

61982J0324

Judgment of the Court of 10 April 1984. - Commission of the European Communities v Kingdom of Belgium. - Failure of a Member State to fulfil its obligations - Sixth Directive on turnover taxes - Taxable amount. - Case 324/82.

European Court reports 1984 Page 01861

Spanish special edition Page 00493

Summary

Parties

Subject of the case

Grounds

Decision on costs

Operative part

Keywords

1 . ACTION FOR FAILURE OF A STATE TO FULFIL ITS OBLIGATIONS - COMPATIBILITY OF NATIONAL MEASURES WITH COMMUNITY LAW - CONSIDERATION BY THE COMMISSION - DUTY TO TAKE ACTION WITHIN A GIVEN PERIOD - NONE

(EEC TREATY , ART . 169)

2.TAXATION PROVISIONS - HARMONIZATION OF LEGISLATION - TURNOVER TAXES - COMMON SYSTEM OF VALUE ADDED TAX - BASIS OF ASSESSMENT - NATIONAL DEROGATIONS - LIMITS

(SIXTH COUNCIL DIRECTIVE (77/388/EEC) , ARTS 11 AND 27 (1) AND (5))

Summary

1 . AS A GENERAL RULE THE COMMISSION IS NOT OBLIGED TO OBSERVE ANY GIVEN TIME-LIMITS WHEN CONSIDERING THE COMPATIBILITY OF NATIONAL MEASURES WITH COMMUNITY LAW AND APPLYING ARTICLE 169 OF THE TREATY

2.THE SPECIAL MEASURES WHICH MEMBER STATES MAY RETAIN , BY VIRTUE OF ARTICLE 27 (1) AND (5) OF THE SIXTH COUNCIL DIRECTIVE ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES , IN ORDER TO PREVENT CERTAIN TYPES OF TAX EVASION OR AVOIDANCE MAY NOT IN PRINCIPLE DEROGATE FROM THE BASIS FOR CHARGING VALUE ADDED TAX LAID DOWN IN

ARTICLE 11 , EXCEPT WITHIN THE LIMITS STRICTLY NECESSARY FOR ACHIEVING THAT AIM .

NATIONAL LEGISLATION WHICH PROVIDES THAT THE MINIMUM BASIS OF ASSESSMENT FOR THE SALE OF NEW CARS IS NOT TO BE LOWER THAN THE CATALOGUE PRICE IN FORCE AT THE TIME WHEN THE TAX FALLS DUE AND WHICH THEREFORE EXCLUDES FROM CONSIDERATION ANY FORM OF PRICE DISCOUNT OR REBATE ENTAILS SUCH A COMPLETE AND GENERAL AMENDMENT OF THE BASIS OF ASSESSMENT THAT IT IS IMPOSSIBLE TO ACCEPT THAT IT CONTAINS ONLY THE DEROGATIONS NEEDED TO AVOID THE RISK OF TAX EVASION OR AVOIDANCE .

Parties

IN CASE 324/82

COMMISSION OF THE EUROPEAN COMMUNITIES , REPRESENTED BY ITS LEGAL ADVISER , DAVID GILMOUR , AND GUIDO BERARDIS , A MEMBER OF ITS LEGAL DEPARTMENT , ACTING AS AGENT , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE OFFICE OF ORESTE MONTALTO , JEAN MONNET BUILDING , KIRCHBERG ,

APPLICANT ,

V

KINGDOM OF BELGIUM , REPRESENTED BY THE MINISTER FOR FOREIGN RELATIONS , 2 RUE QUATRE-BRAS , 1000 BRUSSELS , IN THE PERSON OF ROBERT HOEBAER , DIRECTOR AT THE MINISTRY OF FOREIGN AFFAIRS , FOREIGN TRADE AND CO-OPERATION WITH DEVELOPING COUNTRIES , AND FRANS J. WAUTERS , ADVISER AT THE MINISTRY OF FINANCE , ACTING AS AGENTS , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE BELGIAN EMBASSY , RESIDENCE CHAMPAGNE , 4 RUE DES GIRONDINS ,

DEFENDANT ,

Subject of the case

APPLICATION FOR A DECLARATION THAT , BY FAILING TO COMPLY WITH THE PROVISIONS OF ARTICLES 11 AND 27 OF THE SIXTH COUNCIL DIRECTIVE (77/388/EEC) OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT - (OFFICIAL JOURNAL , L 145 , 13 . 6 . 1977) AS REGARDS THE CALCULATION OF THE BASIS FOR CHARGING TAX ON CARS , THE KINGDOM OF BELGIUM HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER COMMUNITY LAW ,

Grounds

1 BY APPLICATION LODGED AT THE COURT REGISTRY ON 20 DECEMBER 1982 , THE COMMISSION OF THE EUROPEAN COMMUNITIES BROUGHT AN ACTION BEFORE THE COURT UNDER ARTICLE 169 OF THE EEC TREATY FOR A DECLARATION THAT , BY RETAINING SPECIAL RULES GOVERNING THE BASIS FOR CHARGING VALUE-ADDED TAX (HEREINAFTER REFERRED TO AS ' ' VAT ' ') ON NEW CARS , EITHER SOLD WITHIN THE

COUNTRY OR IMPORTED , AND ON SO-CALLED '' VOITURES DE DIRECTION '' CONTRARY TO ARTICLE 11 OF THE SIXTH COUNCIL DIRECTIVE OF 17 MAY 1977 ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT - (DIRECTIVE 77/388/EEC , OFFICIAL JOURNAL 1977 , L 145 , P . 1), THE KINGDOM OF BELGIUM HAD FAILED TO FULFIL ITS OBLIGATIONS UNDER THE EEC TREATY .

2 THOSE SPECIAL RULES WERE LAID DOWN PRIMARILY BY ROYAL DECREE NO 17 OF 20 JULY 1970 (MONITEUR BELGE OF 31 JULY 1970) AND IN CIRCULARS NO 4 OF 12 JANUARY 1971 AND NO 74 OF 11 JULY 1972 , WHICH WERE BOTH ADOPTED ON THE BASIS OF ARTICLE 35 OF THE BELGIAN VAT CODE , AND ARE ALSO BASED ON VARIOUS OTHER PROVISIONS OF THAT CODE .

3 FOR NEW CARS , ARTICLE 1 OF ROYAL DECREE NO 17 LAYS DOWN A MINIMUM BASIS FOR CHARGING VAT ON CARS SUPPLIED TO USERS WITHIN THE COUNTRY OR IMPORTED BY USERS , WHICH , ACCORDING TO ARTICLE 2 OF THE DECREE , MAY NOT BE LOWER THAN THE CATALOGUE PRICE IN FORCE AT THE TIME WHEN THE TAX IS PAYABLE .

4 FOR VOITURES DE DIRECTION , THAT IS TO SAY CARS APPROPRIATED BY MANUFACTURERS OR DEALERS FOR THEIR OWN USE , CIRCULARS NOS 4 AND 74 MAKE PROVISION FOR A SPECIAL OPTIONAL SCHEME UNDER WHICH THE VAT CHARGED VARIES ACCORDING TO THE DURATION OF THE APPROPRIATION AS FOLLOWS :

IF THE APPROPRIATED NEW CAR IS SOLD WITHIN SIX MONTHS FROM THE DATE WHEN IT WAS FIRST USED , NO TAX IS DEMANDED IN RESPECT OF ITS APPROPRIATION , BUT UNDER ARTICLE 2 (3) OF ROYAL DECREE NO 17 THE APPROPRIATED CAR IS DEEMED TO BE NEW AT THE TIME OF ITS SALE AND IS THEREFORE THEN SUBJECT TO A VAT CHARGE BASED ON THE CATALOGUE PRICE IN FORCE FOR A NEW CAR .

IF THE APPROPRIATED NEW CAR IS SOLD MORE THAN SIX MONTHS AND LESS THAN 18 MONTHS AFTER IT WAS FIRST USED , THE VAT PAYABLE ON ACCOUNT OF ITS APPROPRIATION IS BASED ON AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE CATALOGUE PRICE IN FORCE AT THE TIME OF SALE AND THE ACTUAL SALE PRICE . THE SALE OF THE CAR IS SUBJECT TO THE RULES GOVERNING THE TAXATION OF SECOND-HAND CARS .

IF THE APPROPRIATED NEW CAR IS NOT SOLD WITHIN 18 MONTHS AFTER IT WAS FIRST USED , VAT IS CHARGED ACCORDING TO THE ORDINARY RULES LAID DOWN IN ARTICLE 12 (1) OF THE BELGIUM VAT CODE ; IN THAT CASE THE VAT PAYABLE ON ACCOUNT OF THE APPROPRIATION OF THE CAR IS CALCULATED ON THE BASIS OF THE PURCHASE PRICE OR THE COST PRICE OF THE APPROPRIATED NEW CAR .

5 ACCORDING TO ARTICLE 2 (3) OF ROYAL DECREE NO 17 , NEW CARS ARE CARS MANUFACTURED WITHIN THE COUNTRY '' WHICH ARE SUPPLIED FOR THE FIRST TIME TO A USER , EVEN IF THEY HAVE BEEN USED BY THE MANUFACTURER OR BY A MOTOR-CAR DEALER ESTABLISHED IN BELGIUM FOR A PERIOD NOT EXCEEDING SIX MONTHS '' AS WELL AS IMPORTED CARS '' WHERE THERE IS NO EVIDENCE THAT THEY HAVE BEEN USED FOR SIX MONTHS BEFORE THE TIME WHEN THE TAX FALLS DUE '' .

6 ARTICLE 2 (2) OF ROYAL DECREE NO 17 DEFINES THE CATALOGUE PRICE AS THE PRICE FREELY FIXED BY THE MANUFACTURER FOR THE SALE TO THE USER OF NEW CARS OF THE SAME TYPE , INCLUDING THEIR EQUIPMENT AND ACCESSORIES , OR , IF THE MANUFACTURER IS ESTABLISHED ABROAD , BY THE AUTHORIZED AGENT EMPOWERED TO FIX THAT PRICE .

7 ARTICLE 4 OF THE DECREE PROVIDES THAT THE CATALOGUE PRICE AND ANY CHANGES MADE TO IT MUST BE NOTIFIED TO THE DIRECTOR GENERAL OF THE COMPETENT ADMINISTRATION .

8 BY LETTER DATED 23 DECEMBER 1977 THE BELGIAN GOVERNMENT NOTIFIED THE COMMISSION , IN ACCORDANCE WITH ARTICLE 27 (5) OF THE SIXTH DIRECTIVE AND WITHIN THE PERIOD LAID DOWN BY THAT ARTICLE , OF THE ABOVE MENTIONED PROVISIONS AS SPECIAL MEASURES ALREADY IN EXISTENCE WHEN THE SIXTH DIRECTIVE ENTERED INTO FORCE .

9 THE COMMISSION FIRST DISCLOSED ITS OBJECTIONS TO THE BELGIAN RULES IN A LETTER DATED 21 NOVEMBER 1979 AND , BY A LETTER DATED 20 MARCH 1981 , COMMENCED AGAINST THE KINGDOM OF BELGIUM THE INFRINGEMENT PROCEDURE PROVIDED FOR BY ARTICLE 169 OF THE EEC TREATY , WHICH LED IT TO BRING THIS ACTION .

ADMISSIBILITY

10 THE BELGIAN GOVERNMENT FIRST RAISES THREE OBJECTIONS OF INADMISSIBILITY AGAINST THE ACTION .

11 IT SUBMITS FIRST OF ALL THAT THE COMMISSION WAS SLOW IN REACTING TO THE NOTIFICATION OF THE BELGIAN LEGISLATION AND THAT THIS CAUSED LEGAL UNCERTAINTY PREJUDICIAL TO ITS LEGITIMATE INTERESTS . SINCE ARTICLE 27 (5) OF THE SIXTH DIRECTIVE DOES NOT EXPRESSLY LAY DOWN A PERIOD WITHIN WHICH OBJECTIONS MUST BE RAISED , THE COMMISSION MUST ACT WITHIN A REASONABLE PERIOD AS IN THE CASE OF THE PROCEDURES PROVIDED FOR BY PARAGRAPHS (3) AND (4) OF ARTICLE 27 AND ARTICLE 93 (3) OF THE EEC TREATY , AS INTERPRETED BY THE COURT IN ITS JUDGMENT OF 11 DECEMBER 1973 IN CASE 120/72 (LORENZ V GERMANY , (1973) ECR 1471 , AT P . 1481) .

12 THAT SUBMISSION CANNOT BE ACCEPTED . THE PERIOD REFERRED TO IN ARTICLE 27 (2) AND (3) OF THE DIRECTIVE AND THE PERIOD RESULTING FROM THE COURT ' S INTERPRETATION OF ARTICLE 93 OF THE EEC TREATY CONCERN VERY SPECIFIC SITUATIONS . THE FIRST CASE INVOLVES THE EXAMINATION OF AN APPLICATION TO DEROGATE FROM THE PROVISIONS OF THE DIRECTIVE AND THE SECOND A PROCEDURE WHICH IN PART DEROGATES EXPRESSLY FROM THE PROCEDURE LAID DOWN IN ARTICLE 169 OF THE TREATY . IN THE ABSENCE OF SUCH A DEROGATION FOR MEASURES RETAINED UNDER ARTICLE 27 (5) OF THE DIRECTIVE , THE RULES CONTAINED IN ARTICLE 169 OF THE TREATY MUST BE APPLIED AND THE COMMISSION IS NOT OBLIGED TO ACT WITHIN A SPECIFIC PERIOD . THE COMMISSION HAS EXPLAINED THAT IN THE PRESENT CASE , EXERCISING THE DISCRETION ACCORDED TO IT BY ARTICLE 169 OF THE TREATY , IT DECIDED THAT IT SHOULD POSTPONE EXAMINING THE COMPATIBILITY OF THE BELGIAN MEASURES IN QUESTION UNTIL THE DIRECTIVE WAS IN FORCE IN ALL THE MEMBER STATES . IN SO DOING IT DID NOT EXERCISE ITS DISCRETION IN A MANNER CONTRARY TO THE TREATY .

13 THE BELGIAN GOVERNMENT ' S SECOND SUBMISSION IS THAT THE COMMISSION WAS WRONG TO BASE ITS ACTION ON ARTICLE 11 OF THE SIXTH DIRECTIVE , AS THE REAL ISSUE IN WHETHER THE BELGIAN LEGISLATION IS COMPATIBLE WITH ARTICLE 27 (5) OF THE DIRECTIVE , WHICH IS THE PROVISION WHICH THE COMMISSION OUGHT TO HAVE MENTIONED AS THE SUBJECT-MATTER OF THE DISPUTE IN THE CONCLUSIONS SET OUT IN ITS APPLICATION .

14 THAT SUBMISSION MUST ALSO BE REJECTED . IN THE FORMAL NOTICE PROVIDED FOR BY ARTICLE 169 WHICH WAS SENT TO THE BELGIAN GOVERNMENT ON 20 MARCH 1981 AND LATER IN ITS REASONED OPINION , THE COMMISSION CLEARLY INDICATED THAT IN ITS VIEW THE BELGIAN MEASURES WERE CONTRARY TO ARTICLE 11 OF THE DIRECTIVE BECAUSE THE COMMISSION ' ' COULD NOT ALLOW RECOURSE TO BE HAD TO ARTICLE 27 (5) OF THE DIRECTIVE ' ' ; CONSEQUENTLY , THE BELGIAN GOVERNMENT COULD NOT HAVE BEEN UNDER ANY MISAPPREHENSION CONCERNING THE TRUE SCOPE OF THE DISPUTE .

15 FINALLY , THE BELGIAN GOVERNMENT MAINTAINS THAT THE SUBMISSIONS CONTESTING THE BELGIAN RULES ON NEW CARS ADVANCED BY THE COMMISSION IN THE COURSE OF THE PRELIMINARY PROCEDURE AND DURING THE PROCEEDINGS BEFORE THE COURT ARE NOT IDENTICAL , AS THEY ARE REQUIRED TO BE , IN SO FAR AS THE COMMISSION DID NOT INVOKE THE PRINCIPLE OF PROPORTIONALITY UNTIL IT MADE ITS APPLICATION TO THE COURT .

16 THAT SUBMISSION RESTS ON A MISUNDERSTANDING OF THE LEGAL IMPACT OF THE COMMISSION ' S ARGUMENT . IN ITS APPLICATION THE COMMISSION ARGUES THAT ' ' THE RIGHT CONTAINED IN ARTICLE 27 (5) OF THE SIXTH DIRECTIVE IS SUBJECT TO THE PRINCIPLE OF PROPORTIONALITY LIKE ANY PROVISION OF THAT TYPE ' ' AND THAT ' ' THE BELGIAN MEASURES ARE CLEARLY DISPROPORTIONATE TO THE PROBLEM TO BE DEALT WITH ' ' . THAT SUBMISSION REPEATS EXACTLY THE ARGUMENT WHICH THE COMMISSION ADVANCED THROUGHOUT THE PRELIMINARY PROCEDURE , NAMELY THAT ARTICLE 27 (5) DOES NOT HAVE THE SCOPE WHICH THE BELGIAN GOVERNMENT ATTRIBUTES TO IT AND DOES NOT COVER NATIONAL MEASURES AS GENERAL AS THOSE AT ISSUE IN THIS CASE .

17 SINCE THOSE SUBMISSIONS MUST BE REJECTED , THE SUBSTANCE OF THE CASE MUST NOW BE EXAMINED .

THE SUBSTANCE

18 IN SUPPORT OF ITS APPLICATION THE COMMISSION ARGUES THAT , BY RETAINING SPECIAL RULES GOVERNING THE BASIS FOR CHARGING VAT ON NEW CARS , EITHER SUPPLIED WITHIN THE COUNTRY OR IMPORTED INTO BELGIUM , AND ON VOITURES DE DIRECTION , THE KINGDOM OF BELGIUM HAS INFRINGED ARTICLE 11 OF THE SIXTH DIRECTIVE .

19 IT IS COMMON GROUND THAT THE BELGIAN RULES IN QUESTION ARE AT VARIANCE WITH ARTICLE 11 OF THE DIRECTIVE , WHICH FIXES THE TAXABLE AMOUNT . AS REGARDS SUPPLIES OF GOODS AND SERVICES WITHIN THE COUNTRY , THAT AMOUNT IS PRINCIPALLY COMPOSED OF THE CONSIDERATION WHICH HAS BEEN OR IS TO BE OBTAINED HAVING REGARD INTER ALIA TO PRICE DISCOUNTS AND REBATES ALLOWED TO THE CUSTOMER AND ACCOUNTED FOR AT THE TIME OF THE SUPPLY . AS REGARDS THE IMPORTATION OF GOODS , IT IS COMPOSED OF THE PRICE PAID OR TO BE PAID BY THE IMPORTER OR , IF THAT PRICE IS NOT THE SOLE CONSIDERATION FOR THE IMPORTED GOODS , THE OPEN MARKET VALUE OR , IF MEMBER STATES WISH , THE CUSTOMS VALUE AS DEFINED IN THE COMMUNITY REGULATIONS .

20 THE DISPUTE CONCERNS THE QUESTION WHETHER THE BELGIAN RULES MAY DEROGATE FROM ARTICLE 11 OF THE DIRECTIVE AS ' ' SPECIAL MEASURES ' ' WITHIN THE MEANING OF PARAGRAPHS (1) AND (5) OF ARTICLE 27 .

21 PARAGRAPH (5) OF THAT ARTICLE IS WORDED AS FOLLOWS :

' ' THOSE MEMBER STATES WHICH APPLY ON 1 JANUARY 1977 SPECIAL MEASURES OF THE TYPE REFERRED TO IN PARAGRAPH (1) ABOVE MAY RETAIN THEM PROVIDING THEY NOTIFY THE COMMISSION OF THEM BEFORE 1 JANUARY 1978 AND PROVIDING THAT WHERE SUCH DEROGATIONS ARE DESIGNED TO SIMPLIFY THE PROCEDURE FOR CHARGING TAX THEY CONFORM WITH THE REQUIREMENT LAID DOWN IN PARAGRAPH (1) ABOVE . ' '

PARAGRAPH (1) OF ARTICLE 27 , TO WHICH PARAGRAPH (5) REFERS , PROVIDES THAT :

' ' THE COUNCIL , ACTING UNANIMOUSLY ON A PROPOSAL FROM THE COMMISSION , MAY AUTHORIZE ANY MEMBER STATE TO INTRODUCE SPECIAL MEASURES FOR DEROGATION FROM THE PROVISIONS OF THIS DIRECTIVE , IN ORDER TO SIMPLIFY THE PROCEDURE FOR CHARGING THE TAX OR TO PREVENT CERTAIN TYPES OF TAX EVASION OR AVOIDANCE . MEASURES INTENDED TO SIMPLIFY THE PROCEDURE FOR CHARGING THE TAX , EXCEPT TO A NEGLIGIBLE EXTENT , MAY NOT AFFECT THE AMOUNT OF TAX DUE AT THE FINAL CONSUMPTION STAGE . ' '

22 THE COMMISSION CONTENDS THAT THE NATIONAL MEASURES IN QUESTION ARE NOT COVERED BY ARTICLE 27 (5) BECAUSE THEY ARE TOO GENERAL IN CHARACTER . IT ARGUES IN PARTICULAR THAT , IN SO FAR AS THEY APPLY TO NEW CARS , THEY RENDER THE SYSTEM LAID DOWN IN ARTICLE 11 PRACTICALLY PURPOSELESS IN THE MARKET SECTOR IN QUESTION AND ARE THEREFORE DISPROPORTIONATE TO THE AIM IN VIEW ; EVEN WHEN ARTICLE 27 (5) OF THE SIXTH DIRECTIVE IS APPLIED , MEMBER STATES ARE OBLIGED TO OBSERVE THE FUNDAMENTAL PRINCIPLES AND SCHEME OF THE DIRECTIVE AS WELL AS GENERAL PRINCIPLES OF COMMUNITY LAW , SUCH AS THE PRINCIPLE OF PROPORTIONALITY .

23 FURTHERMORE , THE COMMISSION DISPUTES THAT THE PROVISIONS AT ISSUE ARE JUSTIFIED BY THE DESIRE TO PREVENT TAX EVASION OR AVOIDANCE OR THAT THEY CONSTITUTE GENUINE MEASURES FOR SIMPLIFYING THE PROCEDURE FOR CHARGING THE TAX . IT ARGUES THAT , AS FAR AS MOST TAXABLE PERSONS ARE CONCERNED , THOSE AIMS CAN IN ANY CASE BE ACHIEVED BY LESS COERCIVE MEASURES , FOR EXAMPLE BY CARRYING OUT CROSS-CHECKS BETWEEN STOCKS OF CARS , EITHER NEW OR ACCEPTED IN PART-EXCHANGE BY DEALERS , AND DEALERS ' SALES .

24 IT IS ARGUED BY THE BELGIAN GOVERNMENT , ON THE OTHER HAND , THAT THE DEROGATION FROM ARTICLE 11 IS LAWFUL BECAUSE IT IS BASED ON ARTICLE 27 (5); IN SO FAR AS THE DEROGATIONS RELATE TO THE SIMPLIFICATION OF THE PROCEDURE FOR CHARGING THE TAX , THEY MUST MEET THE CRITERION LAID DOWN IN PARAGRAPH (1) OF ARTICLE 27 , THAT IS TO SAY , THEY MAY NOT AFFECT THE AMOUNT OF TAX DUE AT THE FINAL CONSUMPTION STAGE EXCEPT TO A NEGLIGIBLE EXTENT ; HOWEVER , THE DIRECTIVE DOES NOT LAY DOWN ANY LIMITATION AS REGARDS NATIONAL PROVISIONS DESIGNED TO PREVENT TAX EVASION OR AVOIDANCE , SO THAT DEPARTURES FROM ANY OF THE PROVISIONS OF THE DIRECTIVE ARE PERMISSIBLE , INCLUDING THOSE CONCERNING THE TAXABLE AMOUNT CONTAINED IN ARTICLE 11 ; WHAT IS MORE , NEITHER THE PRINCIPLE OF PROPORTIONALITY NOR ANY OTHER PARTICULAR REQUIREMENT CAN BE INVOKED IN THAT REGARD .

25 THE BELGIAN GOVERNMENT MAINTAINS , HOWEVER , THAT THE RULES IN QUESTION DO IN FACT SATISFY THE REQUIREMENTS OF PROPORTIONALITY BECAUSE THERE IS WIDESPREAD TAX EVASION IN THE MOTOR TRADE . THE PRACTICES IN QUESTION CONSIST INTER ALIA IN SELLERS ' GIVING A FALSE DECLARATION OF THE PRICE OF NEW CARS , EXPECIALLY WHEN ACCEPTING USED CARS IN PART-EXCHANGE , AND IN BUYERS ' DEDUCTING UNPAID INPUT TAX ; SUCH PRACTICES PLAY A CONSIDERABLE PART IN THE BUDGETARY DEFICIT AND ALSO DISTORT COMPETITION .

26 THE BELGIAN GOVERNMENT ALSO REFERS TO THE DECLARATION CONTAINED IN THE MINUTES OF THE MEETING OF THE COUNCIL AT WHICH THE SIXTH DIRECTIVE WAS ADOPTED , WHICH EXPRESSLY CITES AS A DEROGATING MEASURE WHICH MAY BE RETAINED PURSUANT TO ARTICLE 27 (5) A PROVISION PROVIDING FOR THE APPLICATION OF A MINIMUM TAXABLE AMOUNT . THAT DECLARATION IS WORDED AS FOLLOWS :

'' THE COUNCIL AND THE COMMISSION AGREE THAT THE MEASURES FOR PREVENTING TAX EVASION OR AVOIDANCE AND THE SIMPLIFICATION MEASURES REFERRED TO IN ARTICLE 27 MAY TAKE VARIOUS FORMS . FOR EXAMPLE , THEY MAY CONSIST IN A SUSPENSION OF THE TAX AT ONE OR MORE STAGES AT WHICH THE TAX , IF IT HAD BEEN CHARGED , WOULD IN ANY CASE HAVE BEEN DEDUCTIBLE IN FULL BY THE BUYER OR CUSTOMER OR IN PROVISIONS DESIGNED TO PREVENT A DECREASE IN THE TAXABLE AMOUNT WHICH THE MEMBER STATE CONSIDERS UNJUSTIFIED . ''

THE MEASURES DESIGNED TO PREVENT THE EVASION OR AVOIDANCE OF TAX ON BOTH NEW CARS AND VOITURES DE DIRECTION

27 AS A PRELIMINARY POINT , IT MUST BE OBSERVED THAT THE BELGIAN LEGISLATION GOVERNING THE BASIS FOR CHARGING VAT ON NEW CARS AND VOITURES DE DIRECTION WAS IN EXISTENCE BEFORE THE NATIONAL PROVISIONS IN THIS SPHERE WERE HARMONIZED BY THE ADOPTION OF THE SIXTH DIRECTIVE . CONSEQUENTLY , THE LEGISLATION DID NOT TAKE ACCOUNT OF THE PRINCIPLES OF THE COMMON SYSTEM OF VALUE-ADDED TAX .

28 FOR THE RETENTION OF SUCH MEASURES , ARTICLE 27 (5) LAYS DOWN THE PROCEDURAL REQUIREMENT THAT MEMBER STATES MUST NOTIFY THEM TO THE COMMISSION . THAT REQUIREMENT WAS DULY SATISFIED BY THE KINGDOM OF BELGIUM .

29 IT SHOULD , HOWEVER , BE NOTED THAT THE MEASURES NOTIFIED MUST BE OF SUCH A NATURE AS TO PREVENT TAX EVASION OR AVOIDANCE AND THAT IN PRINCIPLE THEY MAY NOT DEROGATE FROM THE BASIS FOR CHARGING VAT LAID DOWN IN

ARTICLE 11 , EXCEPT WITHIN THE LIMITS STRICTLY NECESSARY FOR ACHIEVING THAT AIM .

30 IT IS NOT DISPUTED THAT THE BELGIAN GOVERNMENT WAS JUSTIFIED IN TAKING THE VIEW THAT THERE WAS A REAL RISK OF TAX EVASION OR AVOIDANCE IN THE MOTOR TRADE WHICH JUSTIFIED THE ADOPTION OF MEASURES OF THE KIND WHICH ARTICLE 27 OF THE SIXTH DIRECTIVE ALLOWS TO BE RETAINED . SUCH MEASURES MAY , WHERE APPROPRIATE , ENTAIL THE APPLICATION OF STANDARD AMOUNTS , PROVIDED THAT THE SPECIAL MEASURES DO NOT DEROGATE FROM THE RULES LAID DOWN BY ARTICLE 11 FURTHER THAN IS NECESSARY TO AVOID THE RISK OF TAX EVASION OR AVOIDANCE .

31 HOWEVER , BY APPLYING TO ALL NEW CARS THE CATALOGUE PRICES NOTIFIED TO THE BELGIAN AUTHORITIES , THE BELGIAN LEGISLATION ENTAILS SUCH A COMPLETE AND GENERAL AMENDMENT OF THE BASIS OF ASSESSMENT THAT IT IS IMPOSSIBLE TO ACCEPT THAT IT CONTAINS ONLY THE DEROGATIONS NEEDED TO AVOID THE RISK OF TAX EVASION OR AVOIDANCE . IN PARTICULAR , IT HAS NOT BEEN PROVED THAT , IN ORDER TO ATTAIN THE AIM IN VIEW , IT IS NECESSARY THAT THE TAXABLE AMOUNT SHOULD BE FIXED ON THE BASIS OF THE BELGIAN CATALOGUE PRICE OR THAT THE TAKING INTO ACCOUNT OF ANY FORM OF PRICE DISCOUNT OR REBATE SHOULD BE EXCLUDED IN SUCH A COMPREHENSIVE MANNER .

32 IT FOLLOWS THAT THE MEASURES AT ISSUE ARE DISPROPORTIONATE TO THE AIM IN VIEW IN SO FAR AS THEY DEPART IN A GENERAL AND SYSTEMATIC WAY FROM THE RULES LAID DOWN IN ARTICLE 11 BY COVERING SALES AND IMPORTS OF ALL NEW CARS , EITHER LEAVING THE FACTORY OR ALREADY USED FOR A PERIOD OF LESS THAN SIX MONTHS .

33 AS REGARDS THE BELGIAN GOVERNMENT ' S ARGUMENT THAT THE APPLICATION OF A MINIMUM TAXABLE AMOUNT IS CONTEMPLATED BY A DECLARATION CONTAINED IN THE MINUTES OF THE MEETING OF THE COUNCIL , IT NEED MERELY BE STATED THAT THE DECLARATION DOES NOT CONTAIN ANY PRECISE STATEMENT CAPABLE OF SUPPORTING ITS ARGUMENT .

34 CONSEQUENTLY , IT MUST BE DECIDED THAT , BY RETAINING THE CATALOGUE PRICE AS THE MINIMUM BASIS FOR CHARGING VAT ON NEW CARS , EITHER SUPPLIED WITHIN THE COUNTRY OR IMPORTED , AS A SPECIAL MEASURE DEROGATING FROM ARTICLE 11 OF THE SIXTH DIRECTIVE , WHEN THE REQUIREMENTS LAID DOWN IN ARTICLE 27 (5) OF THE DIRECTIVE ARE NOT FULFILLED , THE KINGDOM OF BELGIUM HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE EEC TREATY .

THE MEASURES INTENDED TO SIMPLIFY THE PROCEDURE FOR CHARGING VAT ON VOITURES DE DIRECTION

35 IN SO FAR AS THE MEASURES IN QUESTION PROVIDE THAT THE CATALOGUE PRICE IS ALSO TO BE THE BASIS FOR CHARGING VAT ON VOITURES DE DIRECTION SOLD WITHIN SIX MONTHS AFTER THEY ARE FIRST USED , A DIFFERENT FINDING IS NOT JUSTIFIED BY THE NEED TO SIMPLIFY THE PROCEDURE FOR CHARGING THE TAX . AS REGARDS THE BELGIAN SYSTEM FOR TAXING THE USE OF VOITURES DE DIRECTION APPROPRIATED BY THE TAXABLE PERSON FOR HIS OWN PRIVATE NEEDS , THE COMMISSION HAS NOT OFFERED SUFFICIENT EVIDENCE THAT IT IS NOT A GENUINE SIMPLIFICATION MEASURE OR THAT IT MAY AFFECT THE AMOUNT OF TAX DUE AT THE FINAL CONSUMPTION STAGE TO AN EXTENT WHICH IS MORE THAN NEGLIGIBLE .

Decision on costs

COSTS

36 UNDER ARTICLE 69 (2) OF THE RULES OF PROCEDURE , THE UNSUCCESSFUL PARTY IS TO BE ORDERED TO PAY THE COSTS . SINCE THE KINGDOM OF BELGIUM HAS FAILED IN ITS MAIN SUBMISSIONS , IT MUST BE ORDERED TO PAY THE COSTS .

Operative part

ON THOSE GROUNDS ,

THE COURT

HEREBY :

- 1 . DECLARES THAT , BY RETAINING THE CATALOGUE PRICE AS THE BASIS FOR CHARGING VAT ON CARS , AS A SPECIAL MEASURE DEROGATING FROM ARTICLE 11 OF THE SIXTH DIRECTIVE , WHEN THE REQUIREMENTS LAID DOWN IN ARTICLE 27 (5) OF THE DIRECTIVE ARE NOT FULFILLED , THE KINGDOM OF BELGIUM HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE EEC TREATY ;*
- 2 . DISMISSES THE REMAINDER OF THE APPLICATION ;*
- 3 . ORDERS THE KINGDOM OF BELGIUM TO PAY THE COSTS .*