Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

17 December 2015*

(References for a preliminary ruling — Free movement of goods — Tax provisions — Internal taxation — Customs duties of a fiscal nature — Charges having equivalent effect — Formalities connected with the crossing of frontiers — Article 30 TFEU — Article 110 TFEU — Directive 92/12/EEC — Article 3(3) — Directive 2008/118/EC — Article 1(3) — Not implemented in domestic law — Direct effect — Levying of a tax on motor vehicles at the time of their import into the territory of a Member State — Tax linked to registration and potential putting into circulation of the vehicle — Refusal to refund the tax where the vehicle is not registered)

In Case C-402/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Dioikitiko Efeteio Athinon (Administrative Court of Appeal, Athens, Greece), made by decision of 26 March 2014, received at the Court on 22 August 2014, in the proceedings

Viamar — Elliniki Aftokiniton kai Genikon Epicheiriseon AE

v

Elliniko Dimosio,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Second Chamber, acting President of the Third Chamber, C. Toader, E. Jarašiūnas (Rapporteur), C.G. Fernlund and K. Jürimäe, Judges,

Advocate General: M. Wathelet,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 September 2015,

after considering the observations submitted on behalf of:

— Viamar — Elliniki Aftokiniton kai Genikon Epicheiriseon AE, by D. Christodoulou, S. Panagopoulou, and K. Christodoulou, dikigoroi,

— the Greek Government, by G. Skiani and V. Stroumpouli and by A. Spyropoulos, acting as Agents,

— the European Commission, by D. Triantafyllou and M. Wasmeier, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: Greek.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 30 TFEU and 110 TFEU, and of Article 1(3) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2008 L 9, p. 12).

2 The reference has been made in the course of proceedings between Viamar — Elliniki Aftokiniton kai Genikon Epicheiriseon AE ('Viamar') and the Elliniko Dimosio (Greek State), represented by the Director of the Athens Customs Office (Telonio Athinon, 'the customs office') concerning the refusal to refund Viamar the registration taxes paid by it following the import of passenger vehicles into Greek territory.

Legal context

EU law

3 Under Article 3 of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such goods (OJ 1992 L 76, p. 1):

'1. This Directive shall apply at Community level to the following products as defined in the relevant Directives:

— mineral oils,

— alcohol and alcoholic beverages,

— manufactured tobacco.

...

3. Member States shall retain the right to introduce or maintain taxes which are levied on products other than those listed in paragraph 1 provided, however, that those taxes do not give rise to border-crossing formalities in trade between Member States.

...'

4 Directive 92/12 was repealed, with effect from 1 April 2010, by Directive 2008/118.

5 Recital 5 in the preamble to Directive 2008/118 states:

'In order to ensure free movement, taxation of goods other than excise goods should not give rise to formalities connected with the crossing of frontiers.'

6 Article 1(3) of Directive 2008/118 reads as follows:

'Member States may levy taxes on:

(a) products other than excise goods;

(b) the supply of services, including those relating to excise goods, which cannot be characterised as turnover taxes.

However, the levying of such taxes may not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.'

Greek law

7 Article 32(1) of Law No 2960/2001 on the National Customs Code (FEK A' 265, 'the National Customs Code'), which, by virtue of Article 131 thereof, is applicable by analogy to the charges levied on Community vehicles, provides:

'Sums wrongly collected by the customs offices shall be refunded without interest to the person entitled if the latter submits, within the strict time-limit of three (3) years from the date of assessment thereof, a relevant application to the competent customs authority, also enclosing the required supporting documentation.'

8 Article 121(1) of the National Customs Code is worded as follows:

'Passenger vehicles classified under tariff heading 87.03 of the Combined Nomenclature [Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1)] shall be subject to a registration tax levied on the taxable value determined pursuant to Article 126 hereof and Article 4 of Law 1573/1985 (FEK A' 201), …, as in force.'

9 Article 128 of the National Customs Code provides:

'1. The obligation to pay the registration tax arises:

for Community vehicles and those coming from a third country, upon their entry into Greece;

for vehicles manufactured in Greece, upon completion of their manufacture;

...

2. The registration tax shall become chargeable and shall be paid before the vehicles are put into circulation, and as regards the vehicles referred to in Articles 121, 122 ... of this Code: in the case of those transported or shipped from other Member States of the European Union (EU), not later than the 15th day of the month following the one on which the obligation to pay the tax arose ...'

10 Article 130 of the National Customs Code provides:

'...

2. For the purposes of establishing and collecting the registration tax, ... a special declaration must be submitted to the competent customs authority before the date on which the tax is chargeable and, in any event, before the issuance of the circulation permit.

...

5. After collection of the registration tax and other charges ... the competent customs authority shall issue proof of collection and a certificate of registration or clearance of the vehicle.

...'

11 Article 141(1) of the National Customs Code provides:

'Where the applicable provisions and the administrative acts adopted on the basis thereof refer to an excise duty on vehicles or a single additional special duty, this shall henceforth be understood as the registration tax.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 As is apparent from the order for reference, in the period from 2009 to 2012 Viamar imported into Greece 85 new passenger vehicles which had been manufactured in the Czech Republic.

13 Following the arrival of those vehicles in the port of Piraeus (Greece) and their being stored in a tax warehouse until completion of the customs clearance process, Viamar prepared and submitted to the competent customs authority the declaration provided for in Article 130 of the National Customs Code and then paid the registration tax that corresponded to each of those 85 vehicles, amounting to a total of EUR 141498.89.

14 The vehicles were never sold in Greece and were re-exported to Belgium, where they were finally sold and put into circulation after payment of the registration tax in Belgium. Thereafter, Viamar filed a request with the customs office seeking a refund of the registration tax paid in Greece, on the ground that the vehicles in question had never been registered or received registration plates in Greece.

15 By decision of 25 July 2012, the customs office, taking the view that the tax had been duly collected and that therefore it was impossible to apply Article 32 of the National Customs Code in order to grant the refund, dismissed the request. On 26 October 2012, Viamar instituted proceedings against that decision before the Dioikitiko Efeteio Athinon (Administrative Court of Appeal, Athens).

16 Viamar argues before that court that the registration tax at issue constitutes a charge having an equivalent effect to a customs duty, contrary to Article 30 TFEU. In its submission, should the Court find that that tax constitutes internal taxation within the meaning of Article 110 TFEU, it should, in order to comply with that article, apply equally to domestic and imported goods at the same stage of marketing by virtue of the same chargeable event. Viamar submits, however, that the collection of that tax, as a condition of completion of the import of a motor vehicle, constitutes a border-crossing formality and, therefore, an unlawful restriction on the free movement of goods. The obligation to pay the tax, which arises on the date on which a motor vehicle enters Greece, is therefore contrary to EU law.

17 The referring court considers that the registration tax at issue is a tax of a fiscal nature and must, accordingly, be examined either in the light of Article 30 TFEU as a charge having equivalent effect to a customs duty or in the light of Article 110 TFEU as a form of internal taxation.

18 It observes, however, that Article 30 TFEU applies only to taxes which are levied on goods due to the crossing of a border. It states in that regard that the chargeable event for the purposes of the registration tax at issue in the main proceedings is not the vehicles' crossing of the Greek border but rather their first registration in Greece for the purpose of their being used on the roads there, that the tax is charged pursuant to objective criteria and that it comes within the general scheme of internal taxation. It is therefore not a customs duty charged on imports or a charge having equivalent effect within the meaning of Article 30 TFEU.

19 The referring court observes that, according to the Court's settled case-law, registration taxes are regarded as forms of internal taxation within the meaning of Article 110 TFEU. However, the registration tax at issue here, which is levied on new motor vehicles, is not caught by the prohibitions laid down in Article 110 TFEU, since it does not have discriminatory or protective effect because, at the times of the facts in the main proceedings, no motor vehicles were manufactured in Greece.

20 The referring court adds that Article 1(3) of Directive 2008/118 has not been implemented in Greek law. Its question therefore concerns the issue whether that provision has direct effect and whether an individual may rely directly on the obligation it imposes on Member States not to levy a tax entailing formalities connected with the crossing of frontiers.

21 The referring court further queries whether the provisions of national law, under which the customs clearance certificate for EU motor vehicles imported into Greek territory is issued after collection of the registration tax, the payment obligation for which arises at the time those vehicles enter Greek territory, are compatible with the principle of the free movement of goods.

22 In those circumstances, the le Dioikitiko Efeteio Athinon (Administrative Court of Appeal, Athens) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 1(3) of [Directive 2008/118] legally sufficient in itself and complete/unconditional and sufficiently clear so that, although that particular provision of the directive has not been transposed into the national law of the Member State/the Greek State, it has direct effect and can be relied on by an individual who derives rights from it before the national courts, and the latter are required to take that provision into account?

(2) In any event, is Article 130(5) of the National Customs Code, in conjunction with Article 128(1) thereof — which provide that the customs clearance certificate for [EU motor] vehicles imported into the country is issued after collection of the registration tax, the obligation to pay which arises upon their entry into the country — compatible with Article 3(c) of the EEC Treaty, providing for the abolition of obstacles to the free movement of goods between Member States?'

Consideration of the questions referred

The first question

23 By its first question, the referring court asks, in essence, whether Article 1(3) of Directive 2008/118 must be interpreted as fulfilling the conditions for producing direct effect allowing an individual to rely on it before a national court in a dispute between that individual and a Member State.

24 As a preliminary point, it should be borne in mind that the period during which the motor vehicles at issue in the main proceedings were imported was the years 2009 to 2012. Directive 92/12 was thus applicable to part of those imports, as it was repealed by Directive 2008/118 only with effect from 1 April 2010. As the wording of Article 3(3) of Directive 92/12 is, in essence, identical to that of Article 1(3) of Directive 2008/118, the considerations set out below also hold true for Article 3(3) of Directive 92/12.

25 According to settled case-law of the Court, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied on before the national courts by individuals against the Member State where the State has failed to

transpose the directive into national law within the time-limit or has transposed it incorrectly (see judgment in *Stichting Natuur en Milieu and Others*, C-165/09 to C-167/09, EU:C:2011:348, paragraph 93 and the case-law cited).

26 In the present case, it is apparent from the order for reference, first, that Article 1(3) of Directive 2008/118 has not been implemented in Greek law. Nor is there anything in the case file submitted to the Court indicating that Article 3(3) of Directive 92/12 has been implemented.

27 Second, Article 1(3) of Directive 2008/118 is unconditional and sufficiently clear in that, without providing for any condition or making it necessary to adopt any further measures, it unequivocally obliges Member States to ensure that, when they levy taxes on goods other than excise goods and on supplies of services, it does not entail formalities connected with the crossing of frontiers in trade between Member States.

28 In the light of the foregoing, the answer to the first question is that Article 1(3) of Directive 2008/118 must be interpreted as fulfilling the conditions for producing direct effect allowing individuals to rely on it before a national court in a dispute between them and a Member State.

The second question

29 As a preliminary point, it should be noted that, in the context of the procedure established by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it (judgment in *Brasserie Bouquet*, C-285/14, EU:C:2015:353, paragraph 15 and the case-law cited).

30 In the present case, it is apparent from the grounds set out in the request for a preliminary ruling that the referring court's questions concern the interpretation of Directive 2008/118. However, as observed above in paragraph 24, given that the imports of the vehicles at issue in the main proceedings took place between 2009 and 2012, in other words both before and after that directive entered into force on 1 April 2010, Directive 92/12 is also applicable *ratione temporis* for the purposes of the dispute in the main proceedings.

31 It is also apparent from the request that the dispute in the main proceedings concerns the refusal by the competent national authorities to refund the registration tax paid by Viamar for the motor vehicles it imported into Greece but re-exported to another Member State without having either registered them or put them into circulation in Greece. The question thus arises, in order to resolve the dispute, as to whether EU law precludes such a practice by national authorities.

32 In those circumstances, the questions posed by the referring court must be regarded as asking, in essence, whether Articles 30 TFEU and 110 TFEU, as well as Articles 3(3) of Directive 92/12 and 1(3) of Directive 2008/118 must be interpreted as precluding a practice by a Member State, such as that at issue in the main proceedings, by which the registration tax collected upon import of motor vehicles originating from other Member States is not refunded when the vehicles concerned were never registered in that Member State and were re-exported to another Member State.

33 It should be remembered in that regard that, according to the Court's settled case-law, a tax levied by a Member State on the registration of motor vehicles for the purpose of being put into circulation in its territory is neither a customs duty nor a charge having equivalent effect to a customs duty within the meaning of Articles 28 TFEU and 30 TFEU. Such a tax is an internal tax and must therefore be examined in the light of Article 110 TFEU (judgment in *Tatu*, C-402/09, EU:C:2011:219, paragraph 32 and the case-law cited).

34 In the present case, the referring court states that the registration tax at issue in the main proceedings, provided for by Articles 121(1) and 128 of the National Customs Code, is levied on account of the first registration of motor vehicles in Greece for the purpose of being put into circulation in Greek territory, not on account of crossing the border into Greece.

35 In those circumstances, as rightly observed by the referring court, taxation such as the registration tax at issue in the main proceedings must be regarded as being internal taxation within the meaning of Article 110 TFEU and does not per se constitute a charge having equivalent effect to a customs duty within the meaning of Article 30 TFEU. The mere fact that such a tax must be paid before the vehicle can be registered in the Member State concerned is of no import in that regard (see, by analogy, judgment in *Brzeziński*, C-313/05, EU:C:2007:33, paragraphs 23 and 24).

36 The Court has held that Article 110 TFEU may not be relied on against internal taxation imposed on imported products where there is no similar or competing domestic production. In particular, it does not provide a basis for censuring the excessiveness of the level of taxation which the Member States might adopt for particular products, in the absence of any discriminatory or protective effect (judgments in *Commission* v *Denmark*, C-47/88, EU:C:1990:449, paragraph 10, and *De Danske Bilimportører*, C-383/01, EU:C:2003:352, paragraph 38).

37 In the present case, the referring court indicates that there is no domestic production of motor vehicles in Greece and that the provisions of the National Customs Code on registration tax do not distinguish between motor vehicles according to their origin or the nationality of their owners. Nor is there anything in the case file submitted to the Court indicating that the amount of the registration tax at issue in the main proceedings is such as to reduce the number of new motor vehicles imported and registered in Greece, thereby affecting the free movement of goods between Greece and other Member States through its protective effect.

38 Consequently, inasmuch as a tax such as the registration tax at issue in the main proceedings is charged by reason of the first registration of motor vehicles in Greece for the purpose of being put into circulation in Greek territory, Article 110 TFEU must be interpreted as not precluding such a tax.

39 As regards Directives 92/12 and 2008/118, motor vehicles are not included in the categories of excise goods in all Member States under Articles 3(1) of Directive 92/12 and 1(1) of Directive 2008/118 and therefore are not covered by the harmonised excise duty arrangements. Although Member States may introduce or maintain taxes on those goods, they must exercise their competence in that field in a manner consistent with EU law (see, to that effect, judgment in *Fendt Italiana*, C-145/06 and C-146/06, EU:C:2007:411, paragraphs 41 and 43 and the case-law cited).

40 Specifically, Member States must comply not only with the provisions of the FEU Treaty, in particular Articles 30 and 110, but also with Articles 3(3) of Directive 92/12 and 1(3) of Directive 2008/118, since the latter provisions, as observed in paragraph 27 above, prohibit the levying of a tax from entailing formalities connected with the crossing of frontiers in trade between Member States (see, to that effect, judgment in *Fendt Italiana*, C-145/06 and C-146/06, EU:C:2007:411, paragraphs 42 and 44).

41 In the present case it is apparent from the order for reference that the referring court is uncertain whether the provisions of the National Customs Code, under which the customs clearance certificate for vehicles imported into the Member State concerned is issued after the collection of the registration tax the payment obligation of which arises at the time those vehicles enter Greek territory, entail such formalities.

42 The Greek Government states in its written observations that all formalities relating to the charging and collection of the registration tax provided for by the National Customs Code are linked to the application of the provisions introducing that tax and are aimed, through the issuance of a customs

clearance certificate after collection of the tax, at ensuring payment of the amount corresponding to that tax and at facilitating checks that the tax has actually been paid in the event of a subsequent inspection. The same holds true for the obligation to file a special declaration under Article 130(2) of the National Customs Code, which concerns subsequent determination of the amount of the registration tax and is aimed at ensuring that customs authorities are informed of the entry of vehicles onto Greek territory.

43 That being so, the dispute in the main proceedings concerns a Member State's practice under which a registration tax collected upon import of motor vehicles originating from other Member States is not refunded even though the vehicles concerned were never registered into that Member State and were re-exported to another Member State.

44 It is appropriate to bear in mind in that regard the Court's case-law, according to which any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 28 TFEU and 30 TFEU (see judgments in *Nádasdi and Németh*, C-290/05 and C-333/05, EU:C:2006:652, paragraphs 38 and 39, and *Brzeziński*, C-313/05, EU:C:2007:33, paragraph 22 and the case-law cited).

45 Although a registration tax such as that provided for under the national rules at issue in the main proceedings has, in principle, as its chargeable event the registration of motor vehicles in a Member State and is, accordingly, internal taxation within the meaning of Article 110 TFEU, that ceases to be the case if it is collected and not refunded when vehicles imported from other Member States have never been registered in that Member State. In such a scenario, it is in reality collected solely by virtue of the crossing of a frontier of a Member State, thereby causing it to constitute a charge having equivalent effect to a customs duty, which is prohibited by Article 30 TFEU.

46 In the light of all the foregoing, the answer to the second question is that Article 30 TFEU must be interpreted as precluding a practice by a Member State, such as that at issue in the main proceedings, by which the registration tax collected upon import of motor vehicles originating from other Member States is not refunded when the vehicles concerned were never registered in that Member State and were re-exported to another Member State.

Costs

47 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 1(3) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC must be interpreted as fulfilling the conditions for producing direct effect allowing individuals to rely on it before a national court in a dispute between them and a Member State.**

2. **Article 30 TFEU must be interpreted as precluding a practice by a Member State, such as that at issue in the main proceedings, by which the registration tax collected upon import of motor vehicles originating from other Member States is not refunded when the vehicles concerned were never registered in that Member State and were re-exported to another Member State.**

[Signatures]