|

61999J0451

Judgment of the Court (Fifth Chamber) of 21 March 2002. - Cura Anlagen GmbH v Auto Service Leasing GmbH (ASL). - Reference for a preliminary ruling: Handelsgericht Wien - Austria. - Vehicle leasing - Prohibition on using in a Member State for longer than a certain time a vehicle registered in another Member State - Obligations to register the vehicle and to pay a consumption tax in the Member State of use - Obligation to insure with an insurer authorised in the Member State of use - Obligation to undergo roadworthiness testing - Restrictions on the freedom to provide services - Justifications. - Case C-451/99.

European Court reports 2002 Page I-03193

Keywords

1. Freedom to provide services - Treaty provisions - Scope - Leasing - Included

(Art. 50 EC)

2. Freedom to provide services - Restrictions - Obligation to register in the Member State of use vehicles leased from an undertaking established in another Member State - Justification - Powers of taxation of Member States in the taxation of motor vehicles - Conditions linked to the time-limit for registration, residence or establishment of the leasing undertaking, insurance, roadworthiness testing and the payment of a consumption tax - Not permissible - Criteria

(Arts 49 EC to 55 EC)

Summary

1. Leasing constitutes a service within the meaning of Article 50 EC. It consists of an economic activity provided for consideration. The fact that that activity implies the handing over of goods by the lessor to the lessee cannot invalidate that classification since the supply relates not so much to the goods themselves as to their use by the lessee, the goods in question remaining the property of the lessor.

(see para. 18)

2. Where a vehicle leased from a company established in one Member State is actually used on the road network of another Member State, the latter may impose an obligation for that vehicle to be registered in its territory, since registration is the natural corollary of the exercise of the powers of taxation which, subject to compliance with Community Law, Member States are free to exercise in the taxation of motor vehicles. The provisions of the Treaty on the freedom to provide services (Articles 49 EC to 55 EC) do, however, preclude legislation of a Member State which in such a case makes registration subject to one or more of the following conditions:

- a time-limit for registration that is so short as to make it impossible or excessively difficult to comply with the obligations imposed, having regard to the formalities which must be completed;

- a requirement that the person in whose name the vehicle is registered in the Member State of use reside or have a place of business there, in so far as it obliges a leasing undertaking either to have a principal place of business in that Member State or to accept registration of the vehicle in the name of the lessee and the consequent limitation of its rights over the vehicle;

- a requirement to insure the vehicle with an authorised insurer in the Member State of use, if that requirement implies that the insurer must have its principal place of business in that Member State, as the home State within the meaning of the non-life insurance directives, and have official authorisation there;

- a requirement of a roadworthiness test when the vehicle has already undergone such testing in the Member State where the leasing company is established, save where that requirement is aimed at verifying that the vehicle satisfies the conditions imposed on vehicles registered in the Member State of use that are not covered by the tests carried out in the Member State where the leasing company is established and/or, if the vehicle has in the meantime been used on the public highway, that its condition has not deteriorated since it was tested in that latter Member State, provided similar testing is imposed where a vehicle previously tested in the Member State of use is presented for registration in that State;

- payment, in the Member State of use, of a consumption tax the amount of which is not proportionate to the duration of the registration of the vehicle in that State.

(see paras 40-42, 46, 71, operative part)

Parties

In Case C-451/99,

REFERENCE to the Court under Article 234 EC by the Handelsgericht Wien (Austria) for a preliminary ruling in the proceedings pending before that court between

Cura Anlagen GmbH

and

Auto Service Leasing GmbH (ASL),

on the interpretation of Articles 49 EC to 55 EC and Article 28 EC,

THE COURT (Fifth Chamber),

composed of: S. von Bahr, President of the Fourth Chamber, acting for the President of the Fifth Chamber, D.A.O. Edward, A. La Pergola, M. Wathelet (Rapporteur) and C.W.A. Timmermans, Judges,

Advocate General: F.G. Jacobs,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

- Auto Service Leasing GmbH (ASL), by H. Asenbauer, Rechtsanwalt,

- the Austrian Government, by A. Längle, acting as Agent,

- the Belgian Government, by A. Snoecx, acting as Agent,

- the Danish Government, by J. Molde, acting as Agent,

- the Finnish Government, by T. Pynnä, acting as Agent,

- the Commission of the European Communities, by M. Patakia, acting as Agent, and by B. Wägenbaur, Rechtsanwalt,

having regard to the Report for the Hearing,

after hearing the oral observations of Auto Service Leasing GmbH (ASL), represented by H. Asenbauer; of the Belgian Government, represented by F. van de Craen, acting as Agent; and of the Commission, represented by M. Patakia, and by B. Wägenbaur, at the hearing on 21 June 2001,

after hearing the Opinion of the Advocate General at the sitting on 25 September 2001,

gives the following

Judgment

Grounds

1 By order of 10 November 1999, received at the Court Registry on 26 November 1999, the Handelsgericht Wien (Vienna Commercial Court) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Articles 49 EC to 55 EC and of Article 28 EC.

2 That question was raised in proceedings between Cura Anlagen GmbH (Cura Anlagen), a company established in Austria, and Auto Service Leasing GmbH (ASL), a company established in Germany and without a place of business in Austria, concerning the performance of a vehicle leasing contract concluded between those two companies.

Legal background

3 Under Paragraph 79 of the Kraftfahrgesetz 1967 (Austrian Law on Motor Vehicles; the KFG), use in Austria of a vehicle with foreign plates and without a permanent base in Austria is authorised for a maximum duration of one year only.

4 Paragraph 82(8) of the KFG provides that a vehicle with foreign registration plates brought into Austria by a legal person established there may be used for a maximum of three days. Thereafter, the foreign plates must be removed and surrendered to the competent authority, and, if the vehicle continues to be used in Austria, it must be registered there in accordance with Paragraph 37 of the KFG.

5 Registration of a vehicle in Austria is subject to compliance with the following conditions:

- the legal person in whose name the vehicle is to be registered must be the legal possessor and be established in Austria or at least have a principal place of business there (Paragraph 37(2) of the KFG);

- the vehicle must be covered by a compulsory civil liability insurance contract made with an insurer authorised in Austria (Paragraphs 37(2)(b), 59 and 61 of the KFG);

- a report must be produced on the roadworthiness and safety of the vehicle, establishing that it is not a source of excessive pollution (Paragraphs 37(2)(h) and 57a of the KFG);

- a fuel consumption tax must have been paid (Paragraph 37(2)(d) of the KFG and Paragraph 1(3) and (5)(f) of the Normverbrauchsabgabegesetz (Austrian Law imposing a Standard Fuel Consumption Tax; the NoVAG)).

6 Concerning that latter condition, Paragraphs 1 and 2 of the NoVAG provide, subject to exceptions contained in Paragraph 3 of the same Law, that a consumption tax must be paid for every vehicle supplied for consideration, leased by way of trade, or registered for the first time in Austria.

7 Under Paragraph 5 of the NoVAG, the amount of the tax corresponds to a percentage of the price paid for the vehicle if it is supplied new, or its normal value, exclusive of VAT, in other cases. Under Paragraph 6(2) of the NoVAG, that percentage varies in relation to the type of fuel and the fuel consumption of the vehicle. Under Paragraph 6(3) of the NoVAG, the tax may not exceed 16% of the value of the vehicle.

The dispute in the main proceedings and the question referred

8 In February 1999, ASL and Cura Anlagen entered into a leasing contract whereby ASL leased a German-registered passenger vehicle (in this case an Audi A3) to Cura Anlagen for 36 months, for a fixed monthly sum, including the cost of compulsory insurance, plus an additional rate per 1 000 km covered by the vehicle over and above a certain distance.

9 It was agreed that Cura Anlagen, which was to take possession of the vehicle from ASL in Munich, was to use it primarily in Austria. It was also agreed that, for the duration of the contract, the vehicle would remain registered in the name of ASL and would thus retain its German registration plates.

10 After bringing the vehicle into Austria in February 1999, Cura Anlagen was unable to use it there in accordance with the terms of the contract by reason of the provisions of the KFG prohibiting the driving of a vehicle with foreign plates in Austria for more than three days.

11 Cura Anlagen then brought an action before the Handelsgericht Wien, seeking an order that ASL should either consent to the registration of the leased vehicle in Austria in the name of Cura

Anlagen and at the same time pay the consumption tax of EUR 2 460 thereon, or get the vehicle registered in Austria in its own name and at its own expense. In the alternative, Cura Anlagen applied for the annulment of the leasing contract.

12 ASL contended that that action should be dismissed. It argued that the combined provisions of Paragraphs 37, 79 and 82(8) of the KFG made cross-border leasing of vehicles so difficult that it was practically impossible for it to provide that service in Austria, with the result that those provisions should be set aside as contrary to the freedom to provide services and, in the alternative, to the free movement of goods.

13 In those circumstances, the Handelsgericht Wien decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

Are Article 49 et seq. EC (or alternatively Article 28 EC) to be interpreted as precluding the application of provisions of Member State A which prohibit an undertaking established in Member State A from using for more than three days, or for more than a year as the case may be, in Member State A a motor vehicle which is leased from a leasing undertaking established in Member State B and registered in Member State B in the name of the leasing undertaking established there, without obtaining a (second) registration for that motor vehicle in Member State A?

The subject-matter and admissibility of the question referred

14 The Austrian Government argues as a preliminary point that the reference for a preliminary ruling is inadmissible in three respects.

15 It argues first that, in so far as it concerns the interpretation of Article 28 EC on the free movement of goods, the question referred is not relevant to the resolution of the dispute in the main proceedings.

16 According to settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Nevertheless, the Court has held that it cannot give a preliminary ruling on a question submitted by a national court where it is quite obvious that the ruling sought by that court on the interpretation or validity of Community law bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, in particular, Case C-36/99 Idéal Tourisme [2000] ECR I-6049, paragraph 20, and the case-law cited therein).

17 In that respect, it should be noted that, by its question, the referring court is primarily seeking to ascertain whether the Austrian legislation entails restrictions on intra-Community trade and, if so, whether those restrictions can be justified. For that purpose, it asks the Court of Justice whether legislation such as that at issue in the main proceedings is compatible either with Articles 49 EC to 55 EC, or with Articles 28 EC to 31 EC, according to whether the leasing of vehicles constitutes a supply of services or a delivery of goods.

18 In relation to that question, this Court would point out that leasing constitutes a service within the meaning of Article 50 EC. It consists of an economic activity provided for consideration. The fact that that activity implies the handing over of goods by the lessor to the lessee, in the main proceedings in this case a motor vehicle, cannot invalidate that classification since the supply relates not so much to the goods themselves as to their use by the lessee, the goods in question remaining the property of the lessor.

19 The Court of Justice has, moreover, already held that the leasing of vehicles constitutes a supply of services within the meaning of Article 9 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1; the Sixth VAT Directive), those services consisting principally in negotiating, drawing up, signing and administering contracts and in making the vehicles concerned, which remain the property of the leasing company, physically available to customers (Case C-190/95 ARO Lease [1997] ECR I-4383, paragraphs 11 and 18).

20 It follows that the question referred should be regarded as concerned only with the interpretation of Articles 49 EC to 55 EC.

21 The Austrian Government then argues that the dispute in the main proceedings concerns the interpretation and performance of a private law contract which bears no relation to the question referred.

22 It should be noted in that respect that, pursuant to Article 234 EC, where a question on the interpretation of the Treaty or of subordinate acts of the institutions of the Community is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon (see, in particular, Case C-412/93 Leclerc-Siplec [1995] ECR I-179, paragraph 9).

23 In the context of that procedure for making a reference, the national court, which alone has direct knowledge of the facts of the case, is in the best position to assess, with full knowledge of the matter before it, the need for a preliminary ruling to enable it to give judgment (see, in particular, Leclerc-Siplec, paragraph 10).

24 Moreover, as the Advocate General has pointed out in paragraph 23 of his Opinion, it is important for a court which is asked to order the enforcement or annulment of a contract to know whether the national provisions which appear to hinder its performance are compatible with Community law or not. The question therefore appears to be relevant.

25 Finally, the Austrian Government challenges the genuineness of the dispute in the main proceedings, which it claims is to a large extent contrived.

26 In that respect, the Court of Justice has held that, in order to determine whether it has jurisdiction, it must examine the conditions in which the case has been referred to it by the national court. The spirit of cooperation which must prevail in the preliminary ruling procedure requires the national court to have regard to the function entrusted to the Court of Justice, which is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions (Case 149/82 Robards [1983] ECR 171, paragraph 19; Case C-83/91 Meilicke [1992] ECR I-4871, paragraph 25).

27 In this case, even if some of the information on the file might give rise to a suspicion that the situation underlying the main proceedings was contrived with a view to obtaining a decision from the Court of Justice on a question of Community law of general interest, it cannot be denied that

there is a genuine contract the performance or annulment of which undeniably depends on a question of Community law.

28 It follows from the above considerations that the question referred is admissible.

Substance

29 According to consistent case-law, Article 49 EC precludes the application of any national legislation which without objective justification impedes a provider of services from actually exercising that freedom (see, in particular, Case C-381/93 Commission v France [1994] ECR I-5145, paragraph 16).

30 Article 49 EC likewise precludes the application of any national legislation which has the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State (Commission v France, cited above, paragraph 17).

31 However, Article 46 EC, which applies here by virtue of Article 55 EC, allows restrictions justified for reasons of public policy, public security or public health, provided that the measures taken pursuant to that article are not disproportionate to the intended objective. As an exception to a fundamental principle of the Treaty, Article 46 EC must be interpreted in such a way that its effects are limited to that which is necessary in order to protect the interests which it seeks to safeguard (see, to that effect, Case 352/85 Bond van Adverteerders and Others [1988] ECR 2085, paragraph 36).

32 Moreover, according to the settled case-law of the Court, restrictions on the freedom to provide services deriving from national measures which apply without distinction are acceptable only if those measures are justified by overriding reasons relating to the public interest and comply with the principle of proportionality, that is to say are suitable for securing the attainment of the objective which they pursue and do not go beyond what is strictly necessary in order to attain it (to that effect, see in particular Case C-55/94 Gebhard [1995] ECR I-4165, paragraph 37, and Case C-67/98 Zenatti [1999] ECR I-7289, paragraph 29).

33 It therefore needs to be determined whether legislation such as that at issue in the main proceedings constitutes an obstacle to the freedom to provide services, and, if so, whether such an obstacle may be allowed as a derogation expressly provided for by the Treaty or justified in accordance with the case-law of the Court of Justice, by overriding reasons relating to the public interest.

34 It should be noted, first, that the Austrian legislation at issue in the main proceedings not only prohibits an undertaking established in Austria from using a vehicle registered in another Member State in Austria beyond a certain period, but also makes the possibility of registering that vehicle in Austria, in order to escape that prohibition, subject to compliance with several conditions which it lists.

35 It should also be noted that the dispute in the main proceedings concerns only the situation created by a three-year leasing contract concluded by a company registered in Austria with a company registered in another Member State and concerning a vehicle intended to be used essentially in Austria. This does not therefore concern simple hiring contracts made for short periods, such as the hiring of a replacement vehicle from a company established in another Member State.

36 Essentially, therefore, the national court is asking by its question whether the provisions of the Treaty on the freedom to provide services (Articles 49 EC to 55 EC) preclude legislation of a Member State, such as that at issue in the main proceedings, which requires an undertaking established in that Member State which takes a lease of a vehicle registered in another Member

State to register it in the first Member State in order to be able to use it there for more than a certain period. It also asks whether the same provisions of the Treaty preclude legislation of a Member State, such as that at issue in the main proceedings, requiring an undertaking established in that Member State which takes a lease of a vehicle registered in another Member State to register it in the first Member State and imposing on it a certain number of conditions.

The requirement to register

37 There is no dispute that the obligation to register in the Member State where they are used vehicles which have been leased from an undertaking established in another Member State has the effect of making cross-border leasing activities more difficult.

38 It therefore needs to be examined whether the restriction arising from that obligation may be justified.

39 For that purpose, it should be noted that the Finnish Government has emphasised the link which exists between the obligation to register and the payment of taxes introduced by the legislation of the Member State in whose territory the vehicle is used. It has argued in that respect that registration is necessary for implementing the taxation of vehicles, which follows the principle, generally accepted in harmonised indirect taxation, whereby goods are normally taxed in the Member State in which they are consumed, which in this case implies that vehicles must be taxed in the State in which they are actually used. The Finnish Government adds that supervision by the tax authorities would be jeopardised if it were not possible to require each vehicle taxable in principle by virtue of its use in the territory of the State in question to be registered there.

40 It should be recalled in that respect that, save for the specific situation of vehicles which are imported into the Community temporarily and motor vehicles intended exclusively for the road transport of goods with an authorised load of 12 tonnes or more, which are not at issue in the main proceedings, the taxation of motor vehicles has not been harmonised and differs considerably from one Member State to another. Member States are therefore free to exercise their powers of taxation in that area, provided they do so in compliance with Community law. It is lawful for them to allocate those powers of taxation amongst themselves on the basis of criteria such as the territory in which a vehicle is actually used or the residence of the driver, which are various components of the territoriality principle, and to conclude agreements amongst themselves to ensure that a vehicle is subject to indirect taxation in only one of the signatory States.

41 In that respect, registration appears to be the natural corollary of the exercise of those powers of taxation. It facilitates supervision both for the Member State of registration and for the other Member States, for which registration in one Member State constitutes proof of payment in that State of taxes on motor vehicles.

42 Therefore, in a situation such as that at issue in the main proceedings, namely where a vehicle leased from a company established in one Member State is actually used on the road network of another Member State, the latter may impose an obligation for that vehicle to be registered in its territory.

43 In the light of the above considerations, there is no need to examine the other justifications raised by the Austrian, Belgian, Danish and Finnish Governments, and by the Commission, in relation to such matters as public policy and road safety.

44 It does, however, need to be examined whether the time-limit within which a vehicle user must register the vehicle in Austria is capable of being justified.

45 To give the national court an answer that will assist it to resolve the dispute before it, it will be sufficient to examine whether the time-limit of three days, which applies to vehicles brought into

Austria by a legal person resident in that Member State, is justified, that period being the only one that is at issue in the situation giving rise to the main proceedings.

46 Even in the absence of Community legislation on the matter and in cases where, as in the main proceedings, the obligation to register may be regarded as compatible with Articles 49 EC to 55 EC, Member States cannot impose a time-limit that is so short as to make it impossible or excessively difficult to comply with the obligations imposed, having regard to the formalities which must be completed.

47 In the case at issue in the main proceedings, the three-day time-limit laid down by Austrian legislation appears excessively short and clearly goes beyond what is necessary to attain the objective pursued by that legislation. To that extent, therefore, it constitutes an unjustified obstacle to the freedom to provide services, as laid down in Articles 49 EC to 55 EC.

The requirement concerning the residence or place of business of the leasing undertaking, save where it accepts registration of the vehicle in the name of the lessee

48 Paragraph 37(2) of the KFG requires a leasing undertaking which has its registered office in another Member State, such as ASL, either to have a principal place of business in Austria or to agree to authorise the lessee to register the vehicle in his name in Austria, thereby limiting its rights as owner of the vehicle.

49 The Austrian Government argues that it is often necessary, where traffic law has been breached, to require the person in whose name the vehicle is registered to give information as to the identity of the driver at a given moment. It would be difficult to obtain such information if the person in question were established in another Member State.

50 That requirement appears disproportionate in relation to the objective cited by the Austrian Government.

51 As the Commission has suggested, it would be sufficient, without hindering the freedom to provide leasing services, for it to be possible to register the leased vehicle in the Member State in whose territory it is driven, in this case Austria, in the name of the leasing undertaking, while at the same time giving the particulars of the lessee who, being by definition resident in Austria, would be responsible, in some cases jointly with the leasing undertaking, for compliance with all the obligations arising from the registration and use of the vehicle.

52 Making the lessee responsible in that way would, moreover, allow the aim pursued by the Austrian Government, as described in paragraph 49 of this judgment, to be achieved just as well if the vehicle remained registered in the Member State where the leasing undertaking is established.

The requirement concerning insurance

53 The result of Paragraphs 37(2)(b), 59 and 61 of the KFG is that, to be capable of being registered in Austria, a vehicle leased to a person established in Austria and who uses it in that State must be insured with an insurer authorised to carry on business in Austria.

54 Such a provision, by restricting the free choice of an insurer, hinders the freedom of vehicle leasing undertakings established in another Member State to offer their services to clients established or residing in Austria. In particular, it may force vehicle leasing undertakings bound by preferential agreements with insurers established outside Austria to conclude contracts that are less advantageous.

55 Any possible justification for that restriction must be assessed in the light of the Community directives governing the supply of insurance services, particularly motor insurance (see, most recently, Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on

the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth Motor Insurance Directive) (OJ 2000 L 181, p. 65)), given that compliance with the obligation to insure any vehicle used on the public highway is supervised and guaranteed by the authorities of the Member State in which it is registered.

56 As the Commission has observed, assessment of the legality of the insurance requirement in Community law depends on the meaning which the national legislation at issue in the main proceedings gives to the term authorised insurer. If it is to be understood as meaning that the insurer must have its principal place of business in Austria and have official authorisation in that State, as the home Member State within the meaning of the non-life insurance directives (see, in particular, Articles 4 and 5 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (Third Non-life Insurance Directive) (OJ 1992 L 228, p. 1)), it must be held that the restriction goes beyond what is necessary to attain the objective pursued. That would not be the case, however, if the expression authorised insurer signifies that the insurer must comply with the conditions laid down by those directives in order to offer its services in a Member State other than the one in which it is established.

The requirement concerning roadworthiness testing

57 The wording of Paragraphs 37(2)(h) and 57a of the KFG shows that registration of a vehicle is subject to the results of a report on its roadworthiness and safety, which must establish that it is not a source of excessive pollution.

58 In the case of cross-border car leasing, that provision requires a vehicle intended to be leased in Austria which has already satisfied the roadworthiness and environmental testing required in another Member State to undergo additional tests in Austria. That provision makes supplying vehicle leasing services in Austria from another Member State less attractive, and therefore hinders the freedom to provide services.

59 It should also be remembered that, although road safety constitutes an overriding reason in the public interest capable of justifying the hindrance in question (Case C-55/93 Van Schaik [1994] ECR I-4837, paragraph 19), Member States must, when examining the roadworthiness and safety of vehicles and their environmentally-friendly quality, comply with the relevant Community provisions.

60 In that respect, it should first be noted that Article 3(1) of Council Directive 96/96/EC of 20 December 1996 on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers (OJ 1997 L 46, p. 1) provides that Member States are to take such measures as they deem necessary to make it possible to prove that a vehicle has passed a roadworthiness test complying with at least the provisions of that directive. Those measures are to be notified to the other Member States and to the Commission. Article 3(2) of Directive 96/96 provides that each Member State is to recognise, on the same basis as if it had itself issued the proof, the proof issued in another Member State showing that a motor vehicle registered on the territory of that other State, together with its trailer or semi-trailer, has passed a roadworthiness test complying with at least the provisions of the directive.

61 However, Article 5 of Directive 96/96 permits Member States to impose more extensive, more frequent or stricter tests than the minimum tests laid down by Article 1 of the directive read in combination with, inter alia, Annex II thereto.

62 Thus, when a vehicle has undergone roadworthiness testing in a Member State, the principle of equivalence and mutual recognition laid down by Article 3(2) of Directive 96/96 requires all the

other Member States to recognise the certificate issued on that occasion, without that preventing them from requiring additional tests for the purposes of registration in their territory, provided those tests are not already covered by that certificate.

63 In addition, as a result of the judgment in Case 50/85 Schloh [1986] ECR 1855 (paragraphs 13 to 16), which concerns the free movement of goods, the fact that a vehicle has been used on the public highway since the last roadworthiness test may make it justifiable, at the time when it is registered in another Member State, to verify for purposes of protecting the health and life of humans that it has not been in an accident and is in a good state of repair, provided a similar inspection is required of vehicles of national origin presented for registration in the same circumstances.

64 It follows that, in a situation such as that at issue in the main proceedings, where a vehicle leased from a company established in one Member State has already undergone roadworthiness testing in that Member State, the authorities of a second Member State may impose additional testing on the registration of the vehicle in that State only for the purposes of verifying that the vehicle satisfies the conditions imposed on vehicles registered in that State that are not covered by the tests in the first Member State and/or, if the vehicle has in the meantime been used on the public highway, checking that its condition has not deteriorated since it was tested in the first Member State, provided similar testing is imposed where a vehicle previously tested in the second Member State is presented for registration in that State.

The requirement concerning fuel consumption tax

65 ASL argues that, by prohibiting the use of vehicles bearing foreign registration plates, the Republic of Austria is not seeking to safeguard the interests of road safety and insurance cover, but is in reality pursuing a fiscal aim. It argues that the consumption tax is a disguised increase in the rate of VAT, contrary to Article 12(3) of the Sixth VAT Directive, which authorises only a normal rate and two reduced rates. The consumption tax at issue in the main proceedings was introduced in order to compensate for the abolition of the increased rate of 32% which applied until 31 December 1991, in particular to the sale and rental of motor vehicles. Moreover, that tax was a percentage of the value of the vehicle.

66 According to the Austrian Government, the aim of the disputed tax is to ensure environmentally friendly conduct in the purchase and leasing of private vehicles. Since the rate of the tax is fixed in relation to the vehicle's fuel consumption, the purchase or leasing of a vehicle with high consumption involves higher taxation than the purchase or leasing of a vehicle with low consumption.

67 In the Commission's view, Article 49 EC precludes the levying of such a tax if it is collected in its full amount. Like ASL, it argues that the tax in question is collected at the same rate whatever the duration of use or registration of the vehicle in Austria, whereas the amortisation of the tax for a vehicle leasing undertaking varies considerably by reference to that duration. Therefore, a pro rata system, that is to say a fixing of the amount of the tax by reference to the actual duration of the leasing contract, would be more appropriate having regard to the principle of proportionality.

68 In that regard, there can be no doubt that a consumption tax such as that at issue in the main proceedings may be intended to serve the general interest of discouraging the purchase or possession of vehicles with heavy fuel consumption.

69 However, such a tax is contrary to the principle of proportionality in so far as the aim which it pursues might be achieved by introducing a tax proportionate to the duration of the registration of the vehicle in the State where it is used, which would ensure there was no discrimination with respect to amortisation of the tax against vehicle leasing undertakings established in other Member States.

70 In addition, the relation between that tax and the Sixth VAT Directive has no relevance to the question of the compatibility of the Austrian legislation with the Community provisions on the freedom to provide services.

71 In the light of the above, the answer to the Handelsgericht Wien must be that the provisions of the Treaty on the freedom to provide services (Articles 49 EC to 55 EC) preclude legislation of a Member State, such as that at issue in the main proceedings, requiring an undertaking established in that Member State which takes a lease of a vehicle registered in another Member State to register it in the first Member State in order to be able to use it there beyond a period that is so short, in this case three days, that it makes it impossible or excessively difficult to comply with the requirements imposed. The same provisions of the Treaty preclude legislation of a Member State, such as that at issue in the main proceedings, requiring an undertaking established in that Member State which takes a lease of a vehicle registered in another Member State to register it in the first Member State and imposing on it one or more of the following conditions:

- a requirement that the person in whose name the vehicle is registered in the Member State of use reside or have a place of business there, in so far as it obliges a leasing undertaking either to have a principal place of business in that Member State or to accept registration of the vehicle in the name of the lessee and the consequent limitation of its rights over the vehicle;

- a requirement to insure the vehicle with an authorised insurer in the Member State of use, if that requirement implies that the insurer must have its principal place of business in that Member State, as the home State within the meaning of the non-life insurance directives, and have official authorisation there;

- a requirement of a roadworthiness test when the vehicle has already undergone such testing in the Member State where the leasing company is established, save where that requirement is aimed at verifying that the vehicle satisfies the conditions imposed on vehicles registered in the Member State of use that are not covered by the tests carried out in the Member State where the leasing company is established and/or, if the vehicle has in the meantime been used on the public highway, that its condition has not deteriorated since it was tested in that latter Member State, provided similar testing is imposed where a vehicle previously tested in the Member State of use is presented for registration in that State;

- payment, in the Member State of use, of a consumption tax the amount of which is not proportionate to the duration of the registration of the vehicle in that State.

Decision on costs

Costs

72 The costs incurred by the Austrian, Belgian, Danish and Finnish Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

Operative part

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Handelsgericht Wien by order of 10 November 1999, hereby rules:

The provisions of the EC Treaty on the freedom to provide services (Articles 49 EC to 55 EC) preclude legislation of a Member State, such as that at issue in the main proceedings, requiring an undertaking established in that Member State which takes a lease of a vehicle registered in another Member State to register it in the first Member State in order to be able to use it there beyond a period that is so short, in this case three days, that it makes it impossible or excessively difficult to comply with the requirements imposed. The same provisions of the Treaty preclude legislation of a Member State, such as that at issue in the main proceedings, requiring an undertaking established in that Member State which takes a lease of a vehicle registered in another Member State to register it in the first Member State and imposing on it one or more of the following conditions:

- a requirement that the person in whose name the vehicle is registered in the Member State of use reside or have a place of business there, in so far as it obliges a leasing undertaking either to have a principal place of business in that Member State or to accept registration of the vehicle in the name of the lessee and the consequent limitation of its rights over the vehicle;

- a requirement to insure the vehicle with an authorised insurer in the Member State of use, if that requirement implies that the insurer must have its principal place of business in that Member State, as the home State within the meaning of the non-life insurance directives, and have official authorisation there;

- a requirement of a roadworthiness test when the vehicle has already undergone such testing in the Member State where the leasing company is established, save where that requirement is aimed at verifying that the vehicle satisfies the conditions imposed on vehicles registered in the Member State of use that are not covered by the tests carried out in the Member State where the leasing company is established and/or, if the vehicle has in the meantime been used on the public highway, that its condition has not deteriorated since it was tested in that latter Member State, provided similar testing is imposed where a vehicle previously tested in the Member State of use is presented for registration in that State;

- payment, in the Member State of use, of a consumption tax the amount of which is not proportionate to the duration of the registration of the vehicle in that State.