Case C-195/90 R

Commission of the European Communities
v
Federal Republic of Germany

(Transport — Road tax)

Order of the President of the Court, 28 June 1990 2715

Summary of the Order

Application for interim measures — Interim measures — Powers of the President under Article 84(2) of the Rules of Procedure
(EEC Treaty, Art. 186; Rules of Procedure, Art. 84(2))

ORDER OF THE PRESIDENT OF THE COURT
28 June 1990 *

In Case C-195/90 R

Commission of the European Communities, represented by Rolf Wägenbaur, Legal Adviser, and R. Gosalbo Bono, a member of the Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Legal Department, Wagner Centre, Kirchberg,

applicant,

* Language of the case: German.

Federal Republic of Germany,

defendant,

APPLICATION for an interim order suspending the operation of the Gesetz über Gebühren für die Benutzung von Bundesfernstraßen mit schweren Lastfahrzeugen (Law on charges for the use of Federal roads and motorways by heavy goods vehicles) of 30 April 1990,

THE PRESIDENT OF THE COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

1 By an application lodged at the Court Registry on 23 June 1990 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by enacting the Gesetz über Gebühren für die Benutzung von Bundesfernstraßen mit schweren Lastfahrzeugen (hereinafter referred to as 'the Gesetz über Gebühren') of 30 April 1990, the Federal Republic of Germany has failed to fulfil its obligations under Articles 76, 95 and 5 of the EEC Treaty.

2 By a separate document also lodged at the Court Registry on 23 June 1990 the Commission of the European Communities sought an interim order under Article 186 of the EEC Treaty that the Federal Republic of Germany should take the necessary measures to suspend the operation of the Gesetz über Gebühren until the Court had reached a decision in the main proceedings.

3 The Commission expressly requests the Court, pursuant to Article 84(2) of the Rules of Procedure, even before the observations of the opposite party have been

submitted, to make an order granting the application as a protective measure pending delivery of the final order in the proceedings for interim measures.

4 It is apparent from the documents that the Gesetz über Gebühren of 30 April 1990 will enter into force on 1 July 1990.

5 Article 1 of the Gesetz über Gebühren introduces a new road tax ('Straßenbenutzungsgebühr') payable, with certain exceptions, on all heavy goods vehicles whose licensed fully loaded weight exceeds 18 tonnes, regardless of their place of registration, which use Federal roads and motorways outside built-up areas.

6 The annual amount of the tax varies, according to the total loaded weight of the vehicle, from DM 1 000 to 9 000. Upon certain conditions the tax may be paid for specific periods of days (24 hours), weeks or months.

7 A certificate is issued for payment of the tax and must accompany the vehicle. The necessary checks are carried out *inter alia* by the police and customs officers; checks at frontiers between Member States may, however, only be by way of spot checks as part of other controls.

8 Article 2 of the Gesetz über Gebühren also amends the Kraftfahrzeugsteuergesetz (Law on Motor Vehicle Tax) and introduces for a limited period a reduced rate of motor vehicle tax payable on all vehicles according to a scale varying according to the vehicle's total weight up to a maximum of DM 3 500 per annum.

9 It is apparent from the documents before the Court that on 21 March 1989 a draft of the Gesetz über Gebühren was forwarded to the Commission for consultation pursuant to the Council Decision of 21 March 1962 instituting a procedure for prior examination and consultation in respect of certain laws, regulations and administrative provisions concerning transport proposed in Member States (Official Journal, English Special Edition, 1959-62, p. 96).

10 The Opinion delivered by the Commission on 15 June 1989 pursuant to the said decision points out that the proposed reduction in the motor vehicle tax would benefit only German carriers, since the carriers of other Member States are, as a result of bilateral agreements, exempt from that tax and the proposed reduction in the rate of the tax would be practically equivalent to the amount of the road tax contemplated. The introduction of the latter tax would thus in fact not constitute a burden upon German carriers but solely on carriers of other Member States who would be required to pay the road tax without having the benefit of a reduction in the motor vehicle tax.

11 The Commission concludes in its Opinion that the provisions contemplated by the Federal Republic of Germany infringe the 'standstill' obligation under Article 76 of the EEC Treaty, according to which, until a common transport policy as referred to in Article 75(1) has been established, no Member State may, without the unanimous approval of the Council, make the various provisions governing the subject when the Treaty enters into force less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State. According to the Opinion, the provisions contemplated were, in addition, contrary in particular to Article 95 of the EEC Treaty.

12 The draft law was adopted on 6 April 1990 whereupon the Commission sent formal notice to the Federal Republic of Germany on 11 April 1990 followed, on 1 June 1990, by the reasoned opinion provided for in Article 169(1) of the EEC Treaty.

13 In its replies of 30 April and 22 June 1990 to the formal notice and the reasoned opinion, the Federal Republic of Germany states that the object of the Gesetz für Gebühren is, first, to bring the motor vehicle tax, which is very high on heavy vehicles, into line with the European average and thus to harmonize the conditions of competition and, secondly, to increase the insufficient contribution made by foreign heavy goods vehicles to the cost of the German road infrastructure. The measures adopted are not contrary to Article 76 of the EEC Treaty, which does not lay down a standstill obligation but is a special provision prohibiting discrimination: neither the new road tax nor the reduction in motor vehicle tax is in itself discriminatory.

14 The Federal Republic of Germany states in the said replies that the road tax is in accordance with the guidelines proposed by the Commission itself in its proposal of 8 January 1988 for a Council directive on the charging of transport infrastructure costs to heavy goods vehicles and that the Gesetz über Gebühren is of limited duration and is to expire in 1993 if a harmonized system of taxation has been adopted by them.

15 In its application for interim measures the Commission alleges *inter alia* in relation to the need for urgency that the unilateral introduction of the road tax envisaged would constitute an unacceptable undermining of *ordre public* in the Community and would seriously disrupt the equilibrium of the transport market by threatening the survival of a considerable number of small and medium-sized transport undertakings established in the other Member States.

16 The Commission further states in its application that there is a danger of the introduction of the road tax provoking retaliatory measures on the part of the other Member States which would further aggravate the disturbance of the market and render illusory any progress towards achieving a common policy.

17 Pursuant to Article 84(2) of the Rules of Procedure, the President may grant an application for interim measures even before the observations of the opposite party have been submitted. The decision may be varied or cancelled even without any application being made by any party.

18 At the present stage of the proceedings when the Federal Republic of Germany has not yet been able to submit its full observations on the Commission's application for interim measures, it is not possible to decide whether the submissions of fact and law put forward by the Commission suffice to justify the grant of the interim measures which the Commission seeks.

19 However, the Commission's submissions are not prima facie without foundation and it cannot be excluded that the circumstances cited by the Commission establish the requisite urgency for the grant of the interim measures sought.

20 In those circumstances and in view of the particular circumstances of the proceedings, especially the imminence of the entry into force of the Gesetz über Gebühren, it appears necessary, in the interests of the proper administration of justice, that the status quo should be maintained for carriers of other Member States pending a decision on the application for interim measures. It should therefore be ordered, as a protective measure, that the Federal Republic of Germany suspend the charging of the road tax provided for in the Gesetz über Gebühren of 30 April 1990 in respect of vehicles registered in other Member States pending delivery of the final order in these proceedings for interim measures.

On those grounds,

THE PRESIDENT

hereby orders as follows:

(1) As a protective measure, the Federal Republic of Germany shall suspend the charging of the road tax provided for in the Gesetz über Gebühren für die Benutzung von Bundesfernstraßen mit schweren Lastfahrzeugen of 30 April 1990 in respect of vehicles registered in other Member States pending delivery of the final order in these proceedings for interim measures.

(2) Costs are reserved.

Luxembourg, 28 June 1990.

J.-G. Giraud
Registrar

O. Due
President