

Newsletter in brief

- Case law in **transport law** :

- ❖ The Montpellier Court of Appeal ruled that the failure to secure pallets inside a closed and sealed container constituted a non-apparent defect that exempted the road haulier from liability.
- ❖ The Orleans Court of Appeal ruled that handling operations requiring specific expertise and carried out the day after the goods were transported were not ancillary to the latter and were therefore not subject to the annual limitation period.
- ❖ The Court of Justice of the European Union has released an important ruling on the temporal application of lighter (administrative or criminal) penalties relating to the control of tachographs.

- **Customs** case law :

- ❖ The CJEU has clarified customs obligations in the event of automatic refunds.
- ❖ The CJEU confirmed that in the case of an intra-Community supply not made to Lithuania, the actual export of goods to Belarus nevertheless allowed for VAT exemption.
- ❖ The CJEU has clarified the rules for applying reduced VAT rates using the Customs Combined Nomenclature, with regard to sudoku games.
- ❖ The CJEU ruled in favour of a French art gallery that had purchased a painting from a company run by the painter of the painting, opting for the 'VAT on the profit margin' regime.
- ❖ The General Court of the European Union, newly competent to rule on preliminary questions in customs and excise matters, has released a decision on fictitious deliveries of petroleum products.



OUR NEWS

Vincent Courcelle-Labrousse comments in the October 2025 issue of the journal AJ Pénal Dalloz on Constitutional Council decision no. 2025-1153 QPC of 30 July 2025 concerning the powers of the European Public Prosecutor's Office.

He is also responsible for bringing together Victor Ferreira, a former chief warrant officer in the French Foreign Legion who became a photographer, and the Moderne Art Fair.

From 23 to 26 October 2025, at Place de la Concorde, as part of the fair, the exceptional exhibition 'La Légion dans la peau' (The Legion in the Skin) will unveil photographs by Victor Ferreira, who for years has been capturing the tattoos of his brothers in arms. The works on display will be sold to benefit "Solidarité Légionnaire" to support the expansion of the infirmary at the "Institut des Invalides de la Légion étrangère".

ROAD TRANSPORT – SHIPMENT EQUAL TO OR GREATER THAN 3 TONNES – SEALED CONTAINER – FAILURE TO SECURE LOAD – CARRIER'S EXEMPTION FROM LIABILITY

During a road journey, a vehicle transporting crates of wine overturned, causing significant damage to the cargo. According to experts, the accident was caused by the pallets being incorrectly positioned in the truck and, therefore, by faulty securing and stowage by the loader.

Pursuant to Article 7.2.1, paragraph 4, of the standard contract applicable to public road transport of goods for which there is no specific standard contract, applicable to the case in question, 'The carrier shall be exempt from liability for loss or damage to the goods during transport if it establishes that the damage resulted from a non-apparent defect in the loading, stowage and securing of the goods or from an apparent defect for which it had issued reservations to the shipper.'

In this case, as the container was closed and sealed when it was picked up, the carrier was unable to access the contents of the container to ensure that the cargo was properly stowed or secured.

In a ruling dated 17 June 2025 (RG No. 23/05736), the Montpellier Court of Appeal ruled that such a failure to secure the pallets inside the container, which was collected closed and sealed, constituted a non-apparent defect that exempted the road carrier from liability.

ROAD TRANSPORT – ANCILLARY OR NON-ANCILLARY NATURE OF HANDLING OPERATIONS – APPLICABLE TIME-BAR

Under Article 25 of the standard contract applicable to public road transport of goods for which there is no specific standard contract, "All actions arising from the contract of carriage and ancillary services shall be time-barred after one year. In the event of total loss, this period shall run from the day on which the goods should have been delivered or offered for delivery and, in all other cases, from the day on which the goods were delivered or offered for delivery to the consignee."



In this case, the goods had been damaged during handling operations carried out the day after their transport by the company responsible for both transport and handling.

The carrier-handler claimed that the handling operations carried out were ancillary to the transport services and therefore subject to the one-year limitation period.

The Court of Appeal of Orléans did not agree and ruled in a judgment dated 11 September 2025 (RG No. 22/01936) that the handling service was independent of the transport service, and not ancillary, since it had taken place the day after the transport and had required separate expertise to handle and deposit the goods on threaded rods previously sealed in the ground.

Given the specific nature of the handling operations, these could be separated from the transport operation and were therefore clearly not ancillary in nature. The annual limitation period provided for in transport contracts was therefore not applicable in this case.

ROAD TRANSPORT – PERIODIC CHECKS ON TACHOGRAPHS – TIMELY APPLICATION OF PENALTIES

On 1 August 2025, the Court of Justice handed down an extremely interesting judgment in the Grand Chamber (C-544/23). All the presidents of the chambers of the Court of Justice met to rule on this dispute.

1. A Slovakian road haulier transporting concrete in a concrete mixer truck was inspected in November 2015 and fined by the Slovakian authorities on the grounds that his tachograph disc had not undergone a ‘valid periodic inspection’. He was fined €200. At the time of the facts, as indicated by the Court of Justice (paragraph 33) « *The obligation to use tachographs in road transport vehicles was laid down in Article 3 of Regulation No 3821/85 and in Paragraph 2(1) of Law No 461/2007, without prejudice to the exceptions listed in Articles 3 and 13 of Regulation No 561/2006. However, those exceptions did not include vehicles intended for the carriage of concrete.* »

Slovak law therefore required transport companies providing bus transport services or road haulage services to install a recording device in every vehicle used for the transport of passengers or goods and to use record sheets and driver cards for its operation.

Admittedly, Regulation No 561/2006 of 15 March 2006 allowed Member States to grant exemptions from the obligation to carry out periodic checks on tachograph discs. Slovak Law 461/2007 reiterated this principle. However, concrete mixer lorries were not covered by these exemptions.

In the context of the proceedings on the merits between 2017 and 2019, the procedural situation of the Slovak carrier was therefore delicate, as it did not benefit from any derogation.

The situation changed when Regulation 561/2006 was amended by Regulation 2020/1054 of 15 July 2020, under which ‘vehicles used for the delivery of ready-mixed concrete’ were expressly included in the possible exemptions.



The company had lodged an appeal with the Court of Cassation and therefore filed a supplementary statement requesting that it be allowed to benefit from the retroactive application of this new regulation, so that the €200 penalty could be cancelled.

2. This decision is significant and was handed down by the Grand Chamber, as it led the Court of Justice to consider the application of retroactivity in mitius from an unusual angle.

Indeed, there is extensive case law from the CJEU concerning the application of Article 49(1) of the Charter of Fundamental Rights of the EU (enshrining the principle of immediate application of the lighter penalty). The amendment of a criminal offence resulting in a lighter criminal penalty immediately benefits a person who has not been finally convicted by a court.

The question arose as to whether or not this principle should be applied to an administrative penalty.

3. In terms of principles, the Court confirmed that by checking tachographs as part of national measures which themselves incorporated Community regulations, including Regulation 561/2006, the Slovak administration had indeed applied EU law.

Consequently, section 51 of the Charter required the administration to apply the principles guaranteed by the Charter.

The Court reminds that Article 51 is applicable « *where a Member State adopts measures in connection with a margin of discretion which is an integral part of the regime established by an act of EU law...* » (paragraph 55).

4. With the Charter thus recognized as applicable to the situation, it remained to be determined whether Article 49(1) 1 was applicable to the dispute. Here, the Court of Justice continues to build on the case law it has developed over the last ten years or so on the scope of the Charter in criminal matters.

As the Court noted, « *three criteria are relevant for assessing the criminal nature of a penalty for the purposes of, inter alia, applying Article 49 of the Charter. The first is the legal classification of the offence under national law, the second is the intrinsic nature of the offence, and the third is the degree of severity of the penalty which the person concerned is liable to incur* » (paragraph 63).

The Court recalled its case law on the application of the three criteria in question. It noted that the offence is classified as an administrative offence under Slovak law (paragraph 65). The Court added that the penalty imposed on the driver appears to be « *to pursue objectives both of deterring and of punishing those offences, without being intended to repair the damage caused thereby* » (paragraph 68), which would revert to a criminal classification.

Conversely, it notes that under Slovak law, the maximum fine was EUR 1,699 and that the fine imposed was only EUR 200. On the other hand, the offence of using a tachograph that had not been inspected by an approved workshop « *constitutes a very serious offence* » under Directive 2006/22 as amended, applicable to the matter.

The Court of Justice did not rule, nor was it its role to do so, on whether this constituted a criminal penalty to which Article 49(1) of the Charter could apply. It therefore put forward hypotheses that this penalty could be administrative (5 infra) or criminal (6 infra) in nature.

5. Examining the hypothesis that the penalty would be administrative in nature, the judgment recalls a principle that appears ‘counterintuitive’, namely that the principle of retroactivity of the more lenient law does not apply to administrative penalties. The Court emphasizes that the common constitutional tradition of the Member States does not lead to the application of what the Court of Justice calls *lex mitior* (more lenient law) to administrative penalties. It notes that the drafters of the Charter intended to limit this principle to genuine criminal penalties.

However, the Court of Justice has shed light on a provision of a regulation that the firm's lawyers have been following very closely for many years, namely Regulation 2988/95 of 18 December 1995 on the protection of the European Union's financial interests (see our Newsletters on limitation periods, in particular No. 57 March-May 2025), but also insofar as it applied to customs matters (see Newsletter No. 55, November-December 2024).

Indeed, Regulation No 2988/95 of 18 December 1995 includes Article 2(2), which provides that *« No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively. »*

It is important to bear this principle in mind in the areas we deal with (Community customs law and common agricultural policy matters) and, more generally, in relation to any irregularity that undermines the financial interests of the European Union through insufficient collection of ‘own resources’ or the payment of undue subsidies..

The Court of Justice uses this regulation to consider, *a contrario*, that road transport control

does not fall within the scope of the principle enshrined in Regulation No 2988/95, as there is no financial interest for the EU.

As stated by the Court of Justice in paragraph 79, *« the fact that the EU legislature considered it necessary, in Article 2(2) of Regulation No 2988/95, to extend the general EU-law principle of the retroactive application of the lighter penalty to all administrative penalties concerning irregularities likely to prejudice the financial interests of the Union within the meaning of Article 1 of that regulation, whether or not they are of a criminal nature, specifically indicates that that principle is not intended to be applied, as such, to penalties which are not of such a nature. »*

6. Continuing its examination of the various possible scenarios for the resolution of the main proceedings, the CJEU this time explores the possibility that the penalty may nevertheless be of a criminal nature. The Court therefore addressed the question of whether the person could benefit from retroactivity. The answer was not automatic because *« ... the Court has had occasion to hold, in essence, that an amendment of the applicable legislation, although favourable to the accused or convicted person, could not fall within the scope of the principle lex mitior, on the ground that such an amendment was not such as to alter the constituent elements of the offence but constituted, with regard to that offence, a mere change of factual situation, or was based exclusively on a new, purely economic and technical assessment by the EU legislature which did not call into question the irregularity of the earlier conduct of the person on whom penalties were to be imposed »* (paragraph 87, which cites, in particular, a landmark ruling on the common agricultural policy that defeated the defence of an agricultural operator on 7 August 2018 *Clergeau* C-115/17).



In this case, the Court notes that the legislature had indeed changed its approach, on the grounds that ready-mixed concrete is transported over short distances and at quick time.

Given the wording of Slovak law, the legislature of that Member State had to be regarded as having immediately incorporated the new state of Community law into its national law. The CJEU even took care to note that Article 49 of the Charter provides at least the same guarantees as those provided for in Article 7 of the European Convention on Human Rights. « *which must be taken into account by virtue of Article 52(3) of the Charter as a minimum threshold of protection* » (paragraph 92).

7. Finally, in this decidedly rich judgment, the Court of Justice empties of its substance the apparently ‘final’ nature under Slovak law of the decision of the trial judges, even though an appeal had been lodged in good time in accordance with the procedural rules of that Member State.

The Court of Justice disregarded the allegedly final nature of the decision of the trial judges in order to adopt an interpretation of what constitutes a final court decision « *autonomous and uniform, throughout the European Union in so far as [this interpretation] determines the extent of the right guaranteed by this provision [Article 49(1) of the Charter] and, consequently, the extent of the obligations derived therefrom for the Member States.* » (paragraph 100). As the Court noted « *conviction cannot be regarded as final for the purposes of the last sentence of Article 49(1) of the Charter where it may be the subject of an ordinary appeal, that is to say, any appeal which forms part of the normal course of an action and which, as such, constitutes a procedural development which any party must reasonably expect.* » (paragraph 102)

This would be the case in the event of an extraordinary appeal, such as an appeal in the interest of the law (paragraph 103). Thus, an appeal to the Court of Cassation precludes any classification of the decision as final.

The decision of the trial judge acquires this character « *until the parties have exhausted that legal remedy or have allowed the time limit for bringing such an appeal to have elapsed without having lodged such an appeal.* » (paragraph 105). The Court of Justice also disregarded national procedure on cases of appeal that appeared restrictive (paragraph 107). As the Court stated « *The last sentence of Article 49(1) of the Charter is worded in a way that is clear and precise and is not subject to any conditions, meaning that it has direct effect.* » (paragraph 112)

Consequently, regardless of the grounds for appeal, the court of cassation is required to apply the more lenient criminal law if the referring court considers that the penalty imposed on the carrier is of a criminal nature.

The CJEU thus invites the Slovak Court of Cassation to apply its procedural rules in a manner consistent with Article 49 or to set them aside altogether. This judgment is therefore revealing in the way in which the Court of Justice of the European Union enforces the principles of the Charter in a concrete and effective manner, possibly by setting aside certain procedural rules, including in cassation, that are unfavourable to defendants.

That being said, in this complicated case, it cannot be ruled out that the Slovak Court of Cassation will resolve the matter by deciding that the penalty is solely administrative, meaning that the principle of *lex mitior* would not be applicable. Consequently, Article 49 of the Charter would not apply.



AUTOMATIC REFUND OF CUSTOMS DUTIES

In a judgment dated 1 August 2025, the Court of Justice of the European Union ruled on a preliminary ruling (C-206/24) referred by the French Court of Cassation in a case concerning a claim for reimbursement of customs duties.

This was an extremely old case concerning imports made between 1988 and 1991 in France, with a view to their transfer to Andorra. At the time, French customs practice was to require the release for free circulation of third-country goods entering France destined for Andorra, entailing the payment of customs duties in France. The European Commission ruled that this practice was contrary to Community law in early 1991.

On 6 June 1991, France complied and announced that it would no longer collect customs duties in such circumstances.

The French customs broker, who had paid customs duties on certain goods cleared through customs by him between 1988 and 1991, had sued the French customs authorities. However, it was subsequently proven that the broker had been reimbursed for the duties by the Andorran importers. His claim was therefore dismissed on the grounds that he had no legal interest in bringing the action.

These importers took over in 2015, and in this extremely old case, it was the first regulation, one of the precursors to Community customs law No. 1430/79 of the Council of 2 July 1979, which was interpreted by this 2025 ruling of the Court of Justice.

Article 2 of this regulation provided for cases of reimbursement but, above all, stipulated that « *Where the competent authorities themselves discover within this period that one or other of the situations described in paragraph 1 obtains, they shall repay or remit on their own initiative.* » From codification to recodification, this principle now appears in Article 116(4) of the Union Customs Code.

Although the importers' claims, which dated back to 2015, were obviously time-barred under the three-year limitation period provided for in the 1979 regulation, they took advantage of the above-mentioned paragraph requiring the administration to proceed with the refund itself. The Court of Justice therefore ruled that it was sufficient for the administration to have established, within the three-year period following the incurrence of the initial customs debt, that the debt was not due. The importer did not have to make a claim, and therefore no limitation period was enforceable against him.

Following its Advocate General, the Court of Justice ruled that « *repayment as such does not necessarily have to be made within that period, with the result that it may be made after the expiry of that period.* » (paragraph 32).

The complexity of identifying debtors or persons who may have succeeded them as a result of a pass-through/reimbursement was not considered to be a factor justifying refraining from making the reimbursement, even belatedly. The main point was therefore to identify a decision by the French customs authorities, namely the ministerial notice of 6 June 1991, which resulted in the customs authorities having « *..., implicitly, but necessarily, found that the customs duties levied on the importation of goods from third countries into*

Andorra had been unlawfully collected » (paragraph 41).

The authorities were required to identify the point from which they had to go back in time to make the refund, namely 6 June 1988. The Court of Justice stated that a passive attitude on the part of the customs authority was unacceptable and that it simply had to spare itself from *« research which would require the use of human and material resources unrelated to what may reasonably be expected of a diligent administration »* (paragraph 38). However, the French customs authorities had done nothing at all.

The Court of Justice therefore ruled that *« the existence of an obligation on a national customs authority to repay customs duties on its own initiative is subject to the fact that that authority has itself established, before the expiry of a period of three years from the entry in the accounts of those duties, that those duties have been wrongly collected, that finding implying that that authority is aware of the identity of the persons who paid those duties and of the amount to be repaid to each of them. Where that authority does not have, and could not have, at its disposal all of the information necessary to make such a repayment to the person who paid the customs duties wrongly collected or to the persons who succeeded him or her in his or her rights and obligations, it is for that authority, in order to comply with its repayment obligation, to take the measures which, without being disproportionate, are necessary and appropriate in order to obtain that information and to make the repayment. »*

It will be interesting to follow this dispute in France to see whether Andorran importers will be entitled to interest on late payments.

The question of the liability of public authorities for negligence may also be raised.

VAT – HIDDEN EXPORT

In a judgment dated 1 August 2025, the Court of Justice of the European Union ruled on a preliminary ruling (C-602/24) requested by a Polish court. The facts concerned the sale of apples by a Polish producer to a Belarusian company, which was to deliver them to Lithuania as part of an intra-Community supply exempt from Polish VAT.

The documents had been drawn up on this basis. However, the Polish tax authorities had launched an investigation.

The Polish authorities had discovered that the Belarusian company, which was unreliable, had in fact secretly **exported** the apples to Belarus.

The Polish authorities considered that the intra-Community supply regime had not been complied with and reclassified the supply as a domestic Polish sale subject to VAT.

The Polish supplier had resisted by arguing that the goods had physically left the tax territory of the European Union.

The Court of Justice agreed with the supplier. It essentially held that the concept of exportation is based on delivery and on the place of consumption of the goods. These are factors that must remain objective.

Consequently, the supplier's intentions in selling the goods and the purchaser's commitments to carry out an intra-Community supply in the neighbouring country are subjective factors which the Court of Justice has ruled out of consideration, even if they fluctuate.

The CJEU first noted the 'supply' (transfer of ownership by the supplier), then an actual departure from Poland that was not contested by the administration, and finally final consumption in Belarus.

The Court of Justice pointed out that the formal requirements for applying VAT, behind which the Polish tax authorities were hiding, prohibited these conditions from altering *« the scope of the exemptions provided for by that directive. »* (2006/112/CE of 28 November 2006, paragraph 39).

The Court adds that *« It would not be proportionate to refuse to apply the exemption to an export on the sole ground that the taxable person does not have the correct export documents if, as in the present case, the tax authorities are certain that the goods have been exported. Such a refusal would go beyond what is necessary to ensure the correct collection of the tax, since the VAT exemption would be subject to excessive formal requirements, without any examination as to whether the substantive exemption criteria are actually satisfied. »* (paragraph 39).

However, the Court recalled the only two situations *« the failure to meet a formal requirement may result in the loss of entitlement to an exemption from VAT »* (paragraph 40). This may occur *« if the effect of the breach is to prevent the production of conclusive evidence that the substantive requirements have been satisfied »* (paragraph 41).

The Courts follows : *« the principle of fiscal neutrality cannot be relied on for the purposes of an exemption from VAT by a taxable person who has intentionally participated in tax evasion which has jeopardised the operation of the common system of VAT »* (paragraph 43).

However, the answers to these two hypotheses favourable to the administration were clearly negative in the main proceedings. Article 146(1)(b) of the VAT Directive is therefore interpreted in favour of the company : *« the exemption provided for in that provision covers a supply of goods initially declared by the supplier as an intra-Community supply which, without the supplier's knowledge, was made outside the territory of the European Union by the person acquiring the goods, where the export at issue has been established by the tax authorities on the basis of the customs documents. »*

This case law had a precedent in a judgment of 17 October 2019 (C-653/18, see our Newsletter No. 31, September-December 2019).

VAT – REDUCED RATE – IDENTIFICATION OF GOODS USING THE COMBINED CUSTOMS NOMENCLATURE

In a judgment of 1 August 2025 in Case C-375/24, the CJEU ruled on a preliminary question referred by a German court concerning reduced VAT rates. Article 98 of the 'VAT Directive' (No. 2006/112/EC of 28 November 2006) allows Member States to grant reduced rates for certain categories of goods. Paragraph 3 of Article 98 allows Member States to use the "Combined Nomenclature" *« to establish the precise coverage of the category concerned »*.

The "Combined Nomenclature" is the tariff schedule according to which all goods imported into or exported from the European Union are subject to the appropriate customs and tariff treatment. This nomenclature is very often used in the field of energy taxation.



It is also used, more rarely, to determine the scope of reduced VAT rates, which makes this decision particularly interesting.

The dispute in the main proceedings concerned the supply of printed products which, if they could be classified under heading 4902 of the Combined Nomenclature, were eligible for the reduced VAT rate in Germany. According to the authorities, the goods fell under heading 4911 and were subject to the standard rate. The goods in question were “sudoku” books, each page of which contained a series of numbers to be completed according to the rules of “sudoku”.

These were paperback notebooks containing mainly printed Sudoku puzzles in which some numbers from the series 1 to 9 were already entered in a grid, with the other numbers to be entered in a specific order. These notebooks are published every eight weeks (paragraph 31).

The Court of Justice first pointed out that, for the purposes of applying Article 98 of the VAT Directive and Annex III thereto, which sets out the list of eligible products, each Member State has the option of using the “Combined Nomenclature” (CN) as an aid in defining eligible products. However, Member States remain free to use only certain headings of the “Combined Nomenclature” and to exclude others for the purposes of this tax choice. The only condition is that the scope of each tariff heading in question must not be distorted or reduced in the process. The question therefore arose as to whether these were periodical printed matter falling under heading 4902 of the Combined Nomenclature.

The Court of Justice therefore addressed the tariff classification of Sudoku books. The Court examined the terms of the “Combined Nomenclature”, which, as a reminder, develops the

Harmonized System (HS) resulting from an international convention of 1983, drafted in two official languages, French and English. There were linguistic discrepancies in the CN, particularly in the German version concerning heading 4902. The CJEU went back to the source. The Court examined both language versions of the HS (paragraph 47).

In light of the explanatory notes to the Harmonized System, which are of fundamental practical importance, the Court considered that « *‘the distinguishing feature of the publications of this heading [4902] is that they constitute one issue in a continuous series under the same title published at regular intervals, each issue being dated ... and also frequently numbered’* » (paragraph 49). The note adds, as quoted by the Court of Justice, that periodicals falling under heading 4902 « *usually consist essentially of reading matter but they may also be profusely illustrated and may even consist mainly of pictorial matter. They may also contain advertising material.* » (idem)

The Court held that the absence of ‘writing’ in Sudoku games did not preclude their classification under heading 4902. The German version, which included only the « other printed writings » was dismissed. Following the Commission’s position, the Court of Justice ruled that « *the term ‘printed’ does not differ in scope depending on ‘the form of the characters in which the printing is executed (e.g., letters of any alphabet, figures, shorthand signs, Morse or other code symbols, Braille characters, musical notations, pictures, diagrams).* » (paragraph 52).

The referring Court will need to check that the goods « *constitute periodicals* ». The Court thus held that « Tariff heading 4902 of the CN must be interpreted as meaning that « *goods described as books bound in paper which contain mainly printed*



sudoku games, in which certain numbers in the series 1 to 9 are already entered in a grid, the other numbers having to be entered in the grid in a precise order, and which are published every eight weeks, come under that heading » (paragraph 57).

This VAT ruling illustrates the significance and practicality of the legal mechanisms of customs tariff classification, far beyond the collection of customs duties.



VAT – ‘MARGIN SCHEME’

In its series of judgments of 1 August 2025, the CJEU handed down an instructive decision on the application of the ‘margin scheme’ (C-433/24).

The special ‘profit margin’ scheme was provided for in Article 311 of the aforementioned ‘VAT Directive’ to apply to second-hand goods, works of art, collectors’ items and antiques. The general mechanism, whereby VAT is charged on the total sale price and then paid to the State, less the VAT paid to the taxable person’s suppliers, does not apply. VAT is calculated solely on the basis of the profit margin realised by the person who will deliver these items (known as the ‘taxable dealer’).

This regime was introduced for items that are often antique or can be exchanged between individuals who are not subject to VAT. It was extremely difficult to verify the traceability of flows and determine deduction rights.

Article 316 of the VAT Directive provides that taxable dealers « *Member States shall grant taxable dealers the right to opt for application of the margin scheme to the following transactions: ...b) the supply of works of art supplied to the taxable dealer by their creators or their successors in title.* »

The Court of Justice was referred to by the French Council of State in a dispute between a French art gallery and the tax authorities.

The gallery had made an intra-Community acquisition of two paintings sold to it by a British company, one of whose two partners was the painter of the paintings sold.

The tax authorities had questioned the eligibility of the transaction for the ‘profit margin’ scheme on the grounds that the seller was a company and not the author, a natural person. This approach was completely absurd, since, from a VAT perspective, the transfer of these paintings to the company for sale excluded any previous delivery that could have given rise to the application of the general VAT regime. The partner had used his company to sell his painting.

The most surprising aspect of this case is that an administrative court and an administrative court of appeal upheld this adjustment. The Council of State, in cassation, nevertheless had doubts and referred the matter to the Court of Justice. The latter handed down a ruling that was entirely favourable to the art gallery.

The Court first noted that Article 316(1)(b) of the ‘VAT Directive’ « *oes not expressly preclude a creator or his or her successors in title from carrying out such a supply [to a taxable dealer] through a legal person or such a supply from being carried out by a legal person.* » (paragraph 33).

Despite the principle of strict interpretation of a derogatory regime such as the ‘profit margin’, the Court of Justice wanted the objectives of the regime to be achieved in this case (paragraph 34).



She first reiterated the principle of tax neutrality and emphasized « *that principle precludes, in particular, economic operators carrying out the same transactions from being treated differently in relation to the collection of VAT.* » (paragraph 35).

This VAT system on the 'profit margin' has « *the specific objective of the EU legislature was to promote the introduction onto the EU market of new works of art, whether imported into the European Union or newly created within its territory, by providing for favourable tax treatment for the importation of such works, for their first supply after creation and for the first supply of those works by taxable dealers.* » (paragraph 37). In order to facilitate the operation of this scheme, the Community legislator has authorized the right to opt for the margin scheme in favour of this type of supply, in Article 316 of the VAT Directive.

The Court of Justice considered that the objectives pursued would be completely thwarted by the approach taken by the French tax authorities. The latter would authorize the option in the case of direct delivery by the author of the work, but would prohibit it in the case of delivery by a company owned by that author (paragraphs 41 to 44).

The Court ruled that « *where the supply of a work of art to a taxable dealer is carried out (...) by a legal person which the creator or his or her successors in title have established for the purpose of marketing the works of art created by the creator, it may be presumed that the supply is attributable to the creator or his or her successors in title, in so far as, in such a case, that supply takes place within the framework of arrangements which the creator or his or her successors in title have generally put in place for the purposes of that marketing* » (paragraph 45).

However, the CJEU stated that such a supply by a company must be the first introduction of the work of art onto the market. There must not have been any previous supply that may have given rise to VAT (paragraphs 46 and 47).

Furthermore, the CJEU rejected the subsidiary question raised by the Council of State as to what the administrative control should be, in particular whether the tax authorities should verify the percentage of the company's capital held by the author or his or her power of control over that company, etc. The Court of Justice dismissed this attempt (paragraph 49).

This judgment unfortunately illustrates the dissonance that is all too often heard between the pragmatic way in which the CJEU applies the VAT system and the bureaucratic and formalistic approach taken by certain national administrations, particularly in France.



EXCISE DUTIES – FICTITIOUS DELIVERIES OF PETROLEUM PRODUCTS

In 2024, the Court of Justice of the European Union transferred the jurisdiction for simple preliminary rulings to the General Court of the European Union. The judgment issued on 9 July 2025 (T-534/24) appears to be one of the first decisions handed down by the General Court in the field of customs and excise law.

In this case, it concerned a Croatian forestry operator who had been invoiced for false deliveries of petroleum products in order to deduct VAT.

The deductibility of VAT had been refused, and the customs authorities had then turned their attention to the issue of excise duties.

On the basis of Croatian law, Customs had subjected these alleged deliveries to local excise duties. However, it was accepted in the debate that the products had never been purchased or received by the company.

The Court held that this was in fact an ‘abuse of rights’ that did not fall within any of the cases provided for in Article 7 of Directive 2008/118/EC of 16 December 2008. The Court ruled that Article 7 of the Directive is « *precluding national legislation, as interpreted by the national authorities, which provides that excise duty is chargeable on the basis of a fictitious supply of excise goods appearing on falsified invoices.* »



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