Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

21 November 2024*

(Reference for a preliminary ruling – Approximation of laws – Road transport – Tax provisions – Directive 1999/62/EC – Charging of heavy goods vehicles for the use of certain infrastructures – Penalties applicable to infringements of the national provisions adopted under that directive – Article 9a – Requirement of proportionality – National legislation penalising all offences by means of a flat-rate fine)

In Case C-61/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad – Haskovo (Administrative Court, Haskovo, Bulgaria), made by decision of 31 January 2023, received at the Court on 7 February 2023, in the proceedings

'Ekostroy' EOOD

v

Agentsia 'Patna infrastruktura',

interested party:

Okrazhna prokuratura – Haskovo,

THE COURT (Sixth Chamber),

composed of T. von Danwitz, Vice-President of the Court, acting as President of the Sixth Chamber, A. Kumin (Rapporteur) and I. Ziemele, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– 'Ekostroy' EOOD, by A.P. Petrova, advokat,

– the Bulgarian Government, by T. Mitova and S. Ruseva, acting as Agents,

* Language of the case: Bulgarian.

– the European Commission, by P. Messina and I. Zaloguin, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 9a of Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ 1999 L 187, p. 42), as amended by Directive 2011/76/EU of the European Parliament and of the Council of 27 September 2011 (OJ 2011 L 269, p. 1) ('Directive 1999/62').

2 The request has been made in proceedings between 'Ekostroy' EOOD, an undertaking established in Bulgaria, and Agentsia 'Patna infrastruktura' (Road Infrastructure Agency, Bulgaria; 'API'), concerning a financial penalty imposed on Ekostroy for the use of a section of motorway without having paid the required toll amount as well as the possible payment of a flat-rate compensatory road charge.

Legal context

European Union law

3 Recital 1 of Directive 1999/62 states:

'The elimination of distortions of competition between transport undertakings in the Member States calls for both the harmonisation of levy systems and the establishment of fair mechanisms for charging infrastructure costs to hauliers'.

4 The first paragraph of Article 1 of that directive provides:

'This Directive applies to vehicle taxes, tolls and user charges imposed on vehicles as defined in Article 2.'

5 Article 2 of that directive provides:

'For the purposes of this Directive:

…

(b) "toll" means a specified amount payable for a vehicle based on the distance travelled on a given infrastructure and on the type of the vehicle comprising an infrastructure charge and/or an external-cost charge;

…

(d) “vehicle” means a motor vehicle or articulated vehicle combination intended or used for the carriage by road of goods and having a maximum permissible laden weight of over 3,5 tonnes;

(e) vehicle of the “EURO 0”, “EURO I”, “EURO II”, “EURO III”, “EURO IV”, “EURO V”, “EEV” category means a vehicle that complies with the emission limits set out in Annex 0;

(f) “type of vehicle” means a category into which a vehicle falls according to the number of its axles, its dimensions or weight, or other vehicle classification factors reflecting road damage …

…’

6 Articles 7 to 7k of that directive relate, inter alia, to the principles and basic rules concerning the introduction and/or maintenance of a tolling system, user charges, charges and pricing.

7 According to Article 9a of Directive 1999/62:

‘Member States shall establish appropriate controls and determine the system of penalties applicable to infringements of the national provisions adopted under this Directive. They shall take all necessary measures to ensure that they are implemented. The penalties established shall be effective, proportionate and dissuasive.’

Bulgarian law

Law on administrative offences and penalties

8 Article 2(1) of the Zakon za administrativnite narushenia i nakazania (Law on administrative offences and penalties, DV No 92 of 28 November 1969), in the version applicable to the dispute in the main proceedings (‘the ZANN’), provides:

‘Acts which constitute administrative offences and the penalties to which they are subject shall be determined by a law or decree.’

9 Article 13 of the ZANN states:

‘(1) The following administrative penalties may be provided for and imposed in the event of an administrative offence:

…

(b) a fine;

…’

10 According to Article 15(1) of the ZANN, a fine is a penalty which consists in the payment of a specified sum of money.

11 Article 27 of the ZANN provides:

‘(1) The administrative penalty shall be determined in accordance with the provisions of this Law within the limits of the penalty laid down for the offence committed.

(2) In the determination of the penalty, account shall be taken of the gravity of the offence, the reasons for its commission and other mitigating and aggravating circumstances, as well as the financial situation of the offender.

(3) Mitigating circumstances shall lead to the imposition of a more lenient penalty, and aggravating circumstances to the imposition of a more severe penalty.

(4) Except in the cases provided for in Article 15(2), the penalties attached to offences may not be replaced by penalties of a more lenient nature.

(5) Other than in cases provided for by law, it shall also not be permissible to fix a penalty below the minimum amount provided for the penalties in the form of a fine or a temporary deprivation of the right to pursue a particular occupation or activity.’

12 Article 28(1) of the ZANN provides:

‘In the case of a minor administrative offence, the authority with power to impose penalties shall not impose any penalty on the offender, but shall issue that person with a written warning to the effect that if, within a period of one year from the date on which the warning takes effect, he or she commits another administrative offence of the same nature, constituting a minor case, an administrative penalty shall be imposed on him or her for that other offence. The authority with power to impose penalties shall, in issuing the warning, apply Article 20(2) to (4) and Article 21.’

13 Article 83(1) and (2) of the ZANN provides:

‘(1) In the cases provided for by the relevant law, decree, decision of the Council of Ministers or municipal ordinance, a financial penalty may be imposed on legal persons and sole traders for failure to fulfil their obligations to the State or the municipality in the exercise of their activities.

(2) The penalty referred to in the previous paragraph shall be imposed in accordance with the detailed rules laid down by this Law, in so far as the corresponding legislative act does not provide otherwise.’

14 Paragraph 1 of the Supplementary Provisions of the ZANN contains the following passage:

‘For the purposes of this Law:

1. “Electronic form” shall mean an electronic statement on a paper, magnetic or other type of medium, drawn up by means of a computerised administrative system on the basis of offence-related data received and processed by automated technical devices or systems.

…

4. "Minor case" shall mean a case in which the offence committed by a natural person or the failure to fulfil an obligation by a sole trader or by a legal person to the State or municipality represents a lesser degree of public danger as compared with ordinary cases of offence or failure to fulfil the type of obligation concerned, having regard to the absence or insignificant nature of the harmful effects or in the light of other mitigating circumstances.'

Law on Roads

15 Article 10 of the Zakon za patishtata (Law on Roads, DV No 26 of 29 March 2000), in the version applicable to the dispute in the main proceedings ('the ZP'), provides:

'(1) A mixed system of charging for the various categories of road vehicles, as well as charges calculated on the basis of duration and on the basis of the distance travelled, shall be introduced for the purpose of using the tolled road network:

1. a user charge relating to the tolled road network – a vignette for road vehicles under Article 10a(7); payment of the vignette shall grant a single road vehicle the right to use the tolled road network for a specified period;

2. a charge for the distance travelled – a toll for road vehicles under Article 10b(3); payment of the toll shall grant a single road vehicle the right to travel the distance between two points of the road or road section concerned, the distance travelled being calculated on the basis of the total amount of the various toll segments used by the road vehicle concerned, and the charges payable being determined on the basis of the total amount of the charges calculated for the toll segments concerned; the charge for the distance travelled shall be determined according to the technical characteristics of the road or road section, the distance travelled, the category of road vehicle, the number of axles and its environmental characteristics, and shall be determined in respect of each road or road section taken separately.

(2) Where the use of a road vehicle is detected on the tolled road network and the corresponding charge referred to in paragraph 1 has not been paid in respect of that vehicle, a redress charge may be paid by the driver of the road vehicle, its owner or a third party, who shall thereby be exempted from administrative criminal liability. In that case, all other persons who may bear such liability in respect of that road vehicle shall also be exempted from administrative criminal liability.

…

(6) The amount of the charges referred to in paragraphs 1, 2, 4 and 5 and in Article 10b(5) shall be determined by a scale adopted by the Council of Ministers on a proposal from the Minister for Regional Development and Public Works. The conditions and procedure for collecting the charges referred to in paragraphs 4 and 5 shall be determined by regulation of the Council of Ministers on a proposal from the Minister for Regional Development and Public Works. …

(7) The conditions, procedure and rules for the establishment and operation of a mixed system of charging for the various categories of road vehicles, calculated on the basis of the duration and distance travelled, shall be determined by a regulation of the Council of Ministers in accordance with the requirements of Directive [1999/62] and of Directive 2004/52/EC of the European Parliament and of the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community [(OJ 2004 L 166, p. 124)]. The regulation shall determine also the

conditions and procedure for collecting the charges referred to in paragraphs 1 and 2 and in Article 10b(5).

…’

16 Article 10b of the ZP provides:

‘(1) Tolls shall be differentiated according to the technical characteristics of the road or road section, the distance travelled, the category of road vehicle and the number of its axles as well as its environmental characteristics, and shall be determined in respect of each separate road or road section.

(2) The control of the road vehicle upon its entry into and exit from the tolled road network, the recording of the distance travelled by the vehicle and the payment of the toll shall be carried out by means of the Electronic toll system. …

(3) The toll shall be paid by the owner or user of the road vehicle in respect of all road vehicles with a technically permissible maximum total mass exceeding 3.5 tonnes, other than those referred to in Article 10a(9), and the payment of that toll shall grant the road vehicle for which it has been paid the right to travel a specified distance between two points.

(4) The amount of the toll payable shall be determined on the basis of the toll data actually obtained, certified in accordance with the rules laid down in the regulation referred to in Article 10(7), or by means of the purchase of a single route pass which shall grant the road user the right to travel a pre-declared distance on a specified road, and which shall be valid only in respect of the road vehicle the registration number of which has been correctly declared by the owner or user of the vehicle. The regulation referred to in Article 10(7) shall also determine the detailed rules for calculating and paying the toll payable.

(4a) Responsibility for incorrectly declared data in the route pass shall lie with the owner or user. In the event of incorrectly declared data as regards the registration number of the road vehicle, including as regards the State in which it is registered, or the period of validity of the route pass, the toll shall be deemed to be unpaid in respect of the road vehicle.

(5) Where it is not possible to establish the actual distance travelled for reasons unrelated to a technical malfunctioning of the Electronic toll system maintained by [API], the road vehicle concerned shall be deemed to have travelled a distance corresponding to the longest section between two points of the tolled road network, determined on the basis of the most direct route along the tolled road network, in which case the owner or user shall pay a maximum charge, as determined in the scale referred to in Article 10(6).

…’

17 Paragraph 1 of the Supplementary Provisions of the ZP contains the following passage:

‘Point 31. “Tolled road network” shall mean a system of roads and sections thereof, access to which is subject to the collection of a vignette or toll and which have been determined as such by the Council of Ministers pursuant to Article 10(3).

…

Point 35. “Toll segment” shall mean a specific part of a road or road section of the tolled road network, individualised by means of an identification number and the direction of traffic, access to which is subject to a toll according to the length of the toll segment and the rate determined in the scale referred to in Article 10(6) for the road or road section concerned.’

Law on Road Traffic

18 Article 102(2) of the Zakon za dvizhenieto po patishtata (Law on Road Traffic, DV No 20 of 5 March 1999), in the version applicable to the dispute in the main proceedings (‘the ZDP’), provides:

‘The owner is under an obligation not to authorise the use of a road vehicle on a road covered by the tolled road network in the event of failure to fulfil the obligations relating to that road vehicle linked to the determination of the amount and the payment of the corresponding charge under Article 10(1) of [the ZP] according to the category of the road vehicle. If a user of the vehicle is listed in the registration certificate, he or she shall fulfil the obligation.’

19 Article 167a of the ZDP states:

‘(1) [API] shall carry out controls regarding the payment of the corresponding charge under Article 10(1) of [the ZP] by means of the electronic toll system.

…

(3) The electronic toll system referred to in Article 10(1) of [the ZP] shall generate reports in respect of each offence detected under Article 179(3) to (3c), to which static images in the form of photographs and/or moving images [in the form of] video recordings shall be automatically attached. The reports, together with the static images in the form of photographs and/or moving images [in the form of] video recordings annexed thereto, shall constitute evidence for the circumstances they capture in relation to the road vehicle, the registration number plate, the date, time and place of use on a road section covered by the tolled road network, and the location of the technical device forming part of the system.

…’

20 Article 179 of the ZDP provides, in paragraphs 3 to 3b thereof:

‘(3) The driver of a road vehicle travelling on a road covered by the tolled road network, without having paid the charge payable under Article 10(1)(1) of [the ZP] in respect of that vehicle, shall be penalised by a fine of 300 [leva (BGN)].

(3a) The driver of a road vehicle in the category referred to in Article 10b(3) of [the ZP] travelling on a road covered by the tolled road network without the corresponding obligations relating to that vehicle concerning determination of the distance travelled having been fulfilled, in accordance with the requirements of [the ZP], in respect of the road section covered by the tolled road network which he or she has begun using, or who has not purchased a route pass for that network in accordance with the category of road vehicle, shall be penalised by a fine of BGN 1 800.

(3b) The owner of a road vehicle in the category referred to in Article 10b(3) of [the ZP] in respect of which the charge payable under Article 10(1)(2) of that law has not been paid, in whole

or in part, including as a result of an incorrect declaration of the data referred to in Article 10b(1) of that law, shall be penalised by a fine of BGN 2 500. If a user of the road vehicle has been registered, the fine shall be imposed on him or her. If the owner or registered user is a legal person, a financial penalty of BGN 2 500 shall be imposed on it.'

21 Article 187a(1) and (2) of the ZDP provides:

'(1) Where offences referred to in Article 179(3) to (3b) are established, in the absence of an offender, the road vehicle shall be deemed to have been driven by its owner, and, where a user of the vehicle is listed in the vehicle's registration certificate, by the user, unless it is established that the road vehicle was being driven by a third party.

(2) Where the owner of the road vehicle is a legal person or a sole trader that has allowed use of the road vehicle without the obligations relating to the determination of the amount and the payment of the corresponding charge referred to in Article 10(1) of [the ZP] having been fulfilled, the owner shall be liable to a financial penalty determined as follows:

1. under Article 179(3) – BGN 300;

2. under Article 179(3a) – BGN 1 800;

3. under Article 179(3b) – BGN 2 500.'

22 By virtue of Article 189h of the ZDP, offences under that law are not governed by Articles 28 and 58d of the ZANN.

Scale of charges for access to and use of the road network of the Republic

23 Article 27 of the scale of charges for access to and use of the road network of the Republic, adopted by Regulation of the Council of Ministers No 370 of 20 December 2019 (DV No 101 of 27 December 2019), in the version applicable to the facts in the main proceedings ('the scale of charges'), fixes the amount of the charge for the distance travelled in respect of which the use by road vehicles of the tolled road infrastructure is subject to payment. As regards motorways, that charge amounts to BGN 0.08 per km for a heavy goods vehicle in the EURO III category, with a technically permissible mass exceeding 12 tonnes and with two or three axles, and to BGN 0.16 per km for a heavy goods vehicle in that category but with four or more axles.

24 Article 28(1) of the scale of charges provides that, where the use of a road vehicle on the tolled road network is detected but the corresponding charge referred to in Article 10(1)(2) of the ZP has not been paid in accordance with Article 10b(3) of the ZP, the redress charge to be paid by the driver of the road vehicle registered in Bulgaria, its owner or a third party is to be BGN 750 where the vehicle is a heavy goods vehicle with a technically permissible maximum total mass exceeding 12 tonnes and with four or more axles.

25 According to Article 29(1) of the scale of charges, where it is not possible to establish the actual distance travelled for reasons unrelated to a technical malfunctioning of the electronic toll system, the road vehicle registered in Bulgaria is to be deemed to have travelled a distance corresponding to the longest section between two points of the tolled road network, determined on the basis of the most direct route along the tolled road network, in which case the owner or

user is to pay a maximum charge of BGN 167 where the vehicle is a heavy goods vehicle in the EURO III category with a technically permissible maximum total mass exceeding 12 tonnes and with four or more axles.

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

26 On 18 January 2022, the use of a heavy goods vehicle with a technically permissible maximum total mass of 44 tonnes, falling within the EURO III category, and with five axles, belonging to Ekostroy, was detected on a motorway covered by the tolled road network of Bulgaria. In accordance with Article 27 of the scale of charges, the amount of the charge for that type of vehicle is BGN 0.16 per km.

27 After noting that the actual technical characteristics of the vehicle checked did not correspond to those which Ekostroy had indicated on the same day in its toll declaration, namely a vehicle with only two axles, for which the charge is BGN 0.08 per km, API found an infringement of Article 102(2) of the ZDP.

28 By means of an electronic form, API imposed a financial penalty of BGN 2 500 on Ekostroy on the basis of Article 187a(2)(3) of the ZDP, read in conjunction with Article 179(3b) of that law. API also sought payment by Ekostroy of a road charge of BGN 167 under Article 10b(5) of the ZP, on the ground that it was not possible to establish the actual distance travelled by the vehicle. However, that form stated that it was possible for Ekostroy, under Article 10(2) of the ZP, to be exempted from the financial penalty and the road charge in return for payment, within 14 days of receipt of the electronic form, of a compensatory road charge of BGN 750.

29 Ekostroy contested the electronic form before the Rayonen sad – Svilengrad (District Court, Svilengrad, Bulgaria). By judgment of 12 July 2022, that court upheld API's decision and dismissed the action.

30 Ekostroy brought an appeal against that judgment before the referring court, the Administrativen sad – Haskovo (Administrative Court, Haskovo, Bulgaria).

31 That court has doubts as to whether the penalties provided for in Article 179(3) to (3b) of the ZDP, incurred in the event of failure to comply with the obligations referred to in the legislative acts transposing Article 9a of Directive 1999/62, namely a fine where the offender is a natural person and a financial penalty where the offender is a legal person, meet the requirements set out in the latter provision. It notes that that fine and the redress charge the payment of which exempts the offender from administrative criminal liability are also flat-rate.

32 The referring court specifies in that regard that it is not authorised to vary the amounts of the penalties provided for in Article 179(3) to (3b) of the ZDP according to the nature or gravity of the offence. It observes that Article 189h of that law prohibits it from fixing a more lenient penalty or from finding that an act constitutes a minor case in the light of the statutory rules, even where that is the case.

33 The referring court therefore does not consider itself to be in a position to carry out an assessment of the proportionality of those penalties or to take account of the various factors specific to each individual case, such as whether the charge due has not been paid in whole or in part, what distance was travelled without the charge being paid, or whether the offence was committed intentionally or negligently.

34 That court points out, however, that the system of penalties at issue in the main proceedings is different from the one at issue in the case which gave rise to the judgment of 22 March 2017, *Euro-Team and Spirál-Gép* (C-497/15 and C-498/15, EU:C:2017:229). In the first place, the legislation applicable in that case did not provide for any possibility of avoiding the imposition of a penalty by paying a 'redress charge' of an amount determined in a corresponding scale. In the second place, the Bulgarian legislation at issue in the main proceedings provides that, irrespective of the imposition of penalties, the natural or legal person concerned must pay the unpaid amount of the toll relating to the use of the road network. The referring court notes that, where it is not possible to establish the actual distance travelled, that amount is to be determined on the basis of a flat-rate maximum amount, at the rate referred to in Article 10(6) of the ZP; under Article 10b(5) of that law, the road vehicle concerned is to be deemed to have travelled a distance corresponding to the longest section between two points of the tolled road network, determined based on the most direct route along the tolled road network.

35 In that context, the Administrativen sad – Haskovo (Administrative Court, Haskovo) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 9a of [Directive 1999/62] be interpreted as meaning that the requirement laid down in that article that penalties for infringements of the national provisions adopted [under] that directive must be proportionate precludes national legislation, such as that at issue in the main proceedings, which provides for the imposition of a flat-rate fine [or financial penalty] … for infringements of the provisions relating to the obligation to ascertain and pay in advance a toll for the use of the road infrastructure, irrespective of the nature and gravity of the infringement, [given that there is] the option of being exempted from [administrative criminal] liability … through payment of a so-called "redress charge"?'

Consideration of the question referred

36 By its single question, the referring court asks, in essence, whether Article 9a of Directive 1999/62 must be interpreted as meaning that the requirement of proportionality to which it refers precludes a system of penalties that provides for the imposition of a flat-rate fine or financial penalty for all offences, whatever their nature and gravity, under the rules on the obligation to make prior payment of the toll for use of a road infrastructure, with the possibility of being exempted from those penalties by paying a flat-rate 'redress charge'.

37 Article 9a of Directive 1999/62 provides that Member States are to establish appropriate controls and determine the system of penalties applicable to infringements of the national provisions adopted under that directive, that they are to take all necessary measures to ensure that those penalties are implemented, and that the penalties established are to be effective, proportionate and dissuasive.

38 In the present case, the referring court confines itself to asking the Court of Justice about the scope of the principle of proportionality of penalties that is referred to in that provision.

39 In that regard, for the principle of proportionality to be implemented under Directive 1999/62, the Member States are required to adopt the legal measures needed in accordance with their national law, since Article 9a of the directive lays down an obligation which by its nature necessitates the intervention of a measure of those Member States, which have a wide margin of discretion when fulfilling that obligation (judgment of 4 October 2018, *Link Logistik N&N*, C-384/17, EU:C:2018:810, paragraph 51).

40 However, that directive does not contain more precise rules with regard to the establishment of those national penalties and, in particular, does not establish any express criterion for the assessment of the proportionality of such penalties (judgment of 4 October 2018, *Link Logistik N&N*, C-384/17, EU:C:2018:810, paragraph 52 and the case-law cited).

41 According to settled case-law, in the absence of harmonisation of EU legislation in the field of penalties applicable where conditions laid down by arrangements under that legislation are not complied with, Member States are empowered to choose the penalties which seem to them to be appropriate. They must, however, exercise that power in accordance with EU law and its general principles (judgment of 22 March 2017, *Euro-Team and Spirál-Gép*, C-497/15 and C-498/15, EU:C:2017:229, paragraph 39 and the case-law cited).

42 The principle of proportionality is one of the general principles of EU law which must be observed by any national legislation which falls within the scope of EU law or which implements that law, including in the absence of harmonisation of EU legislation in the field of sanctions applicable (judgment of 4 May 2023, *Agenția Națională de Integritate*, C-40/21, EU:C:2023:367, paragraph 49 and the case-law cited).

43 Thus, the measures imposing penalties permitted under the relevant national legislation must not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 22 March 2017, *Euro-Team and Spirál-Gép*, C-497/15 and C-498/15, EU:C:2017:229, paragraph 40 and the case-law cited). In particular, the severity of the penalty must be commensurate with the seriousness of the breach which it is intended to suppress (judgment of 4 May 2023, *Agenția Națională de Integritate*, C-40/21, EU:C:2023:367, paragraph 51 and the case-law cited).

44 As regards the objectives pursued by Directive 1999/62, it follows from recital 1 of that directive that they consist in both the harmonisation of levy systems and the establishment of fair mechanisms for charging infrastructure costs to hauliers, with a view to eliminating distortions of competition between transport undertakings in the Member States.

45 In that context, the Court has held that the severity of penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely deterrent effect, while respecting the general principle of proportionality (judgment of 22 March 2017, *Euro-Team and Spirál-Gép*, C-497/15 and C-498/15, EU:C:2017:229, paragraph 42 and the case-law cited).

46 Furthermore, Member States are required to comply with the principle of proportionality not only as regards the determination of factors constituting an infringement and the determination of the rules concerning the severity of fines, but also as regards the assessment of the factors which may be taken into account in the fixing of a fine (judgment of 22 March 2017, *Euro-Team and Spirál-Gép*, C-497/15 and C-498/15, EU:C:2017:229, paragraph 43 and the case-law cited).

47 Accordingly, that principle requires not only that the penalty imposed corresponds to the seriousness of the offence, but also that the individual circumstances of the particular case are taken into account in determining the penalty and fixing the amount of the fine (judgment of 4 October 2018, *Link Logistik N&N*, C-384/17, EU:C:2018:810, paragraph 45).

48 In the present case, Article 179(3) to (3b) of the ZDP provides, in the case of infringement of various substantive provisions of that law, for fines and financial penalties of a flat-rate amount, respectively, of BGN 300, BGN 1 800 and BGN 2 500.

49 In addition, as stated by the referring court, the ZDP does not authorise the court seised to vary the fines or financial penalties imposed, nor, inter alia, to reduce the flat-rate amounts thereof according to the nature or gravity of the offence committed. More specifically, the system of penalties at issue in the main proceedings does not allow account to be taken of the degree to which the wrongdoing was committed intentionally or negligently and, as is apparent from Article 189h of the ZDP, precludes in particular the application of mitigating circumstances, for which the ZANN in principle makes provision.

50 Accordingly, the only adjustment of fines that is provided for under that system relates to the category of the vehicle concerned, which is established on the basis of the number of its axles. However, such an adjustment, devoid of any connection with the conduct of the operator of the vehicle or its driver, fails to take account of the nature and gravity of the offence committed. Thus, in particular, the court seised cannot, when imposing the penalty, take into consideration the distance travelled by the vehicle without the driver having paid the amount of the required toll, since the amount of the fine penalising the failure to comply with the payment obligation is flat-rate and does not vary according to either the kilometres travelled without authorisation or whether or not the offender paid a toll in advance for a specified itinerary. Moreover, no adjustment is possible even if the distance can be calculated subsequently.

51 Furthermore, it should be recalled that, in accordance with the requirements of Directive 1999/62, set out inter alia in Articles 7 to 7k thereof, the system of road tolls at issue in the main proceedings has been designed in such a way that users' contributions to the maintenance of the infrastructure is proportional to its use and takes account of the emission class of the vehicle used. However, the absence of any possibility of adjusting the fines or financial penalties according to the gravity of the offence committed is likely to run counter to that principle of contribution.

52 Thus, subject to verification by the referring court, the system of penalties at issue in the main proceedings does not provide for any possibility for national courts to tailor the penalty to the individual case.

53 In those circumstances, the imposition of flat-rate fines or financial penalties for all breaches of certain obligations laid down by law, without adjustment of the amount of the fine or financial penalty in line with the seriousness of the breach, as provided for under the system of penalties at

issue in the main proceedings, appears to be disproportionate in the light of the objectives pursued by the EU legislation (see, to that effect, judgment of 22 March 2017, *Euro-Team and Spirál-Gép*, C-497/15 and C-498/15, EU:C:2017:229, paragraph 49 and the case-law cited).

54 The fact that, in the present case, the national legislation at issue in the main proceedings provides for the possibility of being exempted from the administrative criminal liability incurred by paying a 'redress charge' is not such as to alter the conclusion that such national legislation is contrary to EU law.

55 That 'redress charge' is fixed at a flat-rate amount of BGN 750 where the vehicle is a heavy goods vehicle with a technically permissible maximum total mass exceeding 12 tonnes and with at least four axles; moreover, that amount does not appear to be adjustable according to the gravity of the offence, which it is for the referring court to ascertain.

56 Furthermore, it appears from the documents before the Court that the amount of the 'redress charge' varies according to the type of vehicle. In such a case, subject to verification by the referring court, the rules relating to the 'redress charge' would also confirm the disproportionate nature of the system of penalties at issue in the main proceedings in the light of the objectives pursued by the EU legislation as referred to in paragraph 44 of the present judgment.

57 In the light of the foregoing considerations, the answer to the question referred for a preliminary ruling is that Article 9a of Directive 1999/62 must be interpreted as meaning that the requirement of proportionality to which it refers precludes a system of penalties that provides for the imposition of a flat-rate fine or financial penalty for all offences, whatever their nature and gravity, under the rules on the obligation to make prior payment of the toll for use of a road infrastructure, including where that system provides for the possibility of being exempted from administrative criminal liability by paying a flat-rate 'redress charge'.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Sixth Chamber) hereby rules:

Article 9a of Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, as amended by Directive 2011/76/EU of the European Parliament and of the Council of 27 September 2011,

must be interpreted as meaning that the requirement of proportionality to which it refers precludes a system of penalties that provides for the imposition of a flat-rate fine or financial penalty for all offences, whatever their nature and gravity, under the rules on the obligation to make prior payment of the toll for use of a road infrastructure, including where that system provides for the possibility of being exempted from administrative criminal liability by paying a flat-rate 'redress charge'.

[Signatures]