JUDGMENT OF THE COURT (Sixth Chamber)
11 December 1997 *

In Case C-8/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal de Grande Instance de Tours (France) for a preliminary ruling in the proceedings pending before that court between

Locamion SA

and

Directeur des Services Fiscaux d'Indre-et-Loire

on the interpretation of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412), as amended by Council Directive 73/79/EEC of 9 April 1973 varying the field of application of the reduced rate of capital duty provided for in respect of certain company reconstruction operations by Article 7(1)(b) of the directive concerning indirect taxes on the raising of capital (OJ 1973 L 103, p. 13), by Council Directive 73/80/EEC of 9 April 1973 fixing common rates of capital duty (OJ 1973 L 103, p. 15), by Council Directive 74/553/EEC of 7 November 1974 amending Article 5(2) of Directive 69/335 (OJ 1974 L 303, p. 9), and by Council Directive 85/303/EEC of 10 June 1985 amending Directive 69/335 (OJ 1985 L 156, p. 23),

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm (Rapporteur), President of the Chamber, G. F. Mancini, P. J. G. Kapteyn, J. L. Murray and G. Hirsch, Judges,

Advocate General: G. Cosmas,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Locamion SA, by Jean-Claude Cavaillé, of the Lyons Bar,

— the French Government, by Catherine de Salins, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Frédéric Pascal, seconded to that directorate from the central administration, acting as Agents,

— the Commission of the European Communities, by Hélène Michard and Enrico Traversa, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Locamion SA, the French Government and the Commission at the hearing on 5 December 1996,

after hearing the Opinion of the Advocate General at the sitting on 20 February 1997,

gives the following

Judgment

1 By judgment of 4 January 1996, received at the Court on 15 January 1996, the Tribunal de Grande Instance (Regional Court), Tours, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412), as amended by Council Directive 73/79/EEC of 9 April 1973 varying the field of application of the reduced rate of capital duty provided for in respect of certain company reconstruction operations by Article 7(1)(b) of the directive concerning indirect taxes on the raising of capital (OJ 1973 L 103, p. 13), by Council Directive 73/80/EEC of 9 April 1973 fixing common rates of capital duty (OJ 1973 L 103, p. 15), by Council Directive 74/553/EEC of 7 November 1974 amending Article 5(2) of Directive 69/335 (OJ 1974 L 303, p. 9), and by Council Directive 85/303/EEC of 10 June 1985 amending Directive 69/335 (OJ 1985 L 156, p. 23; hereinafter 'the Directive').

2 Those questions were raised in proceedings between Locamion SA (hereinafter 'Locamion') and the Directeur des Services Fiscaux d'Indre-et-Loire (Head of the Indre-et-Loire Tax Office) concerning payment of the regional charge on vehicle registration certificates (hereinafter 'the registration charge').

3 The Directive is aimed in particular at achieving harmonization of the factors involved in the fixing and levying of capital duty in the Community, by means of the elimination of tax obstacles which interfere with the free movement of capital.

4 Article 4(1) of the Directive lists the transactions which are subject to capital duty, one of which is an increase in the capital of a capital company by contribution of assets of any kind (point (c)).

5 Pursuant to Article 7 of the Directive, as amended by Directive 85/303, the transaction whereby a capital company transfers all its assets and liabilities to another capital company which is in the process of being formed or which is already in existence is totally exempt from capital duty.

6 The Directive also provides, in accordance with the final recital in its preamble, for the abolition of other indirect taxes with the same characteristics as capital duty or stamp duty on securities, the retention of which might frustrate the purpose of the measures provided for in the Directive. Those indirect taxes, collection of which is prohibited, are listed in Articles 10 and 11 of the Directive. Article 10 provides:

'Apart from capital duty, Member States shall not charge, with regard to companies, firms, associations or legal persons operating for profit, any taxes whatsoever:

(a) in respect of the transactions referred to in Article 4;

(b) in respect of contributions, loans or the provision of services, occurring as part of the transactions referred to in Article 4;

(c) in respect of registration or any other formality required before the commencement of business to which a company, firm, association or legal person operating for profit may be subject by reason of its legal form'.

7 Article 12(1) of the Directive sets out an exhaustive list of taxes and duties other than capital duty which, notwithstanding Articles 10 and 11, may affect capital companies in connection with the transactions referred to in the latter provisions (see, to that effect, Case 36/86 *Ministeriet for Skatter og Afgifter* v *Dansk Sparinvest* [1988] ECR 409, paragraph 9, and Joined Cases C-71/91 and C-178/91 *Ponente Carni and Cispadana Costruzioni* [1993] ECR I-1915, paragraph 24).

8 As regards the French legislation applicable in the main proceedings, Article R-113 of the Code de la Route (Highway Code) provides that the new owner of a vehicle must, if he wishes to use it on the road, arrange for a registration certificate to be issued in his name within 15 days of the date of transfer of ownership recorded in the log book, by applying to the Prefect of the *département* in which he is resident.

9 The issue of a registration certificate is subject, *inter alia*, to payment of the registration charge provided for by Article 1599(n) et seq. of the Code Général des Impôts (General Tax Code).

10 Article 1599(n) provides:

'A charge shall be payable for the benefit of the Regions on vehicle registration certificates issued within their respective territorial areas, which may be a *pro rata* or a flat-rate charge, according to the provisions laid down by Articles 1599(o) to 1599(r).

The basis of assessment for the said charge and the manner in which it is collected shall be the same as for stamp duty.'

11 Pursuant to Article 1599(o), the issue of registration certificates for automobiles and all other motor vehicles is subject to payment of a proportional charge, of which the rate per unit of horse power, laid down by the Region concerned, is determined each year by decision of the Regional Council. The unit rate is reduced by one-half for commercial vehicles with a total authorized weight when loaded exceeding 3.5 tonnes, non-agricultural tractors and motorcycles. Lastly, in both cases, the rate is reduced by one-half for vehicles which are more than 10 years old.

12 According to the order for reference, by resolution of its extraordinary general meeting of 30 June 1992, Locamion proceeded to carry out a merger which involved taking over France Location. This entailed the transfer of all that company's assets and liabilities to Locamion, including a large fleet of vehicles.

13 As the purchaser of those vehicles, Locamion applied to the Prefect of the *département* in which its Tours establishment is located for the 1 698 vehicles which it had just acquired as a result of the aforementioned transaction to be registered in its name. Following the issue of the 1 698 log books, Locamion was asked to pay FF 2 391 761.

14 Locamion claimed reimbursement of that sum on the ground that the registration charge was contrary to the Directive. By decision of 26 January 1994 the Directeur des Services Fiscaux d'Indre-et-Loire rejected that claim.

15 Locamion thereupon brought proceedings against the latter before the Regional Court for reimbursement of the charges paid, less the fixed charge corresponding to the *pro rata* unit rate, on the ground that the levying of the proportional registration charge in connection with a merger is incompatible with the Directive.

16 The Regional Court decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Articles 4 and 7 of Council Directive 69/355/EEC of 17 July 1969 be interpreted as meaning that the Directive applies to the merger/take-over transactions defined by Articles 371 to 372-2 of Law No 66.537 of 24 July 1966 on commercial companies?

(2) Is the levying by the French State of a proportional charge on the drawing-up of registration certificates following a merger/take-over transaction compatible with the prohibition laid down by Article 10 of the Directive and, if not, is it covered by the provisions of Article 12?'

17 By letters lodged at the Court Registry on 20 March and 7 April 1997 — that is, after the Advocate General had delivered his Opinion — Locamion submitted observations on certain points which, in its view, had not been sufficiently developed in the order for reference or in the parties' written and oral pleadings. Locamion makes no formal request that the proceedings be reopened, deferring to the wisdom of the Court of Justice.

18 Pursuant to Article 61 of its Rules of Procedure, the Court does not consider it necessary in the present case to reopen the oral procedure.

19 As regards the first question, all the parties who have lodged written observations maintain that merger/take-over transactions are covered by the Directive. They refer in that connection to the judgment in Joined Cases C-197/94 and C-252/94 *Bautiaa and Société Française Maritime* [1996] ECR I-505.

20 It is clear from paragraph 34 of the judgment in *Bautiaa and Société Française Maritime* that the merger transactions at issue in that case constituted an increase in the capital of a capital company by contribution of assets of any kind, within the meaning of Article 4(1)(c) of the Directive, in the particular circumstances referred to in Article 7(1)(b), that is to say, the transfer by one or more capital companies of all of their assets and liabilities to one or more capital companies which are in the process of being formed or which are already in existence.

21 However, the facts related to the Court in the order for reference do not enable it to be determined with a sufficient degree of precision whether the merger/take-over transaction at issue in the main proceedings may be regarded as having entailed an increase in Locamion's capital, as required by Article 4(1)(c) of the Directive.

22 It is clear from the first resolution recorded in the minutes of Locamion's general shareholders' meeting of 30 June 1992 that at the time the company already owned all the shares in the company taken over. That is why it was decided that the merger would not lead to an increase in Locamion's capital.

23 This would appear to suggest, however, that the 1992 merger/take-over transaction constitutes the result of a prior increase in Locamion's capital effected in 1991, when all the shares in France Location were transferred to Locamion, so that the two transactions can be viewed together as a single transaction carried out in two stages.

24 In those circumstances, given the lack of sufficient information regarding the characteristics of the transaction at issue in the main proceedings, it is appropriate to consider the second question on the assumption that the transaction in question is a merger/take-over covered by the Directive.

25 By its second question, the national court essentially asks whether Article 10 of the Directive is to be interpreted as precluding a tax such as the registration charge and, if so, whether Article 12 of the Directive authorizes the levying of that charge.

26 It should be borne in mind that indirect taxes with the same characteristics as capital duty fall within the scope of Article 10 of the Directive.

27 So far as concerns Article 10(a) of the Directive, it must be determined whether the registration charge in effect taxes, directly or indirectly, a transaction which, pursuant to Articles 4(1)(c) and 7(1) of the Directive, must in principle be exempted from all capital duty.

28 The levying of the registration charge is governed by different rules, depending on the situation which gives rise to the issue of a registration certificate. If levied on a transfer, the charge is *pro rata*, but in the majority of other cases, only a fixed unit rate is applied.

29 Accordingly, Locamion and the Commission maintain that, in the present case, the event which gives rise to the proportional registration charge is the merger/takeover transaction, with the result that the charge constitutes a financial charge which indirectly taxes the raising of capital and is therefore caught by the prohibition laid down by Article 10 of the Directive.

30 It should be noted that, in contrast to the view taken by Locamion and the Commission, the event giving rise to the registration charge is the issue to the owner of

a vehicle of a document which is necessary if that vehicle is to be used on the road. It is clear from Article R-113 of the Code de la Route that where a vehicle is acquired and then re-sold without meanwhile being used on the road, no registration charge is payable.

31 It follows that the registration charge does not affect the transfer of vehicles to a capital company but, more specifically, their use on the road.

32 That conclusion is borne out, moreover, by an examination of the detailed rules for calculating the registration charge, which are fundamentally different from those governing the capital duty harmonized by the Directive. It is clear from Article 5 of the Directive that, in the case of the transactions referred to in Article 4(1)(a), (c) and (d), the duty is charged on the actual value of assets of any kind contributed. The registration charge, on the other hand, is calculated by reference to the type of vehicle, its capacity in terms of horsepower, its weight and its age.

33 Furthermore, the registration charge is not payable in respect of contributions, loans or provision of services, occurring as part of the transactions referred to in Article 4 of the Directive, within the meaning of Article 10(b) thereof, that is to say, transactions which contribute to the carrying out or completion of the transactions referred to in Article 4.

34 As to Article 10(c) of the Directive, it should be noted that the registration charge is unrelated to the legal form of the entity which owns the vehicles in respect of which the levy is due. It may just as well be a natural person as a legal person, or

a partnership as a capital company (see Case C-2/94 *Denkavit Internationaal and Others* [1996] ECR I-2827, paragraphs 23 to 26). The registration charge cannot therefore be linked to formalities to which companies may be made subject by reason of their legal form.

35 It follows that the characteristics of the registration charge differ from those of the taxes prohibited under Article 10 of the Directive.

36 Accordingly, there is no need to consider the second part of the question concerning Article 12 of the Directive.

37 The answer to the second question must therefore be that Article 10 of the Directive is to be interpreted as not precluding a tax such as the vehicle registration charge.

Costs

38 The costs incurred by the French Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Tribunal de Grande Instance de Tours by judgment of 4 January 1996, hereby rules:

Article 10 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 73/79/EEC of 9 April 1973 varying the field of application of the reduced rate of capital duty provided for in respect of certain company reconstruction operations by Article 7(1)(b) of the directive concerning indirect taxes on the raising of capital, by Council Directive 73/80/EEC of 9 April 1973 fixing common rates of capital duty, by Council Directive 74/553/EEC of 7 November 1974 amending Article 5(2) of Directive 69/335, and by Council Directive 85/303/EEC of 10 June 1985 amending Directive 69/335, must be interpreted as not precluding a tax such as the regional charge on vehicle registration certificates.

Ragnemalm Mancini Kapteyn

Murray Hirsch

Delivered in open court in Luxembourg on 11 December 1997.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber