Reports of Cases

OPINION OF ADVOCATE GENERAL
BOBEK
delivered on 18 February 2016[1]

Case C-80/15

Robert Fuchs AG
v
Hauptzollamt Lörrach(Request for a preliminary ruling

from the Finanzgericht Baden-Württemberg (Finance Court, Baden-Württemberg, Germany))

(Customs Union and Common Customs Tariff — Notion of 'commercial use' of a means of transport — Inclusion of paid flights with a flight instructor))

I – Introduction

1. In this case, the claimant before the national court, Robert Fuchs AG ('Fuchs'), temporarily brings helicopters from Switzerland into the European Union's territory in order to give flight training. The dispute before the national court boils down to whether Fuchs can claim a temporary importation exemption from the payment of customs duties for those helicopters.

2. The national court's focus is on relief from duties for temporary admission of means of transport. That ground for relief is provided for under Article 558(1) of Commission Regulation (EEC) No 2454/93[2] which implements Council Regulation (EEC) No 2913/92[3] ('the Implementing Regulation' and 'the Customs Code' respectively).

3. In order to establish whether relief can be granted to Fuchs, the national court asks the Court of Justice to interpret the meaning of the expression 'commercial use' under Article 555(1)(a) of the Implementing Regulation. Specifically, the national court asks whether the notion of 'commercial use' covers the type of activity Fuchs is engaged in, namely, flight training.

1 — Original language: English.

2 — Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 2286/2003 of 18 December 2003 (OJ 2003 L 343, p. 1).

3 — Council Regulation of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

II – Legal framework

A – *International law*

1. The Istanbul Convention

4. The Convention on Temporary Admission, concluded on 26 June 1990 ('the Istanbul Convention'), was acceded to by the EEC by Council Decision 93/329/EEC.[4] According to Article 34 of that convention, the English and French texts of the Istanbul Convention are equally authentic.

5. Article 1(a) of Annex C to the Istanbul Convention defines 'means of transport' as 'any vessel …, hovercraft, aircraft, motor road vehicles and railway rolling stock …'. Article 1(b) of Annex C defines 'commercial use' as 'the transport of persons for remuneration or the industrial or commercial transport of goods, whether or not for remuneration'.[5] Article 1(c) of Annex C defines 'private use' as 'the transport exclusively for personal use by the person concerned excluding commercial use'.[6]

B – *EU law*

1. The Customs Code

6. Article 137 of the Customs Code provides for a procedure by which one can obtain relief from customs duties for temporary admission of goods into the EU.

7. The conditions for relief under the temporary admission procedure have been laid down in the Implementing Regulation in accordance with Article 141 of the Customs Code.

8. Article 204(1)(a) of the Customs Code provides that a customs debt will be incurred when obligations arising from the use of the relevant customs procedure have not been fulfilled.

2. The Implementing Regulation

9. Article 232 and Article 233 of the Implementing Regulation read together provide that 'means of transport referred to in Articles 556 to 561' are deemed to be declared for temporary importation by virtue of crossing the Union customs frontier.

4 — Council Decision 93/329/EEC of 15 March 1993 concerning the conclusion of the Convention on Temporary Admission and accepting its annexes (OJ 1993 L 130, p. 1).

5 — In French: 'l'acheminement des personnes à titre onéreux ou le transport industriel ou commercial des marchandises, que ce soit ou non à titre onéreux'.

6 — In French: 'l'utilisation par l'intéressé exclusivement pour son usage personnel, à l'exclusion de tout usage commercial'.

10. Chapter 5 of Title III of Part II of the Implementing Regulation is entitled 'Temporary Importation'. Section 2 of that chapter is entitled 'Conditions for total relief from import duties'. Section 2 is then divided into seven subsections, each listing different types of goods potentially eligible for relief. Subsection 1 of Section 2, entitled 'Means of transport', contains Articles 555 to 562. Article 555(1) defines the following terms:

'(1) For the purposes of this subsection:

(a) "commercial use" means the use of means of transport for the transport of persons for remuneration or the industrial or commercial transport of goods, whether or not for remuneration;

(b) "private use" means the use other than commercial of a means of transport;

(c) "internal traffic" means the carriage of persons or goods picked up or loaded in the customs territory of the Community for setting down or unloading at a place within that territory.'

11. Article 558(1) of the Implementing Regulation provides that:

'(1) Total relief from import duties shall be granted for means of road, rail, air, sea and inland waterway transport where they

(a) are registered outside the customs territory of the Community in the name of a person established outside that territory; however, if the means of transport are not registered, the above condition may be deemed to be met where they are owned by a person established outside the customs territory of the Community;

(b) are used by a person established outside that territory, without prejudice to Articles 559, 560 and 561; and

(c) in the case of commercial use and with the exception of means of rail transport, are used exclusively for transport which begins or ends outside the customs territory of the Community; however, they may be used in internal traffic where the provisions in force in the field of transport, in particular those concerning admission and operations, so provide.'

III – Facts, procedure and questions referred

12. Fuchs is a flight and maintenance undertaking. Its seat is in Switzerland, but it is also certified in Germany. It offers (among other things) services in the helicopter flight business, in particular, flight training for private individuals and professional pilots.

13. By a decision of 13 October 2009, the Hauptzollamt Lörrach (Customs Office, Lörrach, Germany) granted an exemption to Fuchs from the obligation to land at a customs airfield ('Zollflugplatzzwang'), in respect of 10 individually listed helicopters registered in Fuchs' name in Switzerland.

14. In 2009 and 2010 those helicopters were flown into the customs territory of the EU. The helicopters were flown either by a flying instructor employed by Fuchs or by a trainee pilot in the presence of a flying instructor[7] and landed in the special airfield in Bremgarten (Germany). Following entry into the customs territory of the EU from Switzerland, training flights were conducted. They began and ended on the special airfield in Bremgarten, without leaving the customs territory of the EU. Subsequently, the helicopters were flown from the special airfield in Bremgarten back into Switzerland.

15. By a decision of 23 May 2011, the Customs Office, Lörrach, revoked Fuchs' exemption from the obligation to land at a customs airfield. It subsequently fixed the duties owed by Fuchs for the use made of the helicopters for training purposes.

16. Fuchs' customs debt allegedly arose under Article 204(1)(a) of the Customs Code for breach of the obligations stemming from the temporary importation procedure. Fuchs had, it was said, used its helicopters commercially without having been granted the corresponding aviation law licence.

17. By a decision of 2 April 2012, the Customs Office, Lörrach, rejected Fuchs' objection to the imposition of the customs duty as unfounded. Fuchs challenged this decision before the Finanzgericht, Baden-Württemberg (Finance Court, Baden-Württemberg), which led to the present request for a preliminary ruling.

18. In its action before the national court, Fuchs submitted that the requirements for total relief from import duties for the temporary importation of means of transport had been satisfied. It argued that the helicopters had not been used for commercial purposes within the meaning of the Implementing Regulation since they were not used 'for the transport of persons for remuneration or the industrial or commercial transport of goods, whether or not for remuneration'. The remuneration paid by the trainee pilots was received for the training, not as payment for the transport.

19. The Customs Office, Lörrach, on the other hand, contended that Fuchs had used the helicopters commercially. In its view persons were transported for remuneration. It argued that the notion of transportation is not limited to cases involving a change in location. Rather, it depends on whether there are persons *in the means of transport*.

20. In the light of this disagreement on the meaning of 'commercial use', by order of 17 February 2015, received at the Court Registry on 20 February 2015, the Finanzgericht, Baden-Württemberg (Finance Court, Baden-Württemberg) decided to stay the proceedings before it and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 555(1)(a) of Commission Regulation (EEC) No 2454/93 … laying down provisions for the Customs Code as amended by Commission Regulation (EC) No 2286/93 … be interpreted as meaning that remunerated flight training with helicopters in which a trainer and trainee are in the helicopter also amounts to a commercial use of a means of transport?'

21. Fuchs, the Commission and the Italian Republic submitted written observations in this case. The Customs Office, Lörrach, the defendant in the main case, did not submit written observations. There was no oral hearing requested by the parties and none was held.

7 — According to the information provided by the referring court, the helicopters were equipped in such a way that both the pilot and the co-pilot could steer the helicopter independently from one another. This apparently happened on all flights according to the particular training situation.

IV – Assessment

A – *Introduction*

22. The Court has been asked essentially whether flight instruction falls within the definition of 'commercial use' under Article 555(1) of the Implementing Regulation (see section B below).

23. The interpretation of that term will be important for determining whether Fuchs qualifies for relief from customs duties under the corresponding subsection. This Court has not been explicitly asked to give its view on whether Fuchs potentially qualifies for relief. That is ultimately a question for the national court. However, consideration of the notion of 'commercial use' will inevitably open up questions regarding the scope of relief from customs duties in cases of temporary importation of 'means of transport'. In order to provide a helpful answer to the question asked by the referring court, I therefore consider it important to also address that issue (see section C below).

B – *Meaning of 'commercial use'*

24. 'Commercial use' is one of the terms defined in the subsection of the Implementing Regulation devoted to total relief from import duties for temporary admission of means of transport. Article 555(1) of the Implementing Regulation states that '"commercial use" means the use of means of transport for the transport of persons for remuneration …'. [8]

25. According to the Court's settled case-law, the meaning and scope of a term must be determined by considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it forms part. [9]

26. On any natural reading, 'means of transport' includes helicopters. [10] Therefore, the crux of the question is whether Fuchs is using its helicopters 'for the transport of persons for remuneration'.

27. As a preliminary remark in this regard, the fact that the training flights begin and end at the same location does not obviously exclude them from the notion of 'transport of persons'. When the training flights take place, there is 'transport' in some sense, as people are being moved around. Confirming this, the Court's case-law provides examples of round trips being considered as falling within the field of transport policy. [11] These cases might be referred to by analogy in the context of customs classifications.

8 — As the national court noted at point 14 of its reference for a preliminary ruling, the remainder of the definition '… or the industrial or commercial transport of goods, whether or not for remuneration' is not relevant in this case. I agree.

9 — See, in the field of customs, judgment in *Digitalnet and Others*, C-320/11, C-330/11, C-382/11 and C-383/11, EU:C:2012:745, paragraph 38.

10 — It also clearly falls within the definition of this term in Article 1(a) of Annexe C of the Istanbul Convention, which covers 'any vessel … including … aircraft'.

11 — Judgment in *Neukirchinger*, C-382/08, EU:C:2011:27, paragraph 19, and Opinion of Advocate General Mengozzi in *Neukirchinger*, C-382/08, EU:C:2010:498, points 25-30; judgment in *Alpina River Cruises and Nicko Tours*, C-17/13, EU:C:2014:191, paragraph 29. See also Opinion of Advocate General Szpunar in Joined Cases *Trijber and Harmsen*, C-340/14 and C-341/14, EU:C:2015:505, points 30-34, which concurs that 'transport' is not dependent on conveyance from A to B.

28. Similarly, contrary to the arguments made by Fuchs and the Commission in their written observations, the fact that control of the aircraft switches between the student and instructor, who are both crew members, does not obviously exclude the existence of transport. The situation might be considered an unusual example, but again, the fact remains that people are being 'transported' in the sense of being moved around. [12]

29. However, even on a purely textual reading, the term 'transport of persons *for remuneration*' does not seem to cover the factual situation in the present case. There is remuneration, but it is specifically paid in exchange for flight training. In other words, there is '*training of persons for remuneration*'. 'Transport' is merely a corollary of the training.

30. I also note that the student pilot (that is, the person paying the remuneration) will himself be doing the 'transporting' for a part of and indeed perhaps the entire duration of the lesson. This can be better understood if we consider flight lessons as being similar to driving lessons for cars. When one thinks of taking driving lessons in a car, one does not think of those lessons as being 'transport of persons for remuneration' on any normal understanding of those words, but rather 'training of persons for remuneration'. The same goes for flight training.

31. Flight training services, such as those provided by Fuchs, are therefore excluded from the notion of 'commercial use' under Article 555(1) of the Implementing Regulation.

32. Textual interpretations of provisions of EU law should only be reconsidered in light of context and purpose where there is textual ambiguity. [13] In this case, the text is, in my view, fairly clear and unambiguous. Nonetheless, to the extent that any residual ambiguity might be considered to exist, a systemic and purposive interpretation of Article 555(1) leads to the conclusion that 'commercial use' should be interpreted as meaning that transport must be the main purpose of the remunerated service.

33. As far as the historical context of the provision is concerned, the definition of 'commercial use' has changed in scope over time in an instructive way.

34. Originally, the term employed was 'business use'. This was defined as 'the use of a means of transport in direct exercise of an activity carried out for consideration or financial gain'. [14] This term was subsequently replaced by 'commercial use', which was defined as 'use of means of transport of persons or of goods for remuneration or in the framework of the economic activity of an enterprise'. [15] Both of these definitions would clearly have covered the type of flight training activity such as that carried out by Fuchs.

12 — I wish to stress that this does not imply any assessment of whether the activity constitutes a transport service. Compare the Commission's 'Handbook on the Implementation of the Services Directive'. This non-binding document notes that the exception for transport services in Article 2(2)(d) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ('the Services Directive'; OJ 2006 L 376, p. 36) 'does not cover services which are not transport services as such, like driving schools …'.

13 — Judgments in *ECB* v *Germany*, C-220/03, EU:C:2005:748, paragraph 31, and *Carboni e derivati*, C-263/06, EU:C:2008:128, paragraph 48.

14 — Article 1(2)(d) of Council Regulation (EEC) No 1855/89 of 14 June 1989 on the temporary importation of means of transport (OJ 1989 L 186, p. 8).

15 — Commission Regulation (EC) No 993/2001 of 4 May 2001 amending Regulation No 2454/93 (OJ 2001 L 141, p. 1). See Article 1(28), replacing Title III of that regulation with (among other things) Article 555(1). For the sake of completeness, it might be added that the original Implementing Regulation from 1993 contained the same definition of 'commercial use' that appears in the current version of the Implementing Regulation (in the original version of the Implementing Regulation the definition appeared in Article 670). Confusingly, this definition was temporarily broadened by Regulation No 993/2001, before the original definition was eventually brought back by Regulation No 2286/2003, as explained further at point 35.

35. However, that definition of 'commercial use' was subsequently narrowed by Regulation No 2286/2003 to the wording found today in Article 555(1) of the Implementing Regulation (and applicable at the relevant time). This was done explicitly in order to bring it into line with the definition of 'commercial use' in the Istanbul Convention. [16]

36. Thus, prior to the modifications made by Regulation No 2286/2003, 'commercial use' covered three types of situation:

— 'use of means of transport of persons … for remuneration';

— 'use of means of transport … of goods for remuneration';

— 'use of means of transport … in the framework of the economic activity of an enterprise'.

37. The third, catch-all category covered all uses of means of transport in a business context (a) whether or not for remuneration and (b) irrespective of the purpose of use.

38. By contrast, following the modifications made by Regulation No 2286/2003, 'commercial use' covered only:

— 'use of means of transport for the transport of persons for remuneration';

— 'use of means of transport for … the industrial or commercial transport of goods, whether or not for remuneration'.

39. The modifications notably removed from the scope of 'commercial use' the third, catch-all category of 'use of means of transport … in the framework of the economic activity'.

40. It can therefore be inferred that deleting this catch-all category meant that non-remunerated transport of persons was removed from the notion of 'commercial use'. However, contrary to the suggestions made by the referring court, the deletion narrowed the scope of 'commercial use' in a second way by making the purpose of the use a relevant factor (see point 37 above).

41. This implies that the notion of 'commercial use' does not cover *every* situation where an economic activity involving a means of transport is undertaken and transport of persons in the broad sense occurs. The definition is narrower. It requires account to be taken of the main purpose of the activity. Thus, it refers to an economic activity *which has as its main purpose the transport of persons*.

42. The main purpose of flight training of the type carried out by Fuchs is clearly *not* the transport of persons. Just as in the case of driving lessons, the main purpose of the exercise and what is being remunerated is the training. The transport is a mere corollary. Flight training of the type carried out by Fuchs is therefore *not* covered by the notion of 'commercial use'.

43. In light of the above, I would answer the question posed by the national court in the following way: remunerated flight training with helicopters, in which a trainer and trainee are in the helicopter, does not amount to a 'commercial use' of a means of transport within the meaning of Article 555(1)(a) of the Implementing Regulation.

16 — Recital 12 of Regulation No 2286/2003.

C – *Article 558(1) of the Implementing Regulation*

1. Introduction

44. Article 555(1) of the Implementing Regulation contains a number of definitions. However, the substantive *conditions* for relief from import duties are laid down in Article 556 et seq. Only some of those conditions actually use one or more of the terms defined in Article 555(1).

45. The national court has not explicitly asked any questions on the interpretation of Article 558(1) of the Implementing Regulation. Whether or not Fuchs in fact qualifies for relief under that provision is a question for the national court deciding in full knowledge of the particular facts of the case.

46. Nonetheless, in order to give a useful answer to the national court, I do consider it is necessary to comment on the general scope of application of Article 558(1) of the Implementing Regulation.[17] This is also partly because the Commission has submitted detailed written observations on this point.

2. Scope of relief under Article 558(1)

47. Article 558(1)(a), (b) and (c) sets out three conditions for relief for temporary admission of means of transport. Only one of these three conditions — Article 558(1)(c) — contains any reference to 'commercial use'.

48. Under Article 558(1)(c), where a means of transport is being used commercially, it can normally only qualify for relief if the transport 'begins or ends outside the customs territory of the Community'. However, this is not a necessary condition which would have to be met in order to qualify for *any* relief under Article 558(1). That limitation is applicable only to the specific cases falling under subsection (c), that is, cases of 'commercial use' of a means of transport. Put differently, relief under Article 558(1) may be granted if the conditions under subsections (a) and (b) are met, without subsection (c) being relevant at all in an individual case.

49. For the reasons set out above in Section IV(B) of this Opinion, the type of training activities carried out by Fuchs do *not* fall within the notion of 'commercial use'. As a result, the fact that those activities do not necessarily 'begin or end outside the customs territory of the Community' is not decisive for qualifying for relief under Article 558(1) of the Implementing Regulation.

50. In its written observations, the Commission argues that flight training does not constitute a 'commercial use'. However, it goes on to suggest in a second stage that flight training nonetheless cannot qualify for relief under Article 558(1). In both cases, the Commission contends that this is essentially because the main purpose of the flight training carried out by Fuchs is *not* the transport of goods or persons.

51. For the reasons set out already, I agree with the first of these arguments. However, I disagree with the Commission's interpretation of the scope of Article 558(1) for the following reasons.

52. The Commission submits that relief under Article 558(1) of the Implementing Regulation only aims at situations where a means of transport is being used *for the purposes of transport* (which it concludes is not the case here).

17 — See in this regard, for example, judgment in *AIFA and Ministero della Salute*, C-452/14, EU:C:2015:644, paragraphs 33 and 34.

53. In this regard, the Commission maintains that the various definitions contained in Article 555(1) of the Implementing Regulation all imply that the means of transport are being used specifically for the purpose of transport. By extension, relief should thus only be available where the purpose of the relevant activity is transport. It considers that this conclusion is also supported by the introductory sentence of Article 558(1) of the Implementing Regulation. Finally, the Commission refers to the *Siig* case to support the contention that relief for temporary admission applies only where a *specific transport operation* is conducted. [18]

54. I do not consider these arguments to be convincing.

55. First, there is no explicit limitation on the availability of relief for temporary admission of a means of transport to situations where the means of transport is used specifically for transport purposes. Such a limitation is not found in Article 558(1) of the Implementing Regulation. Nor, indeed, is it found in any of the other various grounds for total relief listed in Articles 556 to 561 of the Implementing Regulation. Nor is it found in the Istanbul Convention. In particular, it is absent from the definition of 'means of transport' in Article 1(a) of Annex C to that convention.

56. Such an explicit, purpose-oriented limitation would, nonetheless, have been easy to insert. Indeed, such a limitation has been included under most of the other grounds for relief from customs duties in cases of temporary admission. [19]

57. In my view, the absence of any such explicit limitation is in itself a sufficient reason for rejecting the Commission's argument on this point. For the sake of completeness, however, I would add that such a limitation cannot be implied either.

58. The first sentence of Article 558(1) refers to 'means of road, rail, air, sea and inland waterway transport' without any functional or purposive limitation. Article 558(1)(a) and (b) are also neutral, referring to objective criteria, namely the place of registration and establishment. Article 558(1)(c) does not apply at all, except in cases of 'commercial use' of a means of transport.

59. Second, the Commission submits that the *definitions* contained in Article 555(1) presuppose that the means of transport mentioned therein are being used specifically for transport purposes (as opposed to, for example, training purposes). On that basis, the Commission infers that *relief* for temporary admission of means of transport under Article 558(1) requires that such means of transport are used specifically for transport purposes.

60. I disagree. Definitions and grounds for relief should not be confused.

61. The far reaching inference proposed by the Commission would require solid justifications and the evidence in this case is, at best, ambiguous.

62. In this regard I note that:

— As the Commission itself recognises, only two of the three definitions of Article 555(1) contain any functional limitation. The definition of 'private use' does not. It is true that the definition of 'private use' in the English version of the Istanbul Convention is also arguably functional. However, this is not the case with the French version, which is neutral.

18 — Judgment in *Siig* (C-272/03, EU:C:2004:805), paragraph 18.

19 — See for example, Article 563 of the Implementing Regulation 'for sports purposes'; Article 566 of the Implementing Regulation 'intended for diagnostic or therapeutic purposes'; Article 568 of the Implementing Regulation 'for the purpose of presentation prior to commercialisation'; and Article 569 of the Implementing Regulation 'with the intention of using them as professional equipment'.

— The definition of 'means of transport' in the Istanbul Convention is neutral as to function.[20] By contrast, in the original version of the Implementing Regulation, 'means of transport' was explicitly defined in a functional way as 'any means used *for the transport of persons or goods …*'[21] (emphasis added). However, this definition was subsequently deleted.[22] If the Commission were correct, its argument should logically apply to *all* grounds for relief for temporary importation of means of transport (not just to Article 558(1)).[23]

63. Third and finally, I disagree with the Commission's reading of the judgment in *Siig*.

64. The *Siig* case concerned the transport of goods by road. To the extent relevant here, the goods in that case were moved by one vehicle within the EU, set down and then picked up by another vehicle to be transported outside the EU. Relief was claimed on the basis that there was 'commercial use' involving transport that began or ended outside the EU (albeit using two different vehicles).

65. The Court considered that relief could not be claimed in such cases. It found that 'the application of the temporary importation procedure directly depends on the carrying-out by the vehicle concerned of a clearly defined transport operation, namely carriage which includes a crossing of the external border of the customs territory of the Community by that vehicle and the goods or persons transported'.[24]

66. The Commission appears to conclude from this that any relief for temporary admission requires a clearly defined 'transport operation' (not for example, a training operation). That is, in my opinion, an incorrect reading of the *Siig* judgment. In *Siig*, the Court did require the existence of a specific 'transport operation'. However, this was because one of the conditions for relief *in that case* was that transport 'begins or ends outside the customs territory of the Community'.[25]

67. Furthermore, such a requirement would also apply under Article 558(1) *only* in cases where relief is being claimed specifically for a 'commercial use'.[26]

3. Conclusion on Article 558(1)

68. For the reasons set out above, I do not consider that relief under Article 558(1) of the Implementing Regulation for uses that are not 'commercial uses' is limited to cases where the relevant means of transport is used specifically for the purpose of transport.

69. Finally, it is for the national court to decide whether Fuchs qualifies for relief in this case. In doing so, the national court must ensure compliance with general principles of EU law, including that of legitimate expectations and/or acquired rights.

20 — Article 1(a) of Annex C to the Istanbul Convention.

21 — Article 670 of the original version of the Implementing Regulation. See footnote 15 above explaining this in detail.

22 — It is questionable whether this limitation would have been considered to be in line with the neutral definition found in the Istanbul Convention (see above in relation to the definition of 'commercial use', which was modified for that very reason).

23 — It is clearly stated that the definitions contained in Article 555(1) of the Implementing Regulation apply to the entire subsection in which they appear.

24 — Judgment in *Siig* (C-272/03, EU:C:2004:805), paragraph 18.

25 — Judgment in *Siig* (C-272/03, EU:C:2004:805), paragraph 17.

26 — Indeed, as pointed out above, *Siig* also involved a 'commercial use'.

70. According to the order for reference, Fuchs applied for and obtained relief for temporary admission. Subsequently, this was retroactively withdrawn given the nature of Fuchs' activities and in the light of a specific interpretation of Articles 555 and 558 of the Implementing Regulation. As pointed out by the Commission, a number of other grounds for relief listed in the Implementing Regulation may also be relevant, although it is unclear whether Fuchs would satisfy the conditions for these. Again, those are issues for the national court.

V – Conclusion

71. In the light of the foregoing, I recommend to the Court that it answer the question referred to it by the Finanzgericht, Baden-Württemberg (Finance Court, Baden-Württemberg,) as follows:

Remunerated flight training with helicopters, in which a trainer and trainee are in the helicopter, does not amount to a 'commercial use' of a means of transport within the meaning of Article 555(1)(a) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the Customs Code as amended by Commission Regulation (EC) No 2286/2003 of 18 December 2003.