Under the 'amended scheme' (see the Notice of the Ministry of Transport of June 1999 on the registration and MOT-testing of vehicles), Danish workers resident in Denmark may use within Denmark a foreign registered vehicle without having to register it in Denmark, subject to compliance with the condition that the work for the undertaking or at the established place of operation outside Denmark constitutes the main activity of the person concerned. The full registration duty need not therefore be paid inasmuch as registration is not required. On the other hand, the Law on registration duty does require payment of a charge which is defined as a part payment calculated on the basis of the full registration duty or — following authorisation and subject to the further condition that the car is used solely for commercial purposes — as a periodic payment of a fixed amount.

Both the 'previous scheme' and the 'amended scheme' create barriers to the free movement of workers contrary to the combined provisions of Articles 39 EC and 10 EC. It is contrary to Article 39 EC to introduce or retain national provisions which give rise to obstacles to the free movement of workers, irrespective of whether the national provisions apply indiscriminately, if the provisions affect workers' access to the labour market. The Danish rules are precisely of such a character. A worker resident outside Denmark will, as a matter of course, be able to use a foreign company car within Denmark without having to obtain authorisation or to pay duty. There is thus clear discrimination of a person resident in Denmark vis-à-vis a person resident outside Denmark in respect of precisely the same use in Denmark of a foreign registered company car. In conclusion, a worker who does not perform his 'main activity' within the foreign undertaking — which might precisely point to an extremely limited use of the company car — is prohibited from using that company car within Denmark. It seems obvious that an employer will thereby be dissuaded from employing a person resident in Denmark in preference to a worker resident outside Denmark as the above obstacles exist even for purely commercial use of the vehicle. It is in this context of secondary importance whether the Danish rules can be regarded as constituting a barrier to a worker's right to seek employment outside of Denmark or a barrier to an employer's prospects of recruiting workers resident in Denmark. There will be a barrier irrespective of whether it is the employer or the employee who must pay the costs and obtain authorisation or effect registration.

With specific reference to ancillary private use, it should be noted at the outset that transport from one's place of residence to one's place of work cannot be treated as constituting 'private use'; this follows from the judgment in Case C-297/99 Skills Motor Coaches Ltd [1]. The possibility of ancillary private use of a company car is an obvious incentive when it comes to seeking employment and obstacles that prevent an employer from offering such use will have the result of discouraging Danish residents — in contrast to persons resident outside Denmark — from seeking employment in a foreign undertaking offering such ancillary private use of a company car.

The Danish Government has set out four principal grounds of justification: the interest in maintaining supervision (road safety and the monitoring and control of road users), the interest in preventing the erosion of tax revenue in Denmark, the fact that certain barriers resulting from differences in taxation levels must be accepted, and the interest in achieving equivalent conditions of competition as between Danish and non-Danish undertakings. None of these considerations can justify the Danish rules, whether by reference to the derogations from Article 39 EC authorised by the Treaty or to the case-law which states that national measures liable to restrict the exercise of the fundamental freedoms guaranteed by the Treaty or to make the exercise of those freedoms less attractive may be accepted under certain conditions.

Finally, the Commission disputes the contention that Council Directive 83/182/EEC [2] can be construed as meaning that the Danish rules may be treated as lawful, quite apart from the fact that provisions of secondary Community law cannot exempt a Member State from its obligations under the combined provisions of Articles 39 EC and 10 EC.

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[1] Case C-297/99 Skills Motor Coaches and Others [2001] ECR I-573.

[2] Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (OJ L 105 of 23.4.1983, p. 59).

Action brought on 23 December 2002 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-469/02)

(2003/C 44/30)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 23 December 2002 by the Commission of the European Communities, represented by H. Michard, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

— Declare that by making the granting and payment of a benefit under the career-break benefit scheme subject to the condition that the person concerned is habitually resident in Belgium, the Kingdom of Belgium has failed to fulfil its duties under Article 39 of the EC Treaty, Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [1], and specifically, so far as concerns career breaks in the context of parental leave, Article 73 of Council Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community [2];

— Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

(The residence clause) The Belgian authorities announced the removal of the clause relating to residence acknowledging thereby that the Commission's arguments were well founded. However, work on compliance has not been completed.

(The clauses relating to payment in Belgium) The requirement that the persons affected by the benefit should have a bank account in Belgium is, in certain cases, such as to call in question the effects of the amendments to the legislation at issue. Indeed, there are instances where, in order to open a bank account or to maintain it, certain banks require a certificate of residence.

(Procedure for dealing with previous refusals) It is essential, for the purpose of legal certainty, that the real rights of the individual are protected from the harmful consequences of conduct by the public authorities which is based on rules which are incompatible with Community law. Failure of a Member State to fulfil its obligations should not, in any event, result in a financial advantage for itself. However, although the Belgian authorities state that anyone whose career-break benefit was refused on the basis of the former rules may make a fresh application on the basis of the new rules, the cases concerned will be routinely re-examined; neither is there any information as to the dissemination of information or on the procedures which will be put in place for back-payment of the benefits to persons who have been denied them on the ground that they were not resident in Belgium.

[1] OJ, English Special Edition 1968 (II), p 475.
[2] OJ, English Special Edition 1972 (I), p 159.

Reference for a preliminary ruling by the Cour d'appel de Bruxelles by judgment of that Court of 20 December 2002 in the case of Siomab against Institut Bruxellois pour la Gestion de l'Environnement ('IBGE')

(Case C-472/02)

(2003/C 44/31)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour d'appel de Bruxelles (Court of Appeal, Brussels) of 20 December 2002, received at the Court Registry on 27 December 2002, for a preliminary ruling in the case of Siomab against Institut Bruxellois pour la Gestion de l'Environnement ('IBGE') on the following questions:

Where a Member State has recourse to the mechanism by which the competent authority of dispatch gives notice of a consignment note under Articles 3(8) and 6(8) of Council Regulation No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community [1], must Articles 3(8), 4(3), 6(8), 7(4) and 26 of the regulation be interpreted as meaning:

(a) that the competent authority of dispatch within the meaning of the regulation, which is empowered to verify whether a planned shipment classified in the notification as a 'shipment of waste for recovery' actually fits that classification, may, when it considers that the classification is incorrect,

(1) refuse to transmit the consignment note because of that incorrect classification and ask the notifier to transmit a new consignment note to it,

(2) transmit the consignment note after reclassifying the planned shipment as a 'shipment of waste for disposal',

(3) transmit the consignment note containing the incorrect classification, immediately accompanying its transmission with an objection based on that incorrect classification?