62015CJ0552
JUDGMENT OF THE COURT (Grand Chamber)

19 September 2017 (*1)

(Failure of a Member State to fulfil obligations — Freedom to provide services — Motor vehicles — Rental or leasing of a motor vehicle by a resident of one Member State from a supplier established in another Member State — Registration tax — Payment of the full amount of tax at the time of registration — Conditions for refunding tax — Proportionality)

In Case C?552/15,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 23 October 2015,

European Commission, represented by M. Wasmeier and J. Tomkin, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Ireland, represented by L. Williams, E. Creedon and A. Joyce, acting as Agents, M. Collins SC, and S. Kingston and C. Daly, Barristers-at-Law, with an address for service in Luxembourg,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, T. von Danwitz and J.L. da Cruz Vilaça, Presidents of Chambers, E. Levits (Rapporteur), J.-C. Bonichot, A. Arabadjiev, C. Toader, M. Safjan, E. Jaraši?nas, C.G. Fernlund, C. Vajda, S. Rodin and F. Biltgen, Judges,

Advocate General: M. Szpunar,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 22 November 2016,

after hearing the Opinion of the Advocate General at the sitting on 2 March 2017,

gives the following

Judgment

1

By its application, the European Commission requests the Court to declare that, by levying a full amount of vehicle registration tax upon the registration by an Irish resident of a motor vehicle leased or rented in another Member State, without taking account of the duration of the use of the vehicle, where the vehicle is neither intended to be used essentially in Ireland on a permanent basis nor in fact used in that way, and by setting conditions for a refund of this tax which go beyond what is strictly necessary and proportionate, Ireland has failed to fulfil its obligations under Article 56 TFEU.

Legal context

2

Section 131(4) of the Finance Act 1992, as last amended by the Finance Act 2014, which was in force on the date of expiry of the period set in the additional reasoned opinion, provides:

‘A person shall not have in his possession or charge after the 1st day of January, 1993, an unregistered vehicle or a converted vehicle as respects which the prescribed particulars in relation to the conversion have not been declared to the [Revenue] Commissioners unless the person is an authorised person or the vehicle is the subject of an exemption under section 135 in force for the time being or is a vehicle referred to in section 143(3) or is exempt from registration under section 135A.’

3

Section 132(1) of the Finance Act 1992 provides:

‘Subject to the provisions of this Chapter and any regulations thereunder, with effect on and from the 1st day of January, 1993, a duty of excise, to be called vehicle registration tax, shall be charged, levied and paid at whichever of the rates specified in subsection (3) is appropriate on—

(a)

the registration of a vehicle, and

(b)

a declaration under section 131(3).’

4

Under section 132(2) of the Finance Act 1992, vehicle registration tax (‘the registration tax’) becomes due, and is payable by the person who registers the vehicle, at the time of its registration.

5

The amount of registration tax to be paid is calculated for standard vehicles, in accordance with sections 132 and 133 of the Finance Act 1992, on the basis of:

–

the open market selling price of the vehicle, defined in section 133(3) of the Finance Act 1992 as being the price which the vehicle ‘might reasonably be expected to fetch on a first arm’s length sale thereof in the open market in the State by retail’. When calculating the open market selling price of a second-hand vehicle, the Revenue Commissioners typically have regard to a variety of factors and consult price lists, sales guides and websites;

–

the level of carbon dioxide emissions of the vehicle concerned, the most polluting vehicles (more than 225g/km) being subject to a registration tax equivalent to 36% of the open market selling price but no less than EUR 720, in accordance with the table at section 132 of the Finance Act 1992.

6

Certain categories of vehicles and persons are exempted from the obligation to pay the registration tax. Thus, section 135(1)(a), (b), (c) and (d) of the Finance Act 1992 exempts vehicles brought in temporarily by non-residents for their business or private use, by residents employed by an employer established in another Member State who provides them with a vehicle or by self-employed residents whose business is carried on solely or principally in another Member State, and special purpose vehicles not intended to be used in a public place.

7

Unless an exemption applies, all vehicles imported into Ireland must be registered, with the registration tax paid, within 30 days of the vehicle's arrival in Ireland, following a pre-registration examination of the vehicle by the National Car Testing Service (Ireland). Imported vehicles that have been leased or rented in another Member State are among those subject to that obligation.

8

Section 135D of the Finance Act 1992, relating to the repayment of amounts of vehicle registration tax on the export of certain vehicles, was inserted by the Finance Act 2012 and has been applicable since 8 April 2013. Section 135D(2)(b) of the Finance Act 1992 was, however, introduced by the Finance Act 2014. Thus amended, section 135D of the Finance Act 1992 states:

'(1) The [Revenue] Commissioners may repay to a person an amount calculated in accordance with this section of vehicle registration tax based on the open market selling price of a vehicle which has been removed from the State, where—

(a)

the vehicle is a category M1 vehicle,

(b)

the vehicle has been registered under section 131 and the vehicle registration tax has been paid,

(c)

the vehicle was, immediately prior to being so removed, registered under section 131,

(d)

within 30 days prior to being so removed—

(i)

the vehicle and any documentation to which paragraph (b) or (c) relates, and

(ii)

where applicable, a valid test certificate … in respect of the vehicle,

have been examined by a competent person and all relevant matters have been found by that person to be in order,

(e)

at the time of examination to which paragraph (d) relates, the open market selling price of the vehicle (being the price to which subsection (2) relates) is not less than EUR 2000, and

(f)

the requirements of subsection (3) have been complied with.

(2) The amount of vehicle registration tax to be repaid shall—

(a)

be calculated by reference to the open market selling price (being that price as determined by the [Revenue] Commissioners) of the vehicle at the time of the examination referred to in subsection (1)(d), and

(b)

include an amount that is calculated by means of one or more than one formula or other means of calculation as may be prescribed by the Minister by regulations made by him or her under section 141.

(3) A claim for repayment for an amount of vehicle registration tax under this section shall be made in such manner and in such form as may be approved by the [Revenue] Commissioners for that purpose and shall be accompanied by—

(a)

documentation to prove to the satisfaction of the [Revenue] Commissioners that the vehicle was removed from the State within 30 days of its examination under this section, and

(b)

proof that the vehicle has subsequently been registered in another Member State or has been permanently exported outside the European Union.

(4) The amount of vehicle registration tax calculated for repayment under this section in respect of a vehicle shall be reduced to take account of—

(a)

the net amount of any remission or repayment of that tax previously allowed on the vehicle under this Chapter, and

(b)

an administration charge of EUR 500.

(5) Any repayment of vehicle registration tax under this section shall be to the person named, at the time of the examination referred to in subsection (1)(d), on the records maintained under section 60 of the Finance Act 1993.’

9

The percentage of the open market selling price upon which calculation of the tax repayment referred to in section 135D(2) of the Finance Act 1992 is based depends on the level of the carbon dioxide emissions of the vehicle, in the same way as this factor determines the amount of registration tax levied initially.

10

Under the Vehicle Registration and Taxation Regulations 2015 (‘the implementing regulations of 2015’), which were adopted on 17 December 2015 and entered into force on 1 January 2016, the amount of the repayment referred to in section 135D(2)(b) of the Finance Act 1992 is calculated by multiplying the amount of registration tax calculated in accordance with section 135D(2)(a) by a reference rate corresponding to the 12 month Euro Interbank Offered Rate (Euribor).

11

By virtue of section 49 of the Finance Act 2015, the amount of the administration charge prescribed in section 135D(4)(b) of the Finance Act 1992 was reduced to EUR 100 from 1 January 2016.

The pre-litigation procedure and the procedure before the Court

12

Following an exchange of correspondence that began in January 2003 and a meeting with the Irish authorities relating to compliance of the Irish system of registration tax with the principles set out in the judgments of 21 March 2002, Cura Anlagen (C?451/99, EU:C:2002:195), and of 15 September 2005, Commission v Denmark (C?464/02, EU:C:2005:546), on 27 January 2011 the Commission sent Ireland a letter of formal notice. The Commission stated in that letter that, by levying a registration tax upon the registration by an Irish resident of a motor vehicle leased or rented in another Member State, without taking account of the duration of the use of the vehicle and without the resident in question having any right to an exemption or a refund, where the vehicle was neither intended to be used essentially in Ireland on a permanent basis nor in fact used in that way, Ireland was failing to fulfil its obligations under Articles 56 to 62 TFEU.

13

In its reply dated 26 May 2011 to the letter of formal notice, Ireland contested the alleged incompatibility of its legislation with EU law. While accepting that the application of the registration tax to hired or leased vehicles could be regarded as a potential obstacle to the freedom to provide services, the Irish authorities contended that such legislation was justified by reasons relating to the choice made by Ireland of residence as a criterion for exercising its powers of taxation, and also by reasons relating to environmental protection, the safeguarding of competition and the coherence and effectiveness of the regime governing the registration tax. Ireland stressed that a change in the system of registration tax would confer a competitive advantage on vehicle leasing undertakings established in Northern Ireland, where registration tax was lower, and would thus encourage Irish residents to use vehicles from abroad, adversely affecting the domestic trade in vehicles and causing serious tax losses.

14

As the Commission was not persuaded by the arguments put forward by Ireland, on 27 October

2011 it issued a reasoned opinion reproducing the analysis set out in the letter of formal notice.

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By letter of 10 January 2012, the Irish authorities informed the Commission that they were going to establish a refund system that would enable applicants who had paid the full amount of registration tax to obtain a refund of the excess tax. By letter of 10 April 2012, the Irish authorities sent the Commission the text of the Finance Act 2012, which established such a system, while explaining that the order bringing that legislation into operation still had to be adopted. The refund system entered into force in Ireland on 8 April 2013.

16

In a letter sent to the Irish authorities on 26 September 2013, the Commission contended that the Irish system of registration tax did not take due account of the order of 29 September 2010, VAV-Autovermietung (C?91/10, not published, EU:C:2010:558). According to the Commission, payment of the full amount of registration tax, without taking account of the duration of the leasing contract, when its duration could be established, was disproportionate, even if a system for refunding the balance was laid down. The Commission therefore requested the Irish authorities to provide it with information on the measures that they were envisaging adopting so as to comply with that order.

17

Following an exchange of letters and a meeting with the Irish authorities, on 11 July 2014 the Commission issued an additional letter of formal notice, repeating its position relating to the guidance resulting from the order of 29 September 2010, VAV-Autovermietung (C?91/10, not published, EU:C:2010:558). According to the Commission, Ireland was failing to fulfil its obligations under Articles 56 to 62 TFEU, by requiring Irish residents, upon the registration of a motor vehicle leased or rented in another Member State, to pay the full amount of the registration tax due for a permanent registration, and not an amount proportionate to the duration of the use of the vehicle in Ireland, when that duration was predetermined and limited. Furthermore, the conditions for refunding the tax paid, namely the payment of an administration charge of EUR 500, the compulsory carrying out of technical examinations and the possible loss of interest, taken together, could discourage the provision of cross-border services.

18

In its reply dated 11 November 2014 to the letter of formal notice, Ireland stated that the system of registration tax was fair and proportionate and complied with the requirements of Article 56 TFEU. It stated in particular that the Irish legislation was very different from the Netherlands legislation at issue in the order of 29 September 2010, VAV-Autovermietung (C?91/10, not published, EU:C:2010:558), that a refund was obligatory when the statutory conditions were met and that it was in the process of adopting measures providing for the payment of interest on sums refunded.

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On 26 February 2015 the Commission adopted an additional reasoned opinion, reiterating its position expressed in its additional letter of formal notice that payment of the full amount of registration tax, even combined with a refund mechanism, was disproportionate when the duration of the use was known in advance. Furthermore, the administration charge of EUR 500 was disproportionate and, taken together with the possible loss of interest and the obligation that a technical examination be carried out, neutralised a significant part of the refund. The Commission therefore called on Ireland to comply with the additional reasoned opinion within two months of receipt thereof, which occurred on 27 February 2015.

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By letter of 27 April 2015, Ireland maintained its view that its legislation complied with EU law. It added that section 135D(2)(b) of the Finance Act 1992, a provision resulting from the Finance Act 2014, henceforth provided for the payment of interest and that the implementing provisions relating thereto would enter into force on 1 January 2016. Ireland also informed the Commission of its intention to reduce the amount of the administration charge from EUR 500 to EUR 100.

21

Since the Commission took the view that, on the expiry of the period laid down in the additional reasoned opinion, the legislation in force in Ireland still did not comply with EU law, it brought the present action.

22

Pursuant to the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, Ireland requested the Court to sit as a Grand Chamber.

The action

Proper conduct of the infringement procedure

Arguments of the parties

23

Without formally pleading that the action is inadmissible, Ireland submits that, by its conduct during the pre-litigation procedure and when the action was brought, the Commission failed to observe the principle of sincere cooperation set out in Article 4(3) TEU and the general principle of good administration set out in Article 41 of the Charter of Fundamental Rights of the European Union, and did not respect Ireland’s rights of defence.

24

First of all, after accepting that a refund system may be compatible with Article 56 TFEU, the Commission changed its position in 2013, relying on the order of 29 September 2010, VAV-Autovermietung (C?91/10, not published, EU:C:2010:558), to reject henceforth the very principle of such a refund system in the context of cross-border application of a national registration tax. That change in the Commission’s position as to what it considers to be required by Article 56 TFEU occurred although there was no relevant development in the case-law and although Ireland amended its legislation a number of times in order to comply with the Commission’s initial demands.

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Next, the application was lodged prematurely and ignores some of the changes made to the Irish legislation, in particular the payment of interest provided for by the Finance Act 2014. Ireland observes that, even before the application was lodged on 23 October 2015, the Commission had been informed that on 1 January 2016 both the implementing regulations of 2015 laying down the method of calculating interest in the event of a refund and the Finance Act 2015 providing for the reduction of the administration charge to EUR 100 would enter into force.

26

Finally, the Commission's position, as set out in its application, remains ambiguous, in particular so far as concerns whether the form of order sought by it is based on a single plea or two separate pleas, one relating to the absence of a mechanism for pro-rata payment of the registration tax, the other alleging that the conditions laid down for a refund of that tax go beyond what is strictly necessary and proportionate. Accordingly, it is very difficult for Ireland to exercise its rights of defence.

27

The Commission counters by stating that it was not inconsistent and did not change its position in carrying out, in the light of the measures recently adopted by Ireland, a fresh assessment as to whether the Irish system of registration tax complied with EU law. More generally, it submits that, on expiry of the period laid down in the additional reasoned opinion, Ireland had not taken the measures necessary to bring its legislation into line with EU law. Section 135D(2)(b) of the Finance Act 1992, a provision resulting from the Finance Act 2014, merely provides for the potential subsequent adoption of rules on the payment of interest and cannot be regarded as establishing a complete or operative system for such payment. It is true that such rules were finally enacted by means of the implementing regulations of 2015, but the latter were not adopted until 17 December 2015, that is to say, well after expiry of the period laid down in the additional reasoned opinion.

Findings of the Court

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The Court has consistently held that the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under EU law and, on the other, to avail itself of its right to defend itself against the objections formulated by the Commission (judgments of 10 May 2001, Commission v Netherlands, C?152/98, EU:C:2001:255, paragraph 23; of 5 November 2002, Commission v Germany, C?476/98, EU:C:2002:631, paragraph 46; of 8 April 2008, Commission v Italy, C?337/05, EU:C:2008:203, paragraph 19; and of 7 April 2011, Commission v Portugal, C?20/09, EU:C:2011:214, paragraph 18).

29

The proper conduct of that procedure constitutes an essential guarantee required by the FEU Treaty not only in order to protect the rights of the Member State concerned, but also so as to ensure that any contentious procedure will have a clearly defined dispute as its subject matter. It follows from that function that the purpose of the letter of formal notice is, first, to delimit the subject matter of the dispute and to indicate to the Member State, which is invited to submit its observations, the factors enabling it to prepare its defence and, secondly, to enable the Member State to comply with its obligations before proceedings are brought before the Court (judgment of

10 April 2008, Commission v Italy, C?442/06, EU:C:2008:216, paragraph 22).

30

In the present instance, as regards the argument that during the pre-litigation procedure the Commission changed its position regarding whether a system of taxation with a subsequent refund is compatible with EU law, it is to be noted that the Commission initially complained, in both the letter of formal notice and the reasoned opinion, that Ireland had imposed on any Irish resident an obligation to pay a registration tax upon the registration of a motor vehicle leased or rented in another Member State, without taking account of the duration of the use of the vehicle and without the resident in question having any right to an exemption or a refund, where the vehicle was neither intended to be used essentially in Ireland on a permanent basis nor in fact used in that way.

31

Those complaints related to the Irish legislation as in force on the dates when that letter of formal notice was sent and that reasoned opinion was issued, the legislation not laying down any mechanism for refunding registration tax. It cannot, however, be inferred either from those complaints or from the content of the letter of formal notice and the reasoned opinion that the Commission carried out a legal assessment of whether a system of levying tax with a subsequent refund is compatible with Article 56 TFEU.

32

Following the entry into force on 8 April 2013 of a system for refunding registration tax, on 11 July 2014 the Commission issued an additional letter of formal notice, setting a fresh period for Ireland to submit its observations, before sending it, on 26 February 2015, an additional reasoned opinion founded on the same complaints as those set out in the additional letter of formal notice. The Commission took the view therein that the levying of the full amount of tax, even combined with a refund mechanism, was disproportionate if the duration of the use was known in advance. It added that the administration charge of EUR 500 was also disproportionate and, considered together with the possible loss of interest and the obligation that a technical examination be carried out, neutralised a significant part of the refund.

33

As the Commission sent Ireland an additional letter of formal notice, setting a fresh period for it to submit its observations, before sending it an additional reasoned opinion founded on the same complaints as those set out in that letter, the Commission did not infringe its rights of defence, Ireland having thus been put in a position to prepare its defence.

34

As regards the alleged breach of the principle of sincere cooperation and the principle of good administration because of the date chosen for bringing the action, it should be recalled, first, that it is for the Commission to determine whether it is expedient to take action against a Member State and what provisions, in its view, the Member State has infringed, and to choose the time at which it will bring an action for failure to fulfil obligations; the considerations which determine that choice cannot affect the admissibility of the action (judgments of 1 June 1994, Commission v Germany, C?317/92, EU:C:1994:212, paragraph 4; of 18 June 1998, Commission v Italy, C?35/96, EU:C:1998:303, paragraph 27; of 1 February 2001, Commission v France, C?333/99, EU:C:2001:73, paragraph 24; and of 8 December 2005, Commission v Luxembourg, C?33/04, EU:C:2005:750, paragraph 66). Indeed, the Commission is entitled to decide, in its discretion, on what date it may be appropriate to bring an action and it is thus not for the Court, in principle, to review the exercise of that discretion (judgments of 10 May 1995, Commission v Germany, C?422/92, EU:C:1995:125, paragraph 18, and of 4 March 2010, Commission v Italy, C?297/08, EU:C:2010:115, paragraph 87).

35

Secondly, in accordance with the Court's settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion, and the Court therefore cannot take account of any subsequent changes (judgments of 19 June 2003, Commission v France, C?161/02, EU:C:2003:367, paragraph 9; of 20 May 2010, Commission v Spain, C?158/09, not published, EU:C:2010:292, paragraph 7; and of 28 October 2010, Commission v Lithuania, C?350/08, EU:C:2010:642, paragraph 30).

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Consequently, where, at the time when the period laid down in the reasoned opinion expires, the Commission considers that a Member State has failed to fulfil its obligations, the rules laid down in Article 258 TFEU must be applied without the Commission being obliged, in principle, to act at a specific time (see, to that effect, judgments of 28 October 2010, Commission v Lithuania, C?350/08, EU:C:2010:642, paragraphs 33 and 34 and the case-law cited, and of 16 April 2015, Commission v Germany, C?591/13, EU:C:2015:230, paragraph 14).

37

Ireland's argument alleging that the present action was brought prematurely must therefore be rejected.

38

Finally, as regards the alleged ambiguity of the subject matter of the present action, it should be recalled that, in accordance with Article 120(c) of the Rules of Procedure and the related case-law, an application initiating proceedings must state the subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law. That statement must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court to rule on the application. It is therefore necessary for the essential points of fact and of law on which a case is based to be indicated coherently and intelligibly in the application itself and for the form of order sought to be set out unambiguously so that the Court does not rule ultra petita or fail to rule on a complaint (judgments of 11 July 2013, Commission v Czech Republic, C?545/10, EU:C:2013:509, paragraph 108 and the case-law cited; of 23 February 2016, Commission v Hungary, C?179/14, EU:C:2016:108, paragraph 141; and of 22 September 2016, Commission v Czech Republic, C?525/14, EU:C:2016:714, paragraph 16).

39

In the present instance, the action brought by the Commission relates to the Irish system of registration tax applicable to vehicles leased or rented in another Member State, as in force on the date on which the period laid down in the additional reasoned opinion expired.

40

Also it should be noted that the Commission clearly stated, in the form of order sought as set out in the application initiating proceedings, that it was complaining, first, that Ireland imposed the obligation on an Irish resident to pay the full amount of registration tax upon the registration of a motor vehicle leased or rented in another Member State, without taking account of the duration of the use of the vehicle, where the vehicle was neither intended to be used essentially in Ireland on a permanent basis nor in fact used in that way, and secondly, that Ireland set detailed rules for a refund of that tax which went beyond what was strictly necessary and proportionate. Those complaints correspond to the complaints that were set out in the additional letter of formal notice and the additional reasoned opinion. Whilst it is true that, in the grounds of the application initiating proceedings, the Commission referred a number of times to the system of registration tax as a whole, it nevertheless conducted a separate analysis there of both the obligation to pay the full amount of registration tax and the detailed rules for its refund, and stated, in particular in paragraph 29 of the application, that those measures, in isolation and in particular when combined, constituted a restriction on the freedom to provide services.

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The argument relating to the alleged ambiguity of the subject matter of the present action must therefore be rejected.

42

It follows from the foregoing that Ireland is not justified in maintaining that the present action was brought in disregard of the principles of sincere cooperation and good administration and the principle of respect for the rights of the defence.

Substance

Arguments of the parties

43

The Commission submits that the Irish system of registration tax, in force on expiry of the period laid down in the additional reasoned opinion, is liable to impede the provision and receipt of leasing and hiring services disproportionately, in breach of Article 56 TFEU.

44

First of all, the obligation to pay, in advance, the full amount of the registration tax applicable in the event of permanent registration, whatever the actual duration of the proposed use in Ireland and when the duration of the lease or hiring has been precisely determined and is known in advance, entails a disproportionate financial and cash-flow burden, because the amount having to be paid in advance could represent almost double the amount of tax that would in fact be payable. The possibility of obtaining a refund of the excess tax after the vehicle is removed from Ireland does not call that finding into question and does not enable an appropriate distinction to be drawn between permanent imports and short-term hiring or leasing.

45

Next, an application for a refund can be submitted only following the completion of a procedure entailing a compulsory technical examination of the vehicle; this entails additional cost since, under the rules in force on the date of expiry of the period laid down in the additional reasoned opinion, the person registering the vehicle was required to pay EUR 500 as an administration charge for the refund procedure.

46

Finally, in addition to the financial and cash-flow burden entailed by the obligation to pay the full amount of registration tax in advance, and the cost relating to the technical examination and to the refund procedure, provision was not made as at that date for the persons hiring or leasing the vehicles to receive interest on the sums retained by the national authorities during the course of the hire or lease.

47

Those measures in isolation, and in particular when combined, have the effect of making the hiring and leasing of vehicles that come from other Member States more difficult than the hiring or leasing of vehicles from undertakings established in Ireland.

48

As regards, in particular, the obligation to pay the full amount of registration tax in advance, the Commission observes that it is apparent from the Court's settled case-law that, in order to be proportionate, such a tax must be calculated with due regard for the term of the contract for hire of the vehicle concerned or for the duration of the vehicle's use on the relevant road network (orders of 27 June 2006, van de Coevering, C?242/05, EU:C:2006:430, paragraphs 31 to 33; of 22 May 2008, Ilhan, C?42/08, not published, EU:C:2008:305, paragraphs 20 and 24; and of 29 September 2010, VAV-Autovermietung, C?91/10, not published, EU:C:2010:558, paragraphs 20, 21, 26 and 30). The Irish scheme for refunding registration tax essentially has the aim of bringing short-term vehicle importation within a more general export refund scheme rather than of specifically ensuring that the importation of vehicles for pre-determined temporary periods of time is taxed in proportion to the duration of the importation.

49

Despite the fact that the registration tax is calculated on the basis of the open market selling price and depends, inter alia, on the vehicle's condition and mileage, it would be possible to establish a pro-rata tax without compromising the objectives pursued by the Irish authorities, on the basis of an estimate of the open market value calculated by reference to average mileage and depreciation. The definitive fixing of the amount of registration tax would occur subsequently, at the time of export, and would give rise to a refund or an additional payment, depending on whether the open market selling price at the time of export turns out to be higher or lower than that taken into account when tax was initially charged. In the event of a higher open market value, additional tax can be enforced, in principle, against two different debtors in the case of short-term hire, namely the lessor and the lessee, and can involve, if necessary, seizure of the vehicle. Such a system, even if founded on estimates requiring subsequent adjustment, is not more unfair or unjust than a system that, as in this instance, does not involve any deduction.

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Furthermore, Ireland's arguments referring to practical difficulties lack coherence. If Ireland's concern were related to the risk of the lessee overstaying in Ireland, there should be no requirement for extra-territorial enforcement because the vehicle remaining in Ireland beyond the date of expiry of the lease would still be in the territory of that Member State. There is nothing preventing Ireland from requiring, at the time of the vehicle's registration, proof of the limited duration of the contract, for example by requesting a copy of the contract, and from subsequently conducting checks relating to registration and compliance with other applicable fiscal and regulatory obligations, such as, for example, the obligation to keep annual motor tax and insurance payments up to date.

51

So far as concerns the administration charge, the Commission considers it disproportionate to be requiring Union citizens who hire or lease vehicles for short periods of time to subsidise the capital costs necessary for setting up an export refund mechanism, in particular in order to finance the cost of the technical examinations on which the refund is contingent. Taking the duration of the use into account would make it possible to avoid vehicles being subject to onerous technical examination procedures and to the considerable fees that such procedures entail.

52

Ireland submits that the system of registration tax is fully compliant with the requirements of Article 56 TFEU, as interpreted by the Court, since, in particular, excess tax is refunded upon export and, since 1 January 2016, that refund is supplemented by the payment of interest and now gives rise to only a modest administration charge of EUR 100, which does not even cover the administrative costs incurred by Ireland in operating the export refund system. The system of registration tax is therefore both justified and proportionate.

53

First, Article 56 TFEU, as interpreted by the Court, does not prohibit the establishment of export refund systems which do not discriminate against cross-border supplies and where any restriction on cross-border movement is justified and proportionate in view of the nature of the tax system at issue. That article does not necessarily require a pro-rata upfront exemption system.

54

The Court’s case-law has been established in the context of national systems precluding any export refund (judgments of 21 March 2002, Cura Anlagen, C?451/99, EU:C:2002:195, and of 23 February 2006, Commission v Finland, C?232/03, not published, EU:C:2006:128; orders of 27 June 2006, van de Coevering, C?242/05, EU:C:2006:430, and of 22 May 2008, Ilhan, C?42/08, not published, EU:C:2008:305; judgment of 26 April 2012, van Putten, C?578/10 to C?580/10, EU:C:2012:246) or national systems which, although providing for such a refund, involved calculation of the amount of the refund on the basis of the duration of the use of the vehicle in the State and excluded the payment of interest (order of 29 September 2010, VAV-Autovermietung, C?91/10, not published, EU:C:2010:558).

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The Court has never declared export refund systems to be, as such and as a matter of principle, incompatible with Article 56 TFEU. On the contrary, it has recognised, in the order of 27 June 2006, van de Coevering (C?242/05, EU:C:2006:430), and in the judgment of 26 April 2012, van Putten (C?578/10 to C?580/10, EU:C:2012:246), that, in the case of the taxation of leased or rented vehicles, an appropriately structured refund system may comply with the principle of proportionality.

56

Also, unlike the cases which gave rise to the decisions referred to in paragraph 54 of the present judgment, the basis for assessment of the registration tax depends not on the time for which the vehicle concerned is in Ireland but on its condition and mileage. Thus, it is not possible to predict at the time of import the correct level of export refund and to calculate ex ante the registration tax actually payable in each case.

57

Secondly, amendment of the system of registration tax to the effect recommended by the Commission would entail substantial amendment of the detailed rules for levying that tax and would result, in particular, in the open market selling price of the vehicle being replaced, as the basis for calculation of the tax, by the duration of its use on the Irish road network or by its presence in Ireland.

58

First of all, although vehicle taxation is not harmonised and the Member States retain their freedom of action in that regard, the Commission seeks, by the present proceedings, to harmonise the bases for calculating registration taxes in the Member States. Next, the basis of calculation chosen by Ireland has the object and effect that vehicle taxation reflects the vehicles' actual use. It is thus consistent with the Court's case-law and the introduction of a method of ex ante calculation, on the basis of anticipated rather than actual use, would not be coherent. The refund, with interest, of excess registration tax upon export seeks to ensure that the taxpayer pays exactly the right amount of tax and is no worse off financially from having paid the full amount of tax in advance. Finally, Article 56 TFEU does not force the Member States to levy the same amount of tax on persons who make heavy use of their vehicle and those who make very little use of it, on the pretext that the duration of the lease is the same, and the fact that it is theoretically possible to replace taking account of the actual use and condition of a vehicle upon export with an exemption established in advance based on duration of use is in this regard irrelevant, as is the existence in other Member States of any tax systems founded on duration of use.

59

Thirdly, amendment of the system of registration tax to the effect recommended by the Commission would prevent the objectives pursued by that tax from being achieved in Ireland. Those objectives are, first of all, to compensate for the external effects of vehicle use, such as the costs for society in terms of road infrastructure, traffic control, emergency services and registration services, and to compensate for the environmental effects in terms of air and noise pollution. Also, the registration tax is intended to be proportionate to the vehicle's market value and, finally, it encourages the purchase of environmentally-friendly vehicles.

60

Fourthly, establishment of the system proposed by the Commission, which involves an initial estimate followed by a balancing payment upon export, would entail risks of loss of tax revenue and would also result in very great practical difficulties since, while subjecting vehicles to the same technical examinations, it would give rise to an additional administrative burden and to costs for the cross-border leasing of vehicles.

61

Fifthly, Ireland observes that there is no duty to register a vehicle in Ireland for 30 days, the effect of this being that the registration tax cannot apply where the term of the rental is particularly short. It adds that, in any event, the tax is relatively low because the initial amount is 2.5 times — and not, as the Commission incorrectly claims, 11 times — the amount ultimately due. Moreover, in order to assess the effect of the registration tax, it is not appropriate to take as a basis the class of the most polluting vehicles as (i) those vehicles are not common and (ii) the rates of registration tax are structured so as to tax the most that type of vehicle, whose environmental impact is the greatest.

62

Sixthly, Ireland observes that setting the amount of the administration charge at EUR 500 was due to the necessity to recoup some of the significant initial costs of setting up the export refund system and adds that that amount has been reduced to EUR 100. The Court has held, as set out in the judgment of 7 April 2011, Tatu (C?402/09, EU:C:2011:219), that reasonable administrative fees may be sought for provision of a service, as long as they do not represent an excessive cost to the consumer and they do not constitute an unjustified obstacle to accessing the service, without, however, ruling itself that the cost to be borne by the taxpayer is not to exceed the cost of the operations in connection with the inspection.

Findings of the Court

– The relevant Irish legal framework

63

It is apparent from the Court's settled case-law, recalled in paragraph 35 of the present judgment, that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion, and the Court cannot take account of any subsequent changes.

64

Consequently, since the Commission called on Ireland to comply with the additional reasoned opinion within two months of receipt thereof and Ireland was notified of that opinion on 27 February 2015, the question whether obligations have not been fulfilled must, in this instance, be determined by reference to the situation prevailing in the Member State as at 27 April 2015.

65

It is, first of all, common ground between the parties that, under the Irish legislation in force on that date, Irish residents wishing to use in Ireland a vehicle made available to them under a rental or leasing contract by an undertaking established in another Member State were required to pay, upon the registration of that vehicle in Ireland, the full amount of registration tax, even if the duration of the use of the vehicle was determined and known in advance under the contract.

66

Next, it is apparent from the documents before the Court that section 135D(2)(b) of the Finance Act 1992 provided that the amount of registration tax to be repaid is calculated using one or more than one formula or other means of calculation as may be prescribed by the competent minister by regulations made by him or her under section 141 of that act. It therefore follows from section 135D(2)(b) that, even though the principle that interest is to be paid if part of the registration tax is refunded could be regarded as laid down in essence, that provision could not in itself produce legal effects enabling the excess registration tax to be refunded with interest and that actual application of the mechanism for payment of interest required the Irish authorities to adopt implementing measures.

67

However, those implementing measures, contained in the implementing regulations of 2015, were not adopted until 17 December 2015 and did not enter into force until 1 January 2016, that is to say, after the period laid down in the additional reasoned opinion had expired.

68

Therefore, for the purpose of assessing the alleged failure to fulfil obligations, account should be taken of the system for refunding registration tax without any mechanism for payment of interest.

69

Finally, in the light of the case-law recalled in paragraph 35 of the present judgment, it is irrelevant that the administration charge, which amounted to EUR 500 on the date when the period laid down in the additional reasoned opinion expired, was reduced to EUR 100 with effect from 1 January 2016. Consequently, in assessing whether the alleged failure to fulfil obligations has taken place, account should be taken of the system for refunding registration tax involving payment of an administration charge of EUR 500.

– The complaint relating to payment, in advance, of the full amount of registration tax

70

By its first complaint, the Commission submits that, by requiring payment, in advance, of the full amount of the registration tax applicable in the event of permanent registration, whatever the actual duration of the proposed use in Ireland of the vehicle imported into that Member State, Ireland has infringed Article 56 TFEU, since such an obligation, even coupled with the possibility of a refund, is not proportionate to the objective pursued by that tax, in cases where the duration of the lease or rental has been determined precisely and is known in advance.

71

It should be recalled that, apart from certain exceptions not relevant to the present case, taxation of motor vehicles has not been harmonised at EU level. The Member States are thus free to exercise their powers of taxation in that area provided that they do so in compliance with EU law (judgment of 21 November 2013, X, C?302/12, EU:C:2013:756, paragraph 23 and the case-law cited).

72

According to the Court’s settled case-law, a Member State may levy a registration tax on a vehicle made available to a person residing in that State by a company established in another Member State when that vehicle is intended to be used essentially in the first Member State on a permanent basis or is in fact used in that way (order of 27 June 2006, van de Coevering, C?242/05, EU:C:2006:430, paragraph 24 and the case-law cited).

73

On the other hand, if the conditions set out in the previous paragraph are not satisfied, the connection with the territory of the first Member State is weaker, so that another justification for the taxation is necessary (see, to that effect, judgments of 15 September 2005, Commission v Denmark, C?464/02, EU:C:2005:546, paragraph 79, and of 26 April 2012, van Putten, C?578/10 to C?580/10, EU:C:2012:246, paragraph 47, and order of 27 June 2006, van de Coevering, C?242/05, EU:C:2006:430, paragraph 26).

74

Even if such a justification, founded on an overriding reason in the public interest, exists, it is also necessary for the tax to comply with the principle of proportionality (see, to that effect, order of 27 June 2006, van de Coevering, C?242/05, EU:C:2006:430, paragraphs 22 and 27, and judgment of 26 April 2012, van Putten, C?578/10 to C?580/10, EU:C:2012:246, paragraph 53).

75

In the present instance, it is apparent from the documents before the Court that, under Irish law, an Irish resident who imports a vehicle into Ireland must, within 30 days of the vehicle's arrival in Ireland, register the vehicle and pay the registration tax relating to it. That tax is calculated, in accordance with sections 132 and 133 of the Finance Act 1992, on the basis of the open market selling price of the vehicle and its level of carbon dioxide emissions. It is also apparent from the documents before the Court that that tax may, so far as concerns the most polluting vehicles, come to 36% of their open market selling price.

76

Such an obligation to register and to pay the full amount of registration tax also concerns residents who import into Ireland a vehicle rented or leased in another Member State, including when the duration of the rental or lease is limited and known in advance. It is common ground between the parties that the duration of the rental or leasing contract is not taken into account when calculating the amount of the tax.

77

Irish residents who rent or lease a vehicle in another Member State, even for a limited period that is known in advance, must therefore pay an amount of tax identical to that applicable where the vehicle is imported permanently.

78

Such an obligation is liable to render the rental or leasing of vehicles from a company established in another Member State more onerous than when the rental or leasing contract is entered into with a company established in Ireland, in the light, in particular, of the discriminatory nature of such an obligation with respect to amortisation of the tax, to the detriment of rental or leasing undertakings established in another Member State (see, to that effect, judgment of 21 March 2002, Cura Anlagen, C?451/99, EU:C:2002:195, paragraph 69, and order of 29 September 2010, VAV-Autovermietung, C?91/10, not published, EU:C:2010:558, paragraph 20).

79

It is true that vehicles leased or rented from companies established in Ireland are also subject to payment of the registration tax when they are first registered in Ireland. However, whilst the view may be taken that part of that tax may be incorporated in the rental or leasing price of vehicles rented or leased from companies established in Ireland, the fact remains that, in the case of vehicles leased or rented from companies established in another Member State, it is the full amount of registration tax that must be paid.

80

The finding that the obligation to pay the full amount of registration tax is liable to render the rental or leasing of vehicles from a company established in another Member State more onerous than that from a company established in Ireland is not called into question by the fact that, under section 135D of the Finance Act 1992, part of the registration tax may, under the conditions laid down in that article, be refunded.

81

Even though Ireland contests certain calculations made by the Commission, it concedes that the amount of registration tax levied initially may be more than double the amount of registration tax finally payable after a refund. As the Advocate General has observed in point 42 of his Opinion, such an approach entails the freezing of substantial funds and therefore represents a considerable cash-flow disadvantage for the person liable to pay the tax.

82

The obligation to pay in advance the full amount of registration tax is, therefore, liable to deter both Irish residents from calling on vehicle rental or leasing services offered by service providers established in other Member States and those service providers from offering vehicle rental or leasing services to Irish residents. Such an obligation thus constitutes a restriction on the freedom to provide services, prohibited, in principle, by Article 56 TFEU.

83

As regards whether such a restriction is justified, it should be noted that the situations which are covered by the present action, in which the duration of the rental or lease is limited and known in advance, correspond for the most part to those where the vehicle is not intended to be used essentially in a Member State on a permanent basis and is not in fact used in that way.

84

It is true that rental or leasing contracts may be extended, with the effect, in that case, that the use of vehicles rented or leased in a Member State other than Ireland draws closer to the use of vehicles in Ireland on a permanent basis. However, as the Advocate General has observed in point 57 of his Opinion, Irish law does not make a distinction on the basis of the duration or substance of the contract underlying the use of the vehicle in Ireland, which would enable the full amount of registration tax to be applied only to situations that are similar to permanent use. Furthermore, as the Commission has rightly pointed out, an extension of a fixed-term contract cannot be presumed.

85

Regarding justification for the aforesaid restriction on the freedom to provide services, Ireland submits, first, that the choice of the tax base for the registration tax and of the detailed rules governing its application falls, in the absence of harmonisation of vehicle taxation in the European Union, within its fiscal sovereignty and that the Commission seeks, by the action it has brought, to compel it to alter those matters in order to achieve harmonisation of the bases of taxation of vehicles in the European Union.

86

As is clear from the case-law recalled in paragraph 71 of the present judgment, whilst the Member States are free to exercise their powers of taxation in the area of vehicle taxation, they are nonetheless required to so in compliance with EU law.

87

The fact that vehicle taxation falls within Ireland's competence cannot therefore justify the restriction on the freedom to provide services.

88

Secondly, so far as concerns the objectives of the registration tax at issue as noted in paragraph 59 of the present judgment, it should be pointed out that the objectives concerning compensating for the costs, generated by the use of vehicles, relating to road infrastructure, traffic control, emergency services and registration services which, according to Ireland, constitute the basis for introducing that tax nevertheless cannot justify the obligation to pay in advance the full amount of registration tax irrespective of the duration of the vehicle's use in Ireland.

89

Purely economic objectives cannot constitute an overriding reason in the public interest justifying a restriction on the freedom to provide services (see, to that effect, judgments of 15 April 2010, CIBA, C?96/08, EU:C:2010:185, paragraph 48 and the case-law cited, and of 24 March 2011, Commission v Spain, C?400/08, EU:C:2011:172, paragraph 74).

90

On the other hand, the overriding reasons in the public interest recognised by the Court include environmental protection (see, to that effect, judgments of 11 March 2010, Attanasio Group, C?384/08, EU:C:2010:133, paragraph 50 and the case-law cited, and of 24 March 2011, Commission v Spain, C?400/08, EU:C:2011:172, paragraph 74). In particular, discouraging the leasing or rental of vehicles with heavy fuel consumption may have a public-interest objective (see, to that effect, judgment of 21 March 2002, Cura Anlagen, C?451/99, EU:C:2002:195, paragraph 68).

91

It must, however, be verified, whether the Irish system of registration tax, consisting in the obligation to pay the full amount of that tax, coupled with a refund mechanism, observes the principle of proportionality.

92

It is necessary at the outset to reject as unfounded Ireland's argument that the Court's case-law, in particular the order of 27 June 2006, van de Coevering (C?242/05, EU:C:2006:430), and the judgment of 26 April 2012, van Putten (C?578/10 to C?580/10, EU:C:2012:246), support the conclusion in the present instance that the principle of proportionality is complied with.

93

It is sufficient to note that those judicial decisions were made in a context of national systems not providing for a refund of registration tax upon export of the vehicle outside the Member State concerned.

94

It cannot therefore be asserted that the Court adopted a position in those judicial decisions on the question whether national legislation which both requires payment of the full amount of registration tax, without regard to the duration of the use, in the Member State in question, of the vehicle rented or leased in another Member State, and provides for a possibility of part of the tax being refunded when the vehicle's use in the first Member State comes to an end observes the principle of proportionality, as that question was not examined by the Court in those decisions.

95

On the other hand, as Ireland moreover acknowledges, the Court ruled in the order of 29 September 2010, VAV-Autovermietung (C?91/10, not published, EU:C:2010:558), on the compliance with EU law of national legislation under which a person residing or established in one Member State who uses in that Member State a motor vehicle registered and hired in another Member State must, upon the first use of that vehicle on the road network of the first Member State, pay the full amount of a tax the balance of which, calculated according to the duration of the use of the vehicle on that network, is reimbursed, without interest, after that use has ended. After having recalled that, in order to be consistent with the principle of proportionality, the amount of such a tax must be calculated by taking account of the duration of the contract for hiring the vehicle concerned or the duration of its use on the road network in question and having found that, in the case in point, that legislation required payment of the full amount of the tax without taking account of the duration of the contract for hiring the vehicle or that of its use on the road network of the Member State concerned, the Court held that that legislation did not comply with EU law, in particular Articles 56 to 62 TFEU (see, to that effect, order of 29 September 2010, VAV-Autovermietung, C?91/10, not published, EU:C:2010:558, paragraphs 26, 27 and 30).

96

In the present instance, as is clear from the documents before the Court, the amount of registration tax is calculated on the basis of the open market selling price of the vehicle at the time of import and of its level of carbon dioxide emissions.

97

It follows that, at the time of registration, the Irish system of registration tax seeks to achieve the objective of protecting the environment principally by means of applying a rate of taxation which depends on the level of carbon dioxide emissions. To that extent, such a system is appropriate for attaining that objective, by discouraging the rental or leasing of vehicles with heavy fuel consumption.

98

On the other hand, at the time of registration, the amount of registration tax is determined without regard to the duration of the use of the vehicle and, in the case of vehicles imported from another Member State, irrespective of whether they are imported permanently or temporarily.

99

That being so, so far as concerns vehicles rented or leased from a company established in another Member State for a period that is determined and known in advance, the obligation to pay the full amount of registration tax goes beyond what is necessary in order to achieve the objective of protecting the environment. Those vehicles, whose use in Ireland is envisaged for a limited period, are taxed at the time of registration on the basis of their potential polluting impact as if they were vehicles used permanently and over a long period in Ireland. Since the duration of their use in Ireland is limited and known in advance, a less restrictive measure could consist in levying, at the time of their registration, a registration tax proportionate to the duration of that use.

100

Ireland submits, however, that its system of registration tax has the object and effect that vehicle taxation reflects the vehicles' actual use in Ireland as is required by the Court's case-law resulting from the order of 27 June 2006, van de Coevering (C?242/05, EU:C:2006:430, paragraph 29).

101

As to that submission, it must, however, be pointed out, as the Commission has contended, that a system providing for the levying, at the time of registration, of a tax proportionate to the duration of the use of the vehicle imported into Ireland, as determined in the rental or leasing contract, would not be such as to affect Ireland's ability to provide that, when the vehicle is exported, the amount of tax may be the subject of adjustment, in the form, as the case may be, of a refund or of a claim for an additional amount, taking account of the vehicle's open market value at that time in the light, in particular, of its condition and the number of kilometres driven in Ireland during the period covered by the contract at issue.

102

Therefore, the introduction of an additional factor corresponding to the duration of use envisaged in Ireland at the time of initial payment of the registration tax would enable the objective of protecting the environment that is pursued to be achieved by means of a less restrictive measure, without calling into question the basis of taxation constituted by the vehicle's open market value and its level of carbon dioxide emissions.

103

Ireland submits, however, that establishment of a system founded on the initial payment of a registration tax proportionate to the duration of use envisaged in Ireland, followed by a balancing payment upon export, would entail the risk of losses of tax revenue and would result in very great practical difficulties, because, in particular, it is not possible to predict, at the time of import, what the exact amount of the export refund will be and because the actual use of the vehicle could differ considerably from the planned use. If the registration tax paid initially proves insufficient but the vehicle has already been exported outside Ireland, the lessor and the owner of the vehicle could fall outside Ireland's geographic tax jurisdiction. Ireland adds that, since establishment of the system proposed by the Commission would require the same technical examination to be carried out as that in force and, subsequently, would give rise to the same administrative costs, it is to be feared that, where additional registration tax is payable, certain taxpayers will seek to avoid those costs and the additional registration tax, by not reporting an extension of the duration of the rental or leasing contract to the Irish authorities.

104

It should, however, be recalled, first of all, that, according to settled case-law of the Court, the need to prevent the reduction of tax revenue is not an overriding reason in the public interest capable of justifying a restriction on the freedom to provide services (see, to that effect, judgment of 22 December 2010, Tankreederei I, C?287/10, EU:C:2010:827, paragraph 27 and the case-law cited). Also, administrative disadvantages are not of themselves sufficient to justify a barrier to the freedom to provide services (see, to that effect, judgments of 4 March 2004, Commission v France, C?334/02, EU:C:2004:129, paragraph 29; of 14 September 2006, Centro di Musicologia Walter Stauffer, C?386/04, EU:C:2006:568, paragraph 48; of 27 November 2008, Papillon, C?418/07, EU:C:2008:659, paragraph 54; and of 9 October 2014, van Caster, C?326/12, EU:C:2014:2269, paragraph 56).

105

Next, it must be pointed out that both the calculation of the registration tax to be paid and that of the registration tax to be refunded, as prescribed by the Finance Act 1992, are based on factors that are partly standardised. Consequently, there would be nothing to prevent Ireland from taking account of the duration of use envisaged in Ireland under a single standardised system, according to whether the envisaged duration of use is short, average or long.

106

As regards Ireland’s fear that, on expiry of the rental or leasing contract, the registration tax actually paid in advance will be less than that finally due, it should be pointed out that the obligation to pay the registration tax concerns Irish residents and that, for this reason, Ireland’s arguments that it might be impossible to recover the tax due are not founded. Furthermore, other measures, such as an obligation to declare any extension of the rental or leasing contract or registration limited to the planned period of use, could be envisaged.

107

Thus, by making it obligatory to pay the full amount of registration tax in advance, Irish law, despite the fact that it provides for part of the tax paid to be refunded, goes beyond what is necessary in order to achieve the objective of protecting the environment and, in particular, in order to deter the rental or leasing of vehicles with heavy fuel consumption.

108

Consequently, it must be held that, by imposing the obligation to pay in advance the full amount of the registration tax applicable in the event of permanent registration, whatever the actual duration of the proposed use in Ireland of the vehicle imported into that Member State, Ireland has failed to fulfil its obligations under Article 56 TFEU, since such an obligation, even coupled with the possibility of a refund, is not proportionate to the objective pursued by that tax, in cases where the duration of the lease or rental has been determined and is known in advance.

– The complaint relating to laying down disproportionate conditions for the refund of registration tax

109

By its second complaint, the Commission submits that, by laying down disproportionate conditions for the refund of the registration tax that must be paid in advance and in full, Ireland has infringed Article 56 TFEU.

110

In addition to what has been recalled in paragraph 35 of the present judgment, it should be noted as a preliminary point that examination of this second complaint remains relevant from the point of view of the measures which Ireland will be prompted to take to give due effect to the present judgment in relation to the merits of the complaint regarding the obligation to pay in advance the full amount of registration tax in cases where the temporary duration of the lease is determined and known in advance.

111

That having been explained, as has been found in paragraph 82 of the present judgment, the obligation to pay the full amount of registration tax is liable to deter both Irish residents from calling on vehicle rental or leasing services offered by service providers established in other Member States and those service providers from offering vehicle rental or leasing services to those Irish residents.

112

Where a procedure for refunding such a tax is provided for, the fact that that procedure is subject to disproportionate conditions is, in itself, such as to give rise to the same deterrent effect, irrespective of whether or not the temporary duration of the rental or lease may be determined precisely and known in advance.

113

In the present instance, among the arrangements for refunding registration tax that are provided for in section 135D of the Finance Act 1992, the Commission refers in particular to the lack of payment of interest and to the existence of additional costs connected with the technical examination of the vehicle and with the administration charge of EUR 500.

114

As regards, first, the Commission’s assertion that, as at the date of expiry of the period laid down in the additional reasoned opinion, registration tax was refunded without interest, Ireland contests the validity of such an assertion and refers for that purpose to section 135D(2)(b) of the Finance Act 1992, inserted into that act by the Finance Act 2014, which, in Ireland’s submission, permits the payment of interest.

115

However, it is sufficient to note in that regard, as has been found in paragraphs 66 and 67 of the present judgment, that, whilst that provision laid down the principle that interest is to be paid if part of the registration tax is refunded, actual application of that principle required implementing measures to be adopted, and that the latter entered into force after the period laid down in the additional reasoned opinion had expired.

116

Ireland’s arguments relating to the existence, on the relevant date for determining whether it has failed to fulfil its obligations, of a regime under which registration tax is refunded with interest are, consequently, entirely unfounded.

117

As Ireland does not contest the Commission’s complaint in so far as it relates to a refund without interest being disproportionate, it must be upheld to that extent. A system founded on the presumption that part of the registration tax paid initially will constitute an overpayment and will therefore have to be refunded, without the payment of interest on those sums being provided for, does not enable the cash-flow disadvantage caused by payment in advance of the full amount of tax to be alleviated. The failure to pay interest therefore does not comply with the principle of proportionality.

118

So far as concerns, secondly, the cost of the compulsory technical examination which the vehicle must undergo upon export and the payment of the sum of EUR 500 by way of an administration charge relating to the refund procedure, the Commission does not state specific reasons in support of its contention relating to the disproportionate nature of the cost of the technical examination.

119

Accordingly, the Court should confine itself to examining the contention relating to the disproportionate nature of the amount of the administration charge, set at EUR 500.

120

The obligation to pay a sum of EUR 500 by way of an administration charge is liable to deter a taxpayer from initiating the refund procedure and thus runs counter to the aim pursued by such a procedure.

121

Whilst, as Ireland submits, it cannot be ruled out that a payment for the individually rendered service may be claimed from the taxpayer, Ireland does not plead that the sum of EUR 500 would correspond to the costs relating to such a service and confines itself to justifying that sum by the overall costs relating to the setting up of the refund system.

122

As the Advocate General has observed in point 66 of his Opinion, where a Member State organises the levying of registration tax in such a way that refund of part thereof is inevitable in certain situations, the expenditure connected with the organisation of that system cannot be financed by deductions from amounts due to persons entitled to repayment.

123

The existence of a deduction of EUR 500, by way of an administration charge, from the amount of registration tax to be refunded therefore likewise does not comply with the principle of proportionality.

124

Consequently, it must be held that, by failing to provide for the payment of interest when registration tax is refunded and by deducting the sum of EUR 500 by way of an administration charge from the amount of registration tax to be refunded, Ireland has failed to fulfil its obligations under Article 56 TFEU.

Costs

125

Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Ireland has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Grand Chamber) hereby:

1.

Declares that, by imposing the obligation to pay in advance the full amount of the vehicle registration tax applicable in the event of permanent registration, whatever the actual limited duration of the proposed use in Ireland of a vehicle imported there, and although the temporary duration of the lease or rental has been determined precisely and is known in advance, Ireland has failed to fulfil its obligations under Article 56 TFEU;

2.

Declares that, by failing to provide for the payment of interest when vehicle registration tax is refunded and by deducting the sum of EUR 500 by way of an administration charge from the amount of registration tax to be refunded, Ireland has failed to fulfil its obligations under Article 56 TFEU;

3.

Orders Ireland to pay the costs.

Lenaerts

Tizzano

Bay Larsen

von Danwitz

Da Cruz Vilaça

Levits

Bonichot

Arabadjiev

Toader

Safjan

Jaraši?nas

Fernlund

Vajda

Rodin

Biltgen

Delivered in open court in Luxembourg on 19 September 2017.

A. Calot Escobar

Registrar

K. Lenaerts

President

(*1) Language of the case: English.