Cabinet d'Avocats

**July– September 2026** | Newsletter No 65

## The Newsletter in brief

- Our news

- Case law on **transport law:**

❖ The Court of Cassation ruled that, pursuant to Article 1 of the CMR, the Convention does not apply to damage sustained by goods stored in a warehouse pending their loading, as the land carrier has not yet taken possession of the goods.

- Case law on **customs matters**:

❖ The General Court of the EU has ruled on a dispute concerning customs value in which the customs authorities had applied the residual method « fall back ».

❖ The General Court of the EU has ruled that a very specific German mechanism governing the movement of excise goods in the context of successive supplies between three operators is contrary to EU law.

❖ In another case concerning a triangular transaction under VAT law, the Court ruled that the mechanism governing the movement of goods subject to excise duty had no bearing on the assessment of the point at which the power to dispose of the goods being transported as an owner is transferred.

❖ The General Court of the EU has reiterated the criteria for exemption from excise duty on denatured alcohol.

❖ The Court of Justice of the European Union has examined the Italian rules and their compliance with EU law in relation to the granting of authorisation to operate a tax warehouse for energy products under a duty suspension arrangement.

❖ The General Court of the EU has ruled on the concept of 'use as heating fuel' and held that the use of propane to test the operation of burners falls within the scope of the Energy Taxation Directive 2003/96/EC.

Godin Associés - Admitted to the Paris and Marseille Bars
12, rue du Quatre-Septembre - 75002 Paris – 72 rue Sainte 13007 Marseille - +33 (0)1 44 55 38 83
**www.godinassocies.com** - avocats@godinassocies.com

## OUR NEWS

The September 2026 issue of « *AJ Pénal Lefebvre Dalloz* » features an article by Vincent Courcelle-Labrousse on the overhaul of the Customs Code, which has been in force since 1 May this year. This reform reshapes the structure of a key piece of legislation in the field of customs, balancing historical continuity, regulatory developments and litigation issues.

Stéphane Le Roy is co-author of a column entitled 'Customs: inspections – penalties – litigation' in the journal **TVA Douane Environnement*, No. 2-2026, June 2026, section 11 (published by Editions JFA Juristes & Fiscalistes Associés). Stéphane Le Roy has commented on two judgments of the Criminal Chamber of the Court of Cassation dated 18 February 2026 concerning the procedures for drawing up a seizure report (appeal No. 25-81.285, §§ 22 to 27, pp. 291–293) and of 25 March 2026 on the concept of the 'holder of the contraband' (appeal No. 25-81.864, §§ 40 to 47, pp. 295–297).

## INTERNATIONAL ROAD TRANSPORT – THE STARTING POINT FOR THE APPLICATION OF THE CMR

The goods were transported by multimodal transport, first by air and then by land.

Following air transport, the goods were stored in a warehouse belonging to the air carrier, pending collection by the road haulier.

Damage was noted on arrival following overland transport. It was established that this damage had occurred whilst the goods were in storage.

The question arose as to which liability regime applied: the Montreal Convention, which applies to air transport, or the CMR, which applies to road transport.

In a judgement of 20 May 2026 (No. 24-17.614), the Court of Cassation reiterated, based on Article 1 of the CMR, that the Convention does not apply until the land carrier has taken possession of the goods. As the damage to the goods occurred after the air carriage stage but before the land carrier took charge of the goods, the storage of the goods in the air carrier's warehouses did not fall within the scope of the CMR.

## CUSTOMS VALUE – APPLICATION OF THE RESIDUAL METHOD / FALLBACK

In a judgment of 3 June 2026 (T-224/25), the General Court of the European Union handed down a ruling on customs value which is of interest in that it extends the case law of the CJEU, which we have previously commented on (see our Newsletter No. 63, March–April 2026), concerning the application of residual methods that enable the authorities to simplify customs valuation procedures.

These were imports into Hungary carried out by a customs agent who had made the declaration on an indirect basis (in his own name but on behalf of an importer).

The representative was therefore the declarant. The authorities had inspected the goods.

Under Article 15 of the Customs Union Directive, the customs authorities had asked the representative to provide proof of payment of the invoiced amount.

These were '*bulk goods which do not have individual or special characteristics*' but apparently all falling under the same TARIC code. They were imported in 2019 under several customs declarations. The Hungarian customs authorities had not taken any samples at the time. A post-clearance control led to the dispute.

The Court first held that the indirect representative was obliged to provide all the information requested by customs regarding the value, including that substantiating the price actually paid (point 32). The Court held that the failure by the indirect representative to provide evidence of this payment « *appears sufficient to justify doubts by that authority as to the very reality of the transaction concerned and, therefore, as to the declared transaction value.*» (paragraph 36).

Article 140 of Implementing Regulation No 2015/2447 of 24 November 2015 allowed the authorities at that time to reject the transaction values.

The Hungarian court asked the General Court whether the fact that the customs authorities had not taken the trouble to carry out on-the-spot checks on the goods at the time they were presented to customs gave rise to a procedural difficulty. As might be expected, the General Court emphasized « *that the procedure for verifying customs declarations, provided for in Article 188 of the Union Customs Code, and the procedure of post-release control, defined in Article 48 of that code, in no way exclude one another. In particular, nothing in the wording of those provisions restricts the use of one procedure where the other one has been employed, nor, conversely, does it oblige the customs authority to use one or the other of those procedures. »* (paragraph 40).

Consequently, in the context of a retrospective audit, the authorities must follow the order laid down for the determination of customs value, namely first Article 70 (the principle of valuation on the basis of the transaction value), then the various secondary methods provided for in Article 74 (paragraphs 1, 2 and 3, to be applied in the alternative and in that order).

The Court held that, in order to apply methods based on comparisons with identical or similar goods, the description of the goods in the invoices had to be sufficiently detailed. This was not the case. Once the authorities had examined « *each of those methods with due diligence and where that representative, duly given the opportunity to do so, has been unable to provide sufficient data on the essential characteristics of those goods, whether that be their physical characteristics or their qualitative aspects*... » (point 52). The authorities could therefore resort to the subsidiary rule of last resort provided for in Article 74(3) of the CDU.

In this instance, the Hungarian customs authorities had applied a simple rule based on « *the basis of data taken from the database relating to goods from the same country as the goods at issue, classed under the same TARIC code as those goods and released for free circulation during the 45 days before and the 45 days after the date of acceptance of the customs declaration* » (paragraph 58).

The Court considered that using this average made it possible to avoid using the higher of two possible values « *since, first, an arithmetic mean provides only one value and, second, by definition, that value is a mean value, which precludes the systematic selection of the higher value. »* (paragraph 61).

The application of this 90-day period (45 days prior to and 45 days following customs clearance) has already been confirmed by a judgment of 9 June 2022 (C-187/21) (see our Newsletter No. 43, May–June 2022).

## TARIFF CLASSIFICATION – AERIAL WORK PLATFORM

On 10 June 2026, the General Court of the European Union (Case T-321/25) ruled on the tariff classification of a self-propelled articulated aerial work platform. These wheeled vehicles are fitted with a small engine and are capable of raising an articulated boom fitted with a work platform to a great height. A person can therefore sit in the platform and carry out various tasks at height. A Belgian company imported several types of scissor lifts, articulated boom lifts, telescopic boom lifts and mobile vertical lifts, and had been granted a binding tariff information under heading 8428 90 90 of the Combined Nomenclature, with an exemption from customs duties. In doing so, the BTI applied Classification Regulation No 738/2000 of 7 April 2000.

However, differences of opinion had arisen regarding tariff classification, and the World Customs Organization (WCO) had issued a classification opinion 8427.10/1 at its 68th session in September 2021. The WCO had classified the goods under heading 8427 10. Consequently, the European Commission considered that Regulation No 738/2000 was no longer in line with the Harmonized System administered by the WCO and adopted a new classification regulation, No 2022/1610 of 13 September 2022, to rectify the tariff classification.

Consequently, the Belgian BTI had been revoked. The Belgian company was contesting this revocation.

It essentially considered that, in order to fall within heading 8427, these platforms would have had to possess minimum transport capacities, which was not the case. The fundamental characteristics of the products lay solely in their ability to lift people to carry out work at height. Although there was a classification opinion from the WCO, which is generally authoritative, the Belgian company had succeeded in persuading the Brussels Court of First Instance to refer a question for a preliminary ruling to the CJEU, which had in turn referred it to the General Court of the EU.

After examining the various competing tariff headings, the Tribunal considered that the WCO's classification opinion provided a correct interpretation of heading 8427 and concluded that « *the mere fact that appliances such as those at issue in the main proceedings are not designed for the transport of goods or persons and that their movement function is purely ancillary and intended to enable the lifting operation to be carried out, is not in itself sufficient to preclude them from being classified under CN heading 8427.* » (points 52). Thus, « *a self-propelled machine fitted with an electric motor and equipped with a lifting device which has a platform mounted on the boom with a safety railing, intended exclusively for lifting goods and persons and not suitable for carrying them, even over short distances, on account of its very limited propulsion capacity, falls under CN heading 8427* » (paragraph 53).

Consequently, the Court held that Classification Regulation No 2022/1610 did not raise any issues regarding its validity.

## EXCISE DUTIES – SUCCESSIVE SUPPLIES

Excise duties are subject to various tax regimes and rules governing movement and storage. The regime for the movement and storage of goods under duty suspension is set out in Directive 2008/118/EC of 16 December 2008. However, certain cases of outright exemption from excise duty fall under Article 27 of Directive 92/83/EC of 19 October 1992, which remains in force. The exemption depends on the intrinsic characteristics of the products, in particular their denaturation and their use by certain specialized consignees, for example in the pharmaceutical industry for non-food purposes.

In the context of movements under a duty suspension arrangement, the standard procedure provides that a movement of excise goods begins at the premises of an authorized warehousekeeper located in a Member State and ends with the goods being taken over and the movement document being cleared at the premises of another authorized warehousekeeper established in the same country or in another Member State. Article 17 of the Directive allowed, in certain cases, for direct deliveries to be made, provided that national law specifically provided for this.

In the present case, which gave rise to a judgment of 1 July 2026 by the General Court of the European Union (T-361/25), German law – with its sometimes extreme complexity – had established a system which was not based on Article 17 of the Directive but was unique in that it rested on a '*legal fiction*'.

The Tribunal's opening summary of the facts illustrates the issue : « *Brenntag is a company incorporated under German law whose activity consists in the marketing of industrial and speciality chemicals. The Customs Office granted it, with effect from 21 January 2011, authorisation to store alcohol under a duty suspension arrangement. Under that authorisation, Brenntag is entitled to use the onward transfer mechanism (weiterbefördern) provided for in Paragraph 26(7) of the BrStV. By that mechanism, the goods are transported directly from Brenntag's suppliers to its customers established within German fiscal territory, without it being required to make a prior physical delivery of those goods to its tax warehouse. In that context, the onward transfer is to be regarded as the fictitious movement of the goods from Brenntag's tax warehouse to the tax warehouses of its customers or to the premises of commercial users within the meaning of Paragraph 26(7) of the BrStV.*» (paragraph 17)

From a logistical point of view, this mechanism resembled a triangular supply for VAT purposes but, unlike that scheme, was not provided for under the excise duty regime. The difficulty for the applicant in the main proceedings lay in the fact that he had not arranged certain transport operations to collect the goods from his own suppliers.

However, German law regarded this end-to-end organisation of transport by the authorized warehousekeeper as a form of indirect handling, which specifically served to validate the entire mechanism based on this 'legal fiction'. The suppliers who had commissioned the carriers had drawn up DAEs to ensure that the goods were delivered to Brenntag.

However, no subsequent DAE had been issued to Brenntag's customers, as the operator believed it was covered by the German BrStV law in its entirety for these transactions.

The Court noted that the conditions laid down in Article 17 of the Directive – namely, a specific authorization for a form of triangular trade – had not been met. The Court held that the principle of the uniform application of Community law precluded the continuation of this complex mechanism. The scheme established by the 2009 Act (Article 26(7)) was held to be contrary to the Directive.

A second question arose as to whether the absence of documentation relating to the movement of these goods between the German company's warehouse and its own customers – resulting from the incorrect application of the 'legal fiction' – could pose a problem in terms of the right to benefit from the exemption.

The Court held that this was not the case and applied the principle of proportionality (paragraph 40). In particular, the Court held that « *In the event of the absence or irregular transmission of the documentation required for the movement of excise goods at the time of their movement, a Member State cannot refuse the exemption provided for in Article 27(1) and (2) of Directive 92/83 if, in the light of the information available to the competent authorities, the substantive conditions relating to its application are satisfied*. » (paragraph 50).

Continuing its line of reasoning and drawing on principles it has long applied to transactions subject to VAT, the Court held that « *It would be otherwise only if the operator concerned intentionally participated in evasion, avoidance or abuse, or if the absence or, as the case may be, the late or incorrect nature of the documentation that must accompany the excise goods at the time of their movement prevented the production of conclusive evidence that the alcohol had been used for exempt purposes (see, by analogy, judgment of 13 March 2025, Alsen, C-137/23, EU:C:2025:179, paragraph 68), which it is for the referring court to ascertain.* » (paragraph 51).

This judgement provides a welcome insight into the fact that formalism, even in matters of excise duty, is not an end in itself.

## EXCISE DUTIES AND TRIANGULAR TRANSACTIONS IN VAT LAW

By contrast, the General Court of the European Union ruled on a supply that unquestionably constituted a triangular transaction for VAT purposes (Articles 138 and 141 of Directive 2006/112/EC of 28 November 2006) in a judgment of 9 September 2026 (T-614/25). That decision concerned products subject to excise duty (petroleum products). The General Court was called upon to examine the possible impact of the excise duty regime on the identification of the transaction subject to VAT within the chain of transactions.

In 2016, a company established in Latvia had sold these petroleum products under the excise duty suspension arrangement to several companies established in Estonia and the United Kingdom, which in turn had resold the goods in European Union Member States other than Estonia and the United Kingdom.

The goods had been transported directly to those final purchasers. In view of the contractual terms, the Latvian authorities considered that the first sale was not an intra-Community supply but a taxable domestic sale.

The transfer of ownership was deemed to have taken place as part of the second sale before the goods left Latvia. The first sale was therefore deemed to have taken place in Latvia and was therefore taxable. The first Latvian seller had lodged an appeal.

The interesting point was that the first seller relied on the provisions of the excise duty regime to resolve his VAT issue in terms of the transfer of ownership, following his supply, in order to be exempt from local VAT.

As well as providing a welcome reminder of the regulatory and case-law requirements concerning triangular sales for VAT purposes, in particular regarding the point in time at which the ‘transfer of the right to dispose of tangible property as owner’ takes place (see paragraphs 24 to 33), the Court ruled in the negative regarding the impact of the excise duty regime.

The Tribunal held that « *the fact that the fuel transport at issue in the main proceedings was carried out under an excise duty suspension arrangement is not a decisive factor in determining to which of the supplies of the chain at issue that transport must be ascribed.* » (paragraph 34).

In the Court’s view, the stage at which the accompanying electronic administrative document is the subject of an ‘acknowledgement of receipt’ at the destination (which constitutes clearance in the EMCS computerized system) has no bearing on the time of transfer of ownership. It is merely proof of departure from the Member State of dispatch (paragraph 37).

## EXCISE DUTIES – EXEMPTION FOR PRODUCTS NOT INTENDED FOR HUMAN CONSUMPTION

On 8 July 2026, the General Court of the European Union once again ruled on the application of Article 27 of Directive 92/83/EC of 19 October 1992 (Case T-381/25).

A Polish company had produced alcohol-based thinners in 2014 and intended to benefit from the mandatory exemption provided for in Article 27(1) of that Directive where the products are « *b. when both denatured in accordance with the requirements of any Member State and used for the manufacture of any product not for human consumption.* »

The Polish authorities had found that the diluents to which the manufacturer had added 1 per cent by mass of propylene glycol to partially denatured alcohol constituted denatured alcohol, which should have been classified under heading 2207 20 00 of the Combined Nomenclature. The tariff classification under heading 3814 00 90 was considered to be incorrect. Consequently, the exemption was challenged by Customs.

A problem had arisen with the buyers of the products.

Three of the contracting parties had specified the destination; the other six had resold the product « *in a way that made it impossible to identify the recipients on the basis of cash register receipts.* » (paragraph 10). It appeared that some of the goods had been resold as drinking alcohol to Polish consumers...

The first issue therefore concerned whether the tariff classification of denatured ethyl alcohol in the Combined Nomenclature had any bearing on the exemption from excise duty. After carefully examining the Directive and the case-law of the Court of Justice, the General Court concluded that « *It is therefore clear from the its case-law that the Court precludes the application of criteria or conditions which are not, in themselves, apparent from the wording of Article 27(1)(b) of Directive 92/83. On the contrary, it must be ascertained, on the basis of specific evidence, whether the conditions relating to the use of ethyl alcohol for the manufacture of products not for human consumption are objectively fulfilled, without that assessment being limited to the mere finding of classification under a specific CN code.* » (paragraph 26).

The Court held that, in view of the « *the objectives pursued by Directive 92/83, the exemptions provided for by that directive seek, in particular, to neutralise the impact of excise duties on alcohol used as an intermediate product in other commercial or industrial products …. »* (point 29).

In the view of the Court « *it follows from Article 27(1)(b) of Directive 92/83, read in conjunction with the twentieth recital of that directive, that the application of the exemption under that provision by a Member State depends on the end-use of the products in question... »* (paragraph 30).

The Court's case-law has repeatedly emphasized the mandatory nature of the exemption under Article 27. Any restriction imposed on it by the authorities can only result from « *forward concrete, objective and verifiable evidence of a serious risk of evasion, avoidance or abuse and ensure (...)* » (point 32).

The Court held that the classification of the product under a code other than heading 2207 of the Combined Nomenclature « *is neither necessary to ensure the correct application of the exemption provided for in Article 27(1)(b) of Directive 92/83, nor to prevent evasion, avoidance or abuse, which it is, however, for the referring court to ascertain, on the basis of the concrete, objective and verifiable evidence available to it. »* (paragraph 33).

It was then necessary to determine whether the fact that consumers ultimately used the product for drinking purposes was a factor attributable to the producer that called the exemption into question.

The Court ruled in the negative, given that the product had been correctly labelled by the manufacturer as a thinner.

Apparently, the people who had bought them in Poland for human consumption knew that they were buying products marketed as a thinner…

The General Court ruled that « *the benefit of the exemption from harmonised excise duty which that article provides for cannot be denied to a taxable person manufacturing products not for human consumption containing ethyl alcohol subject to excise duty, such as diluents, on the sole ground that that taxable person knew or should have known that those products were being used for human consumption »* (paragraph 43).

## ENERGY TAXATION – AUTHORISATION TO OPEN A TAX WAREHOUSE FOR THE STORAGE OF ENERGY PRODUCTS

On 11 June 2026, the Court of Justice of the European Union delivered a judgment (C-386/24) which provides guidance on the procedures for granting authorization to operate a warehouse for energy products under the excise duty suspension arrangements.

In February 2016, an Italian company had been granted a license to operate a commercial warehouse equivalent to a tax warehouse for the storage of energy products, specifically liquefied petroleum gas. In February 2020, the Italian authorities suspended this license on the grounds of non-compliance with the conditions laid down in Article 23(4) of Italian Legislative Decree No 504/1995.

According to the authorities, « *requirements relating to the operational and supply needs of the installation and the minimum quantity of products subject to a reduced excise duty rate over the two-year period referred* » (paragraph 20) the requirements set out in Article 23 would not be met.

This case gave rise to lengthy proceedings, which were notably characterized by two references to the CJEU by the Italian Council of State. The CJEU therefore examined the case on 15 December 2022 (C-597/21). However, the dispute had not been resolved.

The decision is of particular interest to specialists in EU law as it provides a comprehensive overview of the case law concerning the circumstances and conditions under which supreme courts are required to refer a question to the CJEU for a preliminary ruling. At the time, Italian law subjected judges' personal liability to a regime whereby a preliminary ruling was systematically sought in order to avoid any criticism.

In essence, Article 23 of Legislative Decree No. 504/95 allowed tax warehouses storing liquefied petroleum gas with a capacity of less than 400 m³ and tax warehouses storing other energy products with a capacity of less than 10,000 m³ to be authorized provided that proof was supplied of « *actual operational requirements and the facility's actual supply needs* ».

One of the following conditions also had to be met: the removal of goods under one of the various possible arrangements – exemption, suspension or duty-free export outside Italy – accounted for at least 30 per cent of all removals; or the warehouse was an « *annex to a tax warehouse situated in the immediate vicinity and belonging to the same group of companies* ».

It was therefore for the Court of Justice to examine whether the conditions laid down by Italian law were in accordance with Article 16(1) of Directive 2008/118/EC of 16 December 2008.

The CJEU has recognized that Article 16(1) affords Member States a wide margin of discretion (paragraph 80). It is simply necessary for national law to pursue the objective of preventing fraud and abuse and to require the provision of an operating guarantee.

The Court of Justice has set out the scope for action in the light of the principle of proportionality, thereby requiring Member States to use measures which, whilst effectively achieving the objective pursued by national law, « *do not exceed the limits of what is necessary and are the least detrimental to the other objectives and the principles laid down by the relevant EU legislation* » (paragraph 82). It is therefore necessary to choose, from among several appropriate measures, the least restrictive one, and the disadvantages caused must not be disproportionate to the aim pursued.

It was in the light of these principles that the CJEU examined the Italian legislation. At the hearing, the Italian Government had stated that the criterion of « *actual operational and supply needs of the installation»* « … *has the goal of verifying whether the economic activity exercised in the warehouse concerned is genuine, by checking the validity of the supply needs taking into account, in particular, the geographical situation of that warehouse, its storage capacity and the existence of a genuine market need. »* (paragraph 84).

According to the Government, the first alternative condition makes it possible to verify that the request is « *an expression of genuine operational needs ».* The second condition serves to emphasize that a small warehouse may nevertheless be taken very seriously provided that it acts as a « satellite » to a larger one that is fully under control (paragraph 85).

The CJEU considered that the criterion of « *actual operational and supply needs of the installation*» appeared to it to be relatively vague (paragraph 88). The referring court will therefore have to examine the application of this criterion in greater detail. The Italian court will assess whether the 1995 decree complies with the requirements of the principle of proportionality under Community law and will apply that principle to the facts of the case.

## ENERGY TAXATION – USES OTHER THAN AS MOTOR FUEL OR HEATING FUEL

The Energy Taxation Harmonization Directive 2003/96/EC of 27 October 2003 ensures a minimum level of harmonization in the taxation of energy products and electricity. Article 2(4)(b) provides for a « *not apply to»* of the directive on the uses of « *energy products used for purposes other than as motor fuels or as heating fuels. »*

A German company described as an ‘energy technology’ firm operated test benches for gas turbine burners at one of its sites. In 2021, it had consumed propane which it had purchased whilst paying energy tax; it subsequently sought a refund of that tax on the grounds that the propane was not subject to excise duty. The tax authorities had rejected its claim on the grounds that the propane was indeed being used as heating fuel and, consequently, the tax was duly payable. A German court referred a question for a preliminary ruling to the CJEU, which forwarded it to the General Court.

In a judgment of 15 July 2026 (T-562/25), the General Court classified this use as heating fuel. According to the company, the purpose of using propane was not to generate energy, but simply to test the operation of the burners of a gas turbine. However, this concerned only the burner section, which in this instance did not include the turbine.

Consequently, the thermal energy was not recovered in any way, nor was it utilized in any way.

In the eyes of the authorities, the company « *consciously and voluntarily uses the thermal energy produced during the combustion of the* *propane in order to achieve its economic objective, which is to obtain conclusive results during the tests. »* (point 14). The German referring court had noted that « *in the context of testing a burner, a transfer of thermal energy takes place which also contributes to meeting the temperature conditions necessary for the simulation of real-world conditions, which are essential for the accuracy of the measurements taken. »* (paragraph 17), whilst questioning whether this constitutes 'use as fuel' in this instance.

The Court examined the various language versions of the Directive and concluded that the concept of 'fuel use' did not necessarily imply that the fuel had to be used for heating. (paragraphs 24, 26). From a technical point of view, the Court considered that « *it is apparent from the information provided to the Court that, in the test bench for the burners of gas turbines, such as that at issue in the main proceedings, the burner ensures the mixture of air, propane and an additional flow of natural gas. It is common ground that the propane is burnt and that the process of combustion of the propane produces heat. In an operational gas turbine, the energy produced (heat) is converted into a rotational motion. However, in the test bench, in the absence of a turbine, the energy produced is not converted into mechanical energy. The gases resulting from the combustion of the propane pass through the test bench without such energy recovery taking place and are then discharged through a chimney into the atmosphere in the form of exhaust gases, by dissipating the bulk of the energy resulting from the combustion.* » (paragraph 27).

As the referring court had pointed out, « *in the testing scenarios of the applicant in the main proceedings, the objective of the simulation concerned is to use the properties of dilatation and volume expansion of the gas used, while seeking, more generally, to achieve a high output, minimum emissions and a stable flame. It is common ground that, in the absence of thermal conditions similar to those of a real-world operation, the measurements thus obtained have no significant value. » (paragraph 28).*

The Court concludes that « *Although the thermal energy thus produced is not converted into mechanical energy, it is transmitted to the gas flow and used in the industrial testing process, of which it is an essential element. »* (paragraph 29). Thus, thermal energy is « *used for heating purposes in order to obtain thermal conditions similar to those of the real-world operation of a gas turbine.»* (paragraph 30). The Court therefore concluded, based on all these technical and legal factors, that the propane in question was indeed being used as a fuel.

The company was not entitled to any exemption.


**Godin Associés**
A.A.R.P.I. inter-barreaux
Lawyers at the Paris and Marseille Bars

**How to find us**
12, rue du Quatre-Septembre
75002 Paris
-
72, rue Sainte
13007 Marseille

**Contact us**
Telephone: +33 (0)1 44 55 38 83
Fax: +33 (0)1 42 60 30 10
Email: avocats@godinassocies.com