Member State for receiving duty-free energy products and a certificate as an end-user exempt from excise duty, and to which the energy products are delivered directly by the authorised warehousekeeper, without coming under the actual control of the purchaser — as meaning that the energy products are consumed by their direct purchaser, which does not in fact put them to use in a particular operation, or as meaning that they are consumed by the third party, which does in fact put them to use in an operation which it carries out?

2. Is the term "used to produce electricity" in Article 14(1)(a) of [Directive 2003/96] to be interpreted — in cases involving energy products which have been released for free circulation and are removed from a tax warehouse of an authorised warehousekeeper, sold in a commercial transaction to a purchaser which possesses neither an authorisation for the production of electricity nor a certificate as an end-user exempt from excise duty, and which are then resold by that purchaser to a third party which possesses an authorisation for the production of electricity, a permit from the competent authorities of the Member State for receiving duty-free energy products and a certificate as an end-user exempt from excise duty, and to which the energy products are delivered directly by the authorised warehousekeeper, without coming under the actual control of the purchaser — as meaning that the energy products are used by the direct purchaser, which does not in fact put them to use in a particular operation for achieving a purpose exempt from excise duty, or as meaning that they are used

by the third party, which does in fact put them to use in an operation which it carries out for achieving a purpose exempt from excise duty, namely heating, for example, for the production of electricity?

3. Taking into account the principles of the provisions of EU law concerning excise duty, in particular Article 1(1)(a) of Directive 2008/118 and Article 14(1)(a) of Directive 2003/96, are energy products subject to excise duty and, if so, at what rate — that for motor fuel or that for energy products used for heating purposes — if it is established that the energy products concerned were supplied to an end-user which possesses the appropriate authorisations and permits under national law for the production of electricity and a certificate as an end-user exempt from excise duty and which received the goods directly from the authorised warehousekeeper, but which is not the first purchaser of the goods?

4. Taking into account the principles of the provisions of EU law concerning excise duty, in particular Article 1(1)(a) of Directive 2008/118 and Article 14(1)(a) of Directive 2003/96, are energy products subject to excise duty at the rate for motor fuel if it is established that the energy products concerned are consumed or used for a purpose which is exempt from excise duty, namely the production of electricity, by a person which possesses the corresponding authorisations and permits under national law and which received the goods directly from the authorised warehousekeeper, but which is not the first purchaser of the goods?'

Consideration of the questions referred

The first and second questions

38 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, firstly, whether Article 7(2) of Directive 2008/118 is to be interpreted as meaning that the sale of excise goods within a tax warehouse, without those goods having physically left that tax warehouse, constitutes a release for consumption of those goods. Secondly, that court asks whether Article 14(1)(a) of Directive 2003/96, read in conjunction with Article 7 of Directive 2008/118, must be interpreted as precluding a refusal by the national authorities to exempt from excise duty energy products which, after having been sold by an authorised warehousekeeper to an intermediate purchaser, are sold on by that purchaser to an end-user who satisfies all the requirements under national law to benefit from an exemption of excise duty on those products and to whom those products are delivered directly by that authorised warehousekeeper from his tax warehouse, on the sole ground that the intermediate purchaser, declares by that warehousekeeper as the consignee of those products, does not satisfy those requirements.

39 As a preliminary point, it must be noted that the goods at issue in the main proceedings, in this case heavy fuel oils under CN code 2710 19 64, are energy products covered by CN code 2710, within the meaning of Article 2(1)(b) of Directive 2003/96, and are taxable on the conditions set out in that directive. They are also excise goods within the meaning of Article 1(1)(a) of Directive 2008/118, consumption of which is subject directly or indirectly to excise duty, the system of which is established by that directive. It must be added that the use for which those goods were intended, namely the production of electricity in a thermal energy plant, is not included in the list of uses excluded, pursuant to Article 2(4)(b) of Directive 2003/96, from the scope of that directive.

40 It is apparent from Articles 4 and 9(1) of Directive 2003/96, read in conjunction with Annex I, Table C, to that directive, that the level of taxation applicable to heavy fuel oils, such as those at issue in the main proceedings, must not be lower than EUR 15 per 1 000 kg.

41 Accordingly, those heavy fuel oils should in consequence be taxed, unless an exemption or a reduction in the level of taxation applies to them.

42 In that regard, it is apparent from Article 14(1)(a) of Directive 2003/96 that the Member States are to exempt from taxation, under conditions which they are to lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse, energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity.

43 In that context, the referring court is doubtful as to whether the sale by Polihim of the goods at issue in the main proceedings to an intermediate purchaser, without that purchaser ever having actual control of those goods, constitutes a release for consumption of the goods, within the meaning of Article 7(2) of Directive 2008/118 and, accordingly, whether the conditions to which exemption of those goods is subject should have been satisfied at the time of that sale.

44 It follows that, in order to answer the first and second questions, as reformulated in paragraph 38 of this judgment, it is necessary to determine, firstly, when the excise duty becomes chargeable in accordance with Article 7 of Directive 2008/118 and, secondly, to what conditions the exemption under Article 14(1)(a) of Directive 2003/96 is subject.

The time at which the excise duty becomes chargeable

45 According to the settled case-law of the Court, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objects of the rules of which it is part (judgment of 26 March 2015 in Litaksa, C-556/13, EU:C:2015:202, paragraph 23 and the case-law cited).

46 Firstly, as regards the actual terms of Article 7(1) of Directive 2008/118, it must be noted that that provision defines the time at which excise duty becomes chargeable as the time of release for consumption of the excise goods.

47 Furthermore, it is clear from Article 7(2)(a) of that directive that, for the purposes thereof, ‘release for consumption’ is to be understood, in particular, as ‘the departure of excise goods, including irregular departure, from a duty suspension arrangement’.

48 Clearly, the part of the sentence ‘the departure of excise goods ... from a duty suspension arrangement’ in Article 7(2)(a) of Directive 2008/118 refers, having regard to the usual meaning of the word ‘departure’ in normal usage, to the physical departure of those goods from the tax warehouse and not their sale.

49 Secondly, it must be noted that such a reading of Article 7(1) and (2)(a) of Directive 2008/118 corresponds to the objectives pursued by that directive.

50 Since excise duty is, as is recalled in recital 9 to Directive 2008/118, a tax on the consumption, that directive lays down, as provided in Article 1(1) thereof, general arrangements in relation to excise duty which is levied directly or indirectly on the consumption of excise goods, which include, inter alia, energy products and electricity covered by Directive 2003/96.

51 Thus, since excise duty is a tax levied on consumption and not on sale, the time at which it becomes chargeable must be very closely linked with the consumer.

52 Accordingly, so long as the goods in question remain in the tax warehouse of an authorised warehousekeeper, there can be no consumption, even if those goods have been sold by that authorised warehousekeeper.

53 Thirdly, it must be noted, as regards the context of Directive 2008/118, that Article 7(2)(a) thereof refers, in particular to the possibility of an irregular departure of excise goods from a duty suspension arrangement. Since the expression ‘irregular departure’ cannot be understood other than as meaning the physical removal of goods from such an arrangement, the use of that expression in that provision confirms the

reading that the release for consumption, within the meaning thereof, takes place at the time of the physical removal of excise goods from a duty suspension arrangement.

54 In addition, it follows from Article 4, point 1, of Directive 2008/118, read in conjunction with Article 15(2) thereof, that excise goods under a duty suspension arrangement are to be held by an authorised warehousekeeper in a tax warehouse. It follows that excise duties are not chargeable so long as the goods concerned are held by the authorised warehousekeeper in its tax warehouse, since they cannot be regarded, in that situation, as having been removed from a duty suspension arrangement within the meaning of Article 7(2)(a) of Directive 2008/118.

55 It follows from the foregoing considerations that Article 7(2) of Directive 2008/118 must be interpreted as meaning that the sale of excise goods held by an authorised warehousekeeper in a tax warehouse does not bring about their release for consumption until the time at which those goods are physically removed from that tax warehouse.

The conditions for exemption referred to in Article 14(1)(a) of Directive 2003/96

56 In the present case, it is not in dispute that the heavy fuel oils at issue in the main proceedings were delivered directly, from Polihim's tax warehouse, to TETS Bobov dol, a company operating a thermal power plant and having the status of end-user authorised under national law to receive energy products exempt from excise duty, and that they were used in that thermal power plant to produce electricity. Nonetheless, while Article 14(1)(a) of Directive 2003/96 provides for exemption of energy products used to produce electricity, the national authorities have refused to exempt those heavy fuel oils from excise duty on the ground that the consignee declared on the tax documents accompanying the deliveries did not satisfy the requirements laid down in national law to benefit from such an exemption.

57 In that regard, it must be noted that Directive 2003/96 does not govern how proof of use of energy products for purposes giving rise to a right to exemption is to be adduced. On the contrary, as is clear from Article 14(1) of that directive, it gives the Member States the responsibility for laying down the conditions referred to in that provision, in order to ensure the correct and straightforward application of such exemptions and to prevent any evasion, avoidance or abuse.

58 A requirement flowing from national law, such as that at issue in the main proceedings, which makes exemption from excise duty subject to the declaration, on the tax documents, of a consignee satisfying the conditions laid down in national law to receive exempt energy products, must be regarded as enabling the objective referred to in Article 14(1) of Directive 2003/96 to be achieved, since it is such as to facilitate, as the Bulgarian Government rightly points out, monitoring of the application of exemptions from excise duty by reducing the risk of a use of the products which does not give entitlement to an exemption.

59 The fact remains that the Member States, when exercising their power to lay down the conditions to which exemption from excise duty provided for in Article 14(1) of Directive 2003/96 is subject, must comply with the general principles of law which form part of the legal order of the European Union, including, inter alia, the principle of proportionality (see, by analogy, judgment of 9 October 2014 in Traum, C-492/13, EU:C:2014:2267, paragraph 27 and the case-law cited).

60 In the present case, it is not in dispute, firstly, that TETS Bobov dol satisfied the requirements laid down in national law to receive, as end-user, energy products exempt from excise duty and, secondly, that the goods at issue in the main proceedings were used by that company to produce electricity, that is to say, for purposes giving an entitlement to exemption from excise duty in accordance with Article 14(1)(a) of Directive 2003/96.

61 In addition, the referring court has not noted any fact which could lead to a presumption that the commercial transactions at issue in the main proceedings, involving successive

sales of heavy fuel oils and their direct delivery to a consignee exempt from excise duty, were carried out with the aim of fraudulently or wrongfully benefiting from an exemption from excise duty.

62 In those circumstances, the refusal by the national authorities, in a case such as that of the main proceedings, to exempt heavy fuel oils from excise duty on the sole ground that the person declared by the authorised warehousekeeper as being their consignee does not have the status of end-user authorised under national law to receive energy products exempt from excise duty, without it being checked, on the basis of the evidence provided, whether the basic requirements necessary for those heavy fuel oils to be used for purposes giving entitlement to exemption are met at the time of their removal from the tax warehouse, goes beyond what is necessary to ensure the correct and straightforward application of those exemptions and to prevent any evasion, avoidance or abuse (see, by analogy, judgment of 27 September 2007 in Collée, C-146/05, EU:C:2007:549, point 29).

63 Having regard to the foregoing, the answer to the first and second questions is that Article 14(1)(a) of Directive 2003/96, read in conjunction with Article 7 of Directive 2008/118, must be interpreted as precluding a refusal by the national authorities to exempt from excise duty energy products which, after having been sold by an authorised warehousekeeper to an intermediate purchaser, are sold on by that purchaser to an end-user who satisfies all the requirements under national law to benefit from an exemption of excise duty on those products and to whom those products are delivered directly by that authorised warehousekeeper from his tax warehouse, on the sole ground that the intermediate purchaser, declared by that warehousekeeper as the consignee of those products, does not have the status of end-user authorised under national law to receive energy products exempt from excise duty.

The third and fourth questions

64 In view of the answer given to the first and second questions, there is no need to answer the third and fourth questions.

Costs

65 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

1. Article 7(2) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC must be interpreted as meaning that the sale of excise goods held by an authorised warehousekeeper in a tax warehouse does not bring about their release for consumption until the time at which those goods are physically removed from that tax warehouse;

2. Article 14(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, read in conjunction with Article 7 of Directive 2008/118, must be interpreted as precluding a refusal by the national authorities to exempt from excise duty energy products which, after having been sold by an authorised warehousekeeper to an intermediate purchaser, are sold on by that purchaser to an end-user who satisfies all the requirements under national law to benefit from an exemption of excise duty on those products and to whom those products are delivered directly by that authorised warehousekeeper from his tax warehouse, on

the sole ground that the intermediate purchaser, declared by that warehousekeeper as the consignee of those products, does not have the status of end-user authorised under national law to receive energy products exempt from excise duty.