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Joined Cases C-290/05 and C-333/05

Ákos Nádasdi

v

Vám- és Pénzügy?rség Észak-Alföldi Regionális Parancsnoksága

and

Ilona Németh

v

Vám- és Pénzügy?rség Dél-Alföldi Regionális Parancsnoksága

(References for a preliminary ruling from the Hajdú-Bihar Megyei Bíróság and the Bács-Kiskun Megyei Bíróság)

(Internal taxation – Registration duty on motor vehicles – Used motor vehicles – Importation)

Summary of the Judgment

1. *Tax provisions – Internal taxation*

*(Arts 23 EC, 25 EC and 90 EC)*

2. *Tax provisions – Internal taxation*

*(Art. 90, first para., EC)*

3. *Tax provisions – Harmonisation of laws – Turnover taxes – Common system of value added tax – Prohibition on the levying of other domestic taxes which can be characterised as turnover taxes*

*(Council Directive 77/388, Art. 33)*

1. A tax on the registration of motor vehicles with a view to bringing them into circulation in the territory of a Member State, which does not apply to private motor vehicles by reason of the fact that they cross the frontier, does not constitute a customs duty on imports or a charge having equivalent effect within the meaning of Articles 23 EC and 25 EC, but comes under the general system of internal taxation on goods and must therefore be examined in the light of Article 90 EC.

(see paras 41-42, operative part 1)

2. The first paragraph of Article 90 EC has to be interpreted as precluding a tax on the registration of motor vehicles with a view to bringing them into circulation in the territory of a Member State, in so far as it is charged on used vehicles when they are first placed in circulation in the territory of that State and its amount, which is determined exclusively by the vehicles' technical characteristics (engine type, engine capacity) and their environmental classification, is calculated without taking the depreciation of the vehicles into account, in such a way that, when applied to used vehicles imported from other Member States, it exceeds the amount of that duty

included in the residual value of similar used vehicles which have already been registered in the Member State of importation.

(see para. 57, operative part 2)

3. Article 33 of the Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, which authorises those States to maintain or introduce, under certain conditions, taxes which are not in the nature of turnover taxes, does not preclude the levy of a tax on the registration of motor vehicles with a view to bringing them into circulation in the territory of a Member State for which turnover is not the basis of assessment and which does not give rise, in trade between Member States, to formalities connected with the crossing of frontiers.

(see para. 60, operative part 3)

## JUDGMENT OF THE COURT (First Chamber)

5 October 2006 (\*)

(Internal taxation – Registration duty on motor vehicles – Used motor vehicles – Importation)

In Joined Cases C-290/05 and C-333/05,

REFERENCES for a preliminary ruling under Article 234 EC from the Hajdú-Bihar Megyei Bíróság and the Bács-Kiskun Megyei Bíróság (Hungary), made by decisions of 3 March and 12 July 2005, received at the Court on 19 July and 14 September 2005 respectively, in the proceedings

**Ákos Nádasdi (C-290/05)**

v

**Vám- és Pénzügyőrség Észak-Alföldi Regionális Parancsnoksága,**

and

**Ilona Németh (C-333/05)**

v

**Vám- és Pénzügyőrség Dél-Alföldi Regionális Parancsnoksága,**

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, N. Colneric (Rapporteur), J.N. Cunha Rodrigues, M. Ilešič and E. Levits, Judges,

Advocate General: E. Sharpston,

Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 1 June 2006 (C-290/05),

after considering the observations submitted on behalf of:

- Mr Nádasdi, by Z. Lampé, ügyvéd,
- Mrs Németh, by I. Szabados, ügyvéd,
- the Hungarian Government, by P. Gottfried (C-290/05 and C-333/05), R. Somssich and A. Müller (C-290/05), acting as Agents,
- the Polish Government, by J. Pietras, acting as Agent,
- the Commission of the European Communities, by R. Lyal and K. Riczné-Talabér, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 July 2006,

gives the following

## **Judgment**

1 The references for a preliminary ruling concern the interpretation of Articles 23 EC, 25 EC, 28 EC and 90 EC as well as Article 33 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), as amended by Council Directive 91/680/EEC of 16 December 1991 (OJ 1991 L 376, p. 1) ('the Sixth Directive').

2 Those questions were raised in the context of disputes between (i) Mr Nádasdi and the Vám- és Pénzügyőrség Észak-Alföldi Regionális Parancsnoksága (Directorate of the Customs and Finance Guard for the region of Észak-Alföld) and (ii) Mrs Németh and the Vám- és Pénzügyőrség Dél-Alföldi Regionális Parancsnoksága (Directorate of the Customs and Finance Guard for the region of Dél-Alföld) regarding a registration duty charged when they registered, in Hungary, used motor vehicles bought in Germany.

## **Legal context**

### *Community law*

3 Article 23 EC states:

'1. The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

2. The provisions of Article 25 and of Chapter 2 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.'

4 Under Article 25 EC:

‘Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.’

5 Article 90 EC states the following:

‘No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.’

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.’

6 Article 33 of the Sixth Directive provides:

‘1. Without prejudice to other Community provisions, in particular those laid down in the Community provisions in force relating to the general arrangements for the holding, movement and monitoring of products subject to excise duty, this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties and, more generally, any taxes, duties or charges which cannot be characterised as turnover taxes, provided however that those taxes, duties or charges do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

2. Any reference in this Directive to products subject to excise duty shall apply to the following products as defined by current Community provisions:

- mineral oils,
- alcohol and alcoholic beverages,
- manufactured tobacco.’

#### *Hungarian law*

7 Law No CX of 2003 on registration duty (a regisztrációs adóról szóló 2003. évi CX. törvény; ‘the Law on registration duty’) states:

‘Article 1

1. The registration duty (“the duty”) is payable on every private motor vehicle or motor caravan (“private car”) which is intended to be placed in circulation in the territory of the Republic of Hungary (“the national territory”).

...

Article 2

1. Placing in circulation entails an initial registration of the private motor vehicle in the national territory (where the vehicle is modified, registration takes place on account of the modification) and presupposes that that information is entered on the registration document ...

...

8. Importation: importation of a vehicle or the bringing of such a vehicle by any other means into the national territory from a territory situated outside the European Community (“the

Community”).

...

### Article 3

...

2. Any natural or legal person or any organisation which does not have legal personality which is a party to the document proving acquisition of the right of ownership is – with the exception of the case defined in paragraph 4 – liable to pay the duty.

...

4. If the placing in circulation is a direct consequence of the importation of the private motor vehicle, the importer is liable to pay the duty.

...

### Article 6

1. The obligation to pay the duty arises:

(a) in the case of a private motor vehicle placed in circulation in the national territory, from the time at which the right of ownership is acquired,

(b) in the case of a private motor vehicle which is modified, on the day of the modification.

...

### Article 8

1. The amount of duty is determined in the annex to this law for the different categories of private motor vehicles.

2. Where a private motor vehicle is modified, the amount of duty payable is determined at the time when the modified vehicle is placed in circulation by the difference between the duty which would have been payable before the modification and the amount payable thereafter.

3. If the amount is greater, the taxable person shall pay the difference in duty to the competent authorities.

...

### Article 13

1. The tax authority shall refund the duty or, upon application, credit it to the account if the person liable exports the vehicle from the national territory.

...

### Article 15

The environmental classification shall be made in conformity with point II of annex 5 to Regulation KöHÉM No 6/1990 (IV. 12.) on technical requirements for the placing into circulation and

maintenance in circulation of road transport vehicles, in force since 30 August 2003.

...'

8 The annex to the Law on registration duty sets the various amounts for that duty on the basis of emissions norms, the type of fuel used and the engine size. Those amounts are applied according to a fixed scale and are the same for both the registration of a new or used vehicle.

9 Article 16 of that law amended the provisions of Law No I of 1988 on traffic on the public highway (a közúti közlekedésről szóló 1988. évi I. törvény; 'the Traffic Law').

10 Under Article 5(4) of that law, as amended:

'Any vehicle being driven on the roads with an authorisation and number plate issued by a competent authority abroad may be driven on national roads subject to the conditions laid down in the specific legislation.'

11 Article 23 of the Traffic Law states:

'1. A vehicle – after having undergone the inspection provided for in paragraph 3 – may be placed in circulation if the owner proves, in an administrative procedure, that he has lawfully acquired the right of ownership, that he has third-party insurance in respect of the vehicle and that he has paid the registration duty provided for in the specific legislation.

2. Placing a vehicle in circulation presupposes the issuing by the administration of number plates and a registration document and entry of the vehicle in the national register of vehicles.

...

6. The national user of the vehicle shall initiate the procedure for placing in circulation a vehicle which has a foreign number plate and is intended to be used in the national territory not more than 30 days after acquiring or importing the vehicle.'

12 Article 47(t) of the Traffic Law states that 'national user' is to be understood as meaning the following:

'a user who has his home, habitual residence or registered office in the territory of the Republic of Hungary'.

13 On 1 February 2004, the entry into force of the Law on registration duty was accompanied by the repeal of Law No LXXVIII of 1991 on consumption duty (a fogyasztási adóról szóló 1991. évi LXXVIII. törvény), which had introduced a turnover tax on the price of certain goods, including motor vehicles, and which both the manufacturers of those goods and persons liable to customs duty upon importing goods had to pay to the central budget. Under Article 6(1) of the Law on consumption duty, that duty was not payable when used goods, notably motor vehicles, were sold on the national market.

## **The main proceedings and the questions referred**

*Case C-290/05*

14 Having purchased a used private motor vehicle for EUR 6 000 in Germany on 2 May 2004, Mr Nádásdi lodged an application to be assessed for registration duty with the Debreceni Fővámszolgálat (Debrecen Main Customs Office) on 13 May 2004.

15 By decision of 14 May 2004, that authority imposed a duty of HUF 150 000, which Mr Nádásdi paid on the same day. It issued him with the certificate of payment of the duty, indicating the date of 14 May 2004.

16 Consequently, in the exercise of its power of review, the Vám- és Pénzügyőrség Észak-Alföldi Regionális Parancsnoksága, by Decision No 8074/2004 of 11 November 2004, amended the decision of the Debreceni Fővámszolgálat, increased the amount of the registration duty payable by Mr Nádásdi to HUF 390 000 and ordered him to pay the balance of HUF 240 000 by no later than 15 days after the decision had become final.

17 According to the grounds of Decision No 8074/2004, the amount of the registration duty was amended on account of the adoption of Law No XII of 2004 amending Law No CX of 2003 on registration duty (a regisztrációs adóról szóló 2003. évi CX. törvény módosításáról rendelkező 2004. évi XII. törvény), which entered into force on 14 May 2004, the new tariff scale being applicable in cases where the certificate of payment of the duty was issued after the entry into force of Law No XII of 2004.

18 Mr Nádásdi brought an action before the referring court for judicial review of Decision No 8074/2004.

19 Under those circumstances, the Hajdú-Bihar Megyei Bíróság (County Court, Hajdú-Bihar) (Hungary) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Does the first paragraph of Article 90 EC allow Member States to maintain in force a duty on used motor vehicles from other Member States, when that duty is wholly independent of the value of the vehicle and the amount is determined solely on the basis of the technical characteristics of the vehicle (engine type, engine capacity) and its environmental classification?’

(2) If the answer to the first question is in the affirmative, is Law No CX of 2003 on registration duty, which is applicable in this case, compatible, as regards imported used motor vehicles, with the first paragraph of Article 90 EC when the registration duty is not payable on motor vehicles which were placed in circulation in Hungary before the law in question entered into force?’

#### *Case C-333/05*

20 Having purchased a used private motor vehicle in Germany on 28 December 2004, Mrs Németh applied to the Kecskeméti Fővámszolgálat (Main Customs Office, Kecskemét) for assessment of the registration duty. In accordance with Regulation KöHÉM No 6/1990, which is a regulation of the Ministry of Transport, Communication and Construction, the Bács-Kiskun Megyei Közlekedési Felügyelet (Traffic Inspectorate of the County of Bács-Kiskun), classed that vehicle in environmental category 7.

21 Taking account of the technical and environmental characteristics of that vehicle, the Kecskeméti Fővámszolgálat set the amount of the registration duty at HUF 390 000.

22 Ruling on the objection lodged by Mrs Németh against that decision, and acting as an administrative body of appeal, the Vám- és Pénzügy?rség Dél-Alföldi Regionális Parancsnoksága confirmed that decision.

23 Mrs Németh then brought an action before the referring court to challenge that confirmatory decision. She takes the view that the Law on registration duty infringes Community law. She maintains that that duty is, in essence, a customs duty payable on import and as such is prohibited within the European Community by Articles 23 EC and 25 EC. However, should it not be classified as a customs duty or as a levy having equivalent effect to a customs duty, it may be possible to regard it as a tax prohibited by Articles 90 EC to 93 EC, or even as a turnover tax prohibited by Article 33 of the Sixth Directive, with the result that it may not be imposed.

24 Under those circumstances, the Bács-Kiskun Megyei Bíróság (County Court, Bács-Kiskun) (Hungary) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) May a tax imposed by a Member State, such as the Hungarian registration duty, be considered to be a customs duty or a measure having equivalent effect?

(2) If the first question is answered in the negative, may a tax imposed by a Member State, such as the Hungarian registration duty – which requires payment of a tax as a precondition for the registration and placing into circulation of a passenger vehicle – be considered to be a type of import duty?

(3) If the second question is answered in the negative, is a tax imposed by a Member State, such as the Hungarian registration duty, compatible with the requirements of Article 90 EC or with Article 33 of the [Sixth] Directive ... , or does that duty infringe the common system of value added tax?

(4) As Community law now stands, is a tax imposed by a Member State, such as the Hungarian registration duty, compatible with the provisions of Community law when the amount of the registration duty payable on new and used passenger cars – leaving aside the environmental classification of the vehicles – is identical, does not in any way reflect the depreciation in value of used vehicles and is wholly independent of the date on which the vehicle was placed in circulation and of the time during which it remained in (lawful) circulation?'

### **Procedure before the Court**

25 In accordance with the second sentence of Article 104(4) of the Rules of Procedure, the Court, after hearing the Advocate General, decided to give judgment without an oral hearing in Case C-333/05.

26 Since Cases C-290/05 and C-333/05 concern the same subject-matter, it is appropriate for them to be joined for the purposes of the judgment, in accordance with Article 43 of the Rules of Procedure.

### **Admissibility of the references for a preliminary ruling**

#### *Case C-290/05*

27 The Hungarian Government considers the reference for a preliminary ruling to be inadmissible. First, it submits that the national court must take a position on the question whether the applicant in the main proceedings should be liable to pay registration duty in accordance with



the new tariff scale. It is, by its very nature, a question of national law. The decision to refer does not indicate how the interpretation of Community law sought by the national court influences the outcome of the case. The questions referred are hypothetical. Second, the Hungarian Government submits that the reference does not give adequate details of the national legislation applicable in the case.

28 In that regard, the Court observes that the procedure laid down in Article 234 EC is based on a clear separation of functions between the national courts and the Court of Justice. 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. Consequently, where the questions submitted concern the interpretation of Community law, the Court is in principle bound to give a ruling (see, *inter alia*, Case C-13/05 *Chacón Navas* [2006] ECR I-0000, paragraph 32 and the case-law cited).

29 Nevertheless, the Court has also stated that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to confirm its own jurisdiction. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought 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 (*Chacón Navas*, paragraph 33, and the case-law cited).

30 The need to provide an interpretation of Community law which will be of use to the national court implies that the national court must have defined the factual and legislative context of the questions it is asking or, at the very least, have explained the factual circumstances on which those questions are based (see Case C-207/01 *Altair Chimica* [2003] ECR I-8875, paragraph 24, and Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 29).

31 In the present case, it must be observed at the outset that the Court has enough information to enable it to give a useful answer to the questions referred and it is not necessary to obtain more detailed information about the national legislation applicable in the main proceedings.

32 As regards the reasons why the questions have been referred, the national court explains that, although Mr Nádásdi does not claim that the Law on registration duty infringes Community law, it still considers that it must apply Community law of its own motion in the context of imported used vehicles. It follows from that explanation that the national court seeks to ascertain the legality of Decision No 8074/2004, which is at issue in the main proceedings, in the light of Community law. It can thus not be claimed that the questions referred are hypothetical in nature.

33 Consequently, the reference for a preliminary ruling must be deemed admissible.

Case C-333/05

34 The Hungarian Government challenges the admissibility of questions two to four, and submits that the national court has not stated the factual and legal reasons for referring those questions to the Court.

35 However, the national court has stated that if the Court of Justice answers the questions raised by the applicant in the main proceedings in the affirmative the national court will be able to uphold the applicant's claim and, if not, it will have to dismiss it.

36 The Hungarian Government's submissions are therefore unfounded and, consequently, the reference for a preliminary ruling is admissible.

### **The questions**

#### *The first and second questions in Case C-333/05*

37 By its first question, the national court is essentially asking whether a tax such as that imposed by the Law on registration duty constitutes a customs duty on imports or a charge having equivalent effect within the meaning of Articles 23 EC and 25 EC. The second question has to be understood as meaning that the national court wishes to know whether such a tax has to be regarded as a duty on imports that is prohibited by those provisions. That second question thus concerns the same issue as that referred to the Court in the first question. A duty on imports falls within the category of charges having equivalent effect within the meaning of those provisions.

38 A tax such as the registration duty is not a customs duty in the strict sense.

39 As regards the question whether that duty is a charge having equivalent effect, it is settled case-law that any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 23 EC and 25 EC (see, inter alia, Case C-90/94 *Haahr Petroleum* [1997] ECR I-4085, paragraph 20, and Case C-213/96 *Outokumpu* [1998] ECR I-1777, paragraph 20).

40 A tax such as that imposed by the Law on registration duty is not levied by reason of a vehicle crossing the frontier of the Member State imposing that tax but upon first registration of the vehicle in the territory of that State for the purpose of being placed in circulation.

41 Such a tax comes under the general system of internal taxation on goods and must therefore be examined in the light of Article 90 EC.

42 Consequently, the answer to the first and second questions referred in Case C-333/05 must be that a tax such as that imposed by the Law on registration duty, which does not apply to private motor vehicles by reason of the fact that they cross the frontier, does not constitute a customs duty on imports or a charge having equivalent effect within the meaning of Articles 23 EC and 25 EC.

#### *The questions in Case C-290/05, the first part of the third question and the fourth question in Case C-333/05*

43 By those questions, the national courts are essentially asking whether the first paragraph of Article 90 EC must be interpreted as precluding a tax such as that imposed by the Law on registration duty.

44 The national courts point out that such a duty is not payable for vehicles placed in circulation in Hungary before the entry into force of that law (the second question in Case C-290/05); that that duty is wholly independent of the value of the vehicle, the amount being determined solely on the basis of the technical characteristics of the vehicle (engine type, engine capacity) and its environmental classification (the first question in Case C-290/05); and that that amount does not in any way reflect the depreciation in value of used vehicles and is wholly independent of the time

during which a vehicle has been in circulation (the fourth question in Case C-333/05).

45 As the Court has already held, within the system of the EC Treaty, Article 90 EC supplements the provisions on the abolition of customs duties and charges having equivalent effect. Its aim is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation that discriminate against products from other Member States (Joined Cases C-393/04 and C-41/05 *AirLiquide Industries Belgium* [2006] ECR I-0000, paragraph 55, and the case-law cited).

46 As far as the taxation of imported used vehicles is concerned, the Court has also held that Article 90 EC seeks to ensure the complete neutrality of internal taxation as regards competition between products already on the domestic market and imported products (see Case C-387/01 *Weigel* [2004] ECR I-4981, paragraph 66, and the case-law cited).

47 According to settled case-law, the first paragraph of Article 90 EC is infringed where the tax charged on the imported product and that charged on the similar domestic product are calculated in a different manner on the basis of different criteria which lead, if only in certain cases, to higher taxation being imposed on the imported product (see *Weigel*, paragraph 67, and the case-law cited). However, even if the conditions for such direct discrimination are not met, taxation might be indirectly discriminatory as a result of its effects.

48 In order to ensure the neutrality of internal taxation in respect of competition between used motor vehicles already on the national market and similar imported vehicles, it is necessary to compare the effects of the registration duty imposed on used vehicles newly imported from a Member State other than the Republic of Hungary with the effects of the residual amount of registration duty affecting similar used vehicles registered in Hungary and which, for that reason, have already been subject to that same duty.

49 A comparison with used vehicles placed in circulation in Hungary before the entry into force of the Law on registration duty is not relevant. Article 90 EC is not designed to prevent a Member State from introducing new taxes or from changing the rate or basis of assessment of existing taxes.

50 It follows from the above that the fact, referred to by the Hungarian Government, that used vehicles previously registered in Hungary exist whose market value includes the amount of residual consumption duty is also irrelevant.

51 As regards the criteria which may be used for calculating a tax, the Court observes that, as it currently stands, Community law does not restrict the freedom of each Member State to establish a tax system which differentiates between certain products, even products which are similar within the meaning of the first paragraph of Article 90 EC, on the basis of objective criteria, such as the nature of the raw materials used or the production processes employed. Such differentiation is compatible with Community law, however, only if it pursues objectives which are themselves compatible with the requirements of the Treaty and its secondary legislation, and if the detailed rules are such as to avoid any form of discrimination, direct or indirect, against imports from other Member States or any form of protection of competing domestic products (*Outokumpu*, paragraph 30).

52 In the context of a system of registration duty, criteria such as engine type, engine capacity and a classification based on environmental considerations constitute objective criteria. They may thus be used in such a system. On the other hand, there is no requirement that the amount of the duty be linked to the price of the vehicle.

53 However, a registration duty must not burden products originating from other Member States more heavily than similar national products.

54 A new vehicle in respect of which registration duty has been paid in Hungary loses, with time, part of its market value. With the depreciation in value, the amount of registration duty included in the residual value of the vehicle also diminishes. Since it is a used vehicle, it can be sold only for a percentage of its initial value, which contains the residual amount of the registration duty.

55 It is apparent from the files sent to the Court by the national courts that a vehicle of the same model, age, mileage and other characteristics, bought second-hand in another Member State and registered in Hungary, will however attract the full rate of registration duty for that category of vehicle. The duty is thus a heavier burden on imported used vehicles than on similar used vehicles already registered in Hungary which have already borne that duty at an earlier stage.

56 Thus, although the purpose of and reason for the registration are environmental in nature and unrelated to the market value of the vehicle, the consequence of the first paragraph of Article 90 EC is that account must be taken of the depreciation of used vehicles when they are being taxed, since that duty is characterised by the fact that it is charged only once when the vehicle is first registered for use in the Member State concerned and is thus incorporated in that value.

57 It follows from the above considerations that the answer to the questions referred in Case C-290/05, the first part of the third question and the fourth question in Case C-333/05 must be that the first paragraph of Article 90 EC is to be interpreted as precluding a tax such as that imposed by the Law on registration duty in so far as

- it is charged on used vehicles when they are first placed in circulation in the territory of a Member State, and
- its amount, which is determined exclusively by the vehicles' technical characteristics (engine type, engine capacity) and their environmental classification, is calculated without taking the depreciation of the vehicles into account, in such a way that, when applied to used vehicles imported from other Member States, it exceeds the amount of that duty included in the residual value of similar used vehicles which have already been registered in the Member State of importation.

A comparison with used vehicles placed in circulation in the Member State in question before the introduction of that duty is not relevant.

*The second part of the third question in Case C-333/05*

58 The registration duty in dispute in the main proceedings is not a turnover tax within the meaning of Article 33 of the Sixth Directive. Turnover is not the basis of assessment for that duty. It also does not give rise, in trade between Member States, to formalities connected with the crossing of frontiers.

59 Such a duty is thus not prohibited under Article 33 of the Sixth Directive.

60 The answer to the second part of the third question must be that Article 33 of the Sixth Directive does not preclude the levy of a tax such as that imposed by the Law on registration duty for which turnover is not the basis of assessment and which does not give rise, in trade between Member States, to formalities connected with the crossing of frontiers.

### **Limitation of the temporal effect of this judgment**

61 Should it be found in this judgment that a tax such as that imposed by the Law on registration duty is incompatible with the first paragraph of Article 90 EC, the Hungarian Government requested the Court, at the hearing in Case C-290/05, to limit the temporal effect of the judgment. In its written observations submitted to the Court in that same case, the Polish Government also made a suggestion to that effect.

62 According to settled case-law, the interpretation which the Court, in the exercise of the jurisdiction conferred upon it by Article 234 EC, gives to a rule of Community law clarifies and where necessary defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its coming into force. It follows that the rule as thus interpreted can, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions for bringing before the courts having jurisdiction an action relating to the application of that rule are satisfied (see, inter alia, Case 24/86 *Blaizot* [1988] ECR 379, paragraph 27, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 141, and Case C-402/03 *Skov and Bilka* [2006] ECR I-199, paragraph 50).

63 It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict for any person concerned the opportunity of relying on a provision which it has interpreted with a view to calling in question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed, namely that those concerned should have acted in good faith and that there should be a risk of serious difficulties (see, inter alia, Case C-57/93 *Vroege* [1994] ECR I-4541, paragraph 21, Case C-372/98 *Cooke* [2000] ECR I-8683, paragraph 42, and *Skov and Bilka*, paragraph 51).

64 As regards the risk of serious difficulties, the Hungarian Government produced, at the hearing, statistics concerning the period from 1 May 2004, the date on which the Republic of Hungary joined the European Union, to 31 December 2005, namely a period of 20 months. During that period, 81 612 used vehicles were brought into the territory of the Republic of Hungary from other Member States. The Hungarian Government estimated the total amount of revenue from registration duty charged on those vehicles to be around 116 million euros. It acknowledged that not all of that amount would have to be reimbursed, but only the part corresponding to the excess duty charged on those vehicles in light of their depreciation.

65 However, that government stressed, first, the administrative costs which would be involved in the case-by-case examination necessary to reimburse the excess tax, the cost of which would probably exceed the total amount to be reimbursed, and, second, the importance of the difficulties involved in identifying all those entitled to a reimbursement.

66 It emerged at the hearing that, since 1 January 2006, a scale of reductions in the amount of registration duty payable has been introduced in which the reductions depend on the number of months elapsed between the date on which the vehicle was first placed in circulation and the date

the administrative procedure for the payment of that duty was initiated.

67 In those circumstances, the examination of the question whether there is, in the present case, a risk of serious difficulties may be confined to the period between 1 May 2004 and 31 December 2005.

68 The amount to be reimbursed is not so high that the reimbursement, as such, is likely to have serious economic repercussions of such a kind to justify a limitation of the temporal effect of this judgment.

69 As regards the administrative cost, Community law requires merely that the Member State reimburse the excess amount in conformity with the rules of national law, provided that the principles of equivalence and effectiveness are respected (see to that effect, *inter alia*, Case C-231/96 *Edis* [1998] ECR I-4951, paragraphs 19, 20 and 34, and Case C-30/02 *Recheio – Cash & Carry* [2004] ECR I-6051, paragraphs 17, 18 and 20).

70 Consequently, it must be found that the second criterion mentioned in paragraph 63 of this judgment, concerning the risk of serious difficulties, is not satisfied.

71 In those circumstances, it is not necessary to determine whether the criterion relating to the good faith of those concerned is fulfilled.

72 Accordingly, there is no need to limit the temporal effect of this judgment.

### **Costs**

73 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

**1. A tax such as that imposed in Hungary by Law No CX of 2003 on registration duty (a regisztrációs adóról szóló 2003. évi CX. törvény), which does not apply to private motor vehicles by reason of the fact that they cross the frontier, does not constitute a customs duty on imports or a charge having equivalent effect within the meaning of Articles 23 EC and 25 EC.**

**2. The first paragraph of Article 90 EC has to be interpreted as precluding a tax such as that imposed by the Law on registration duty in so far as**

– **it is charged on used vehicles when they are first placed in circulation in the territory of a Member State, and**

– **its amount, which is determined exclusively by the vehicles' technical characteristics (engine type, engine capacity) and their environmental classification, is calculated without taking the depreciation of the vehicles into account, in such a way that, when applied to used vehicles imported from other Member States, it exceeds the amount of that duty included in the residual value of similar used vehicles which have already been registered in the Member State of importation.**

**A comparison with used vehicles placed into circulation in the Member State in question before the introduction of that duty is not relevant.**

**3. Article 33 of the Sixth Directive does not preclude the levy of a tax such as that imposed by the Law on registration duty for which turnover is not the basis of assessment and which does not give rise, in trade between Member States, to formalities connected with the crossing of frontiers.**

[Signatures]

\* Language of the case: Hungarian.