



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

22 March 2017¹

(Reference for a preliminary ruling — Approximation of laws — Road transport — Tax provisions — Directive 1999/62/EC — Charging of heavy goods vehicles for the use of certain infrastructures — Toll — Member States' obligation to establish effective, proportionate and dissuasive penalties — Flat-rate fine — Proportionality)

In Joined Cases C-497/15 and C-498/15,

REQUESTS for a preliminary ruling under Article 267 TFEU, brought by the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged, Hungary), by decisions of 14 September 2015, received by the Court on 22 September 2015, in the proceedings

Euro-Team Kft. (Case C-497/15),

Spirál-Gép Kft. (Case C-498/15)

v

Budapest Rendőrfőkapitánya,

THE COURT (Tenth Chamber),

composed of M. Berger (Rapporteur), President of the Chamber, A. Borg Barthet and F. Biltgen, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Hungarian Government, by M.Z. Fehér, G. Koós and A. Pálffy, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by J. Hottiaux and L. Havas, acting as Agents,

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

gives the following

¹ — Language of the cases: Hungarian.

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of Article 9a of Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ 1999 L 187, p. 42), as amended by Directive 2011/76/EU of the European Parliament and of the Council of 27 September 2011 (OJ 2011 L 269, p. 1) ('Directive 1999/62').
- 2 The requests have been made in two sets of proceedings between Euro-Team Kft. (Case C-497/15) and Spirál-Gép Kft. (Case C-498/15) respectively, and the Budapest Rendőrfőkapitánya (Commander in chief of police, Budapest, Hungary) concerning the imposition of a fine for having used a section of motorway without having paid the required toll.

Legal context

EU law

- 3 Recitals 1, 12 and 15 of Directive 1999/62 read as follows:

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

...

(12) Existing distortions of competition cannot be eliminated solely by harmonising taxes or fuel excise duties; however, until technically and economically more appropriate forms of levy are in place, such distortions may be attenuated by the possibility of retaining or introducing tolls and/or user charges for the use of motorways; in addition Member States should be allowed to levy charges for the use of bridges, tunnels and mountain passes;

...

(15) The rates of user charges should be based on the duration of the use made of the infrastructure in question and be differentiated in relation to the costs caused by the road vehicles.'

- 4 The first paragraph of Article 1 of Directive 1999/62 provides:

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

- 5 Article 2 of Directive 1999/62 provides:

'For the purpose of this directive the following definitions shall apply:

...

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

...'

6 Under Article 7(1) of Directive 1999/62:

‘Without prejudice to Article 9 paragraph 1a, Member States may maintain or introduce tolls and/or user charges on the trans-European road network or on certain sections of that network, and on any other additional sections of their network of motorways which are not part of the trans-European road network under the conditions laid down in paragraphs 2, 3, 4 and 5 of this article and in Articles 7a to 7k. This shall be without prejudice to the right of Member States, in compliance with the Treaty on the Functioning of the European Union, to apply tolls and/or user charges on other roads, provided that the imposition of tolls and/or user charges on such other roads does not discriminate against international traffic and does not result in the distortion of competition between operators.’

7 Article 9a of Directive 1999/62 provides:

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

Hungarian law

The Road Traffic Law

8 Paragraph 20(1) of the Közúti közlekedésről szóló 1988. évi I. törvény (Law No I of 1988 on road traffic; ‘the Road Traffic Law’) provides:

‘A fine may be imposed on anyone who infringes the present law, specific legislation, or acts of Community law, relating to:

...

(m) distance-based tolls payable for the use of a toll section of road.

...’

9 Paragraph 21 of the Road Traffic Law states:

‘(1) The person who operates the vehicle or, in the situation referred to in Paragraph 21/A(2), the person who has been entrusted with the use of the vehicle, shall be responsible for ensuring compliance, when operating or using the vehicle, with the provisions laid down in the specific laws, concerning

...

(h) distance-based tolls payable for the use of a toll section of road.

...

(2) In the event of an offence under subparagraph (1), the person who operates the vehicle or, in the situation referred to in Paragraph 21/A(2), the person who has been entrusted with the use of the vehicle, shall be ordered to pay an administrative fine of HUF 10 000 to HUF 300 000 (Hungarian forints; approximately EUR 32 to EUR 974). The amount of the fines applicable for offences under the different provisions shall be set by Governmental regulation. Where a single act constitutes an

infringement of a number of rules and is examined in a single set of proceedings, the penalty shall be a fine the amount of which corresponds to the sum of the amounts of the fines laid down for each of those infringements.

...

(5) The Government — taking account of subparagraph (1) — shall establish by regulation the list of offences in respect of which an administrative fine may be imposed ... on the person operating the vehicle.'

The Law on tolled roads

- 10 Paragraph 3(1) and (6) of the az autópályák, autóutak és főutak használatáért fizetendő, megtett úttal arányos díjról szóló 2013. évi LXVII. törvény (Law No LXVII of 2013 on distance-based tolls payable for the use of motorways, expressways and main roads; 'the Law on tolled roads'), provides:

'(1) The use of tolled sections of road with tolled motor vehicles requires road use authorisation as specified in this Law.

...

(6) The operator of the motor vehicle shall be responsible for ensuring compliance with the requirements in subparagraph (1) in respect of the motor vehicle that he operates.'

- 11 Article 14 of the Law on tolled roads provides:

'Save in the cases of exemption provided for in Paragraph 9, road use shall be deemed unauthorised if:

- (a) prior to using a section of tolled road, the person liable to pay the toll fails to purchase a route ticket for the section of tolled road that they use, and they do not have a valid agreement with the toll service provider for the submission of toll declarations under this Law to the body responsible for collecting the toll and for toll payment;
- (b) the person liable to pay the toll uses a section of tolled road under a toll or environment protection declaration for a lower toll or environment protection category than that which is applicable; or
- (c) with respect to the motor vehicle concerned, the person liable to pay the toll holds a valid agreement to use a section of tolled road with the toll service provider for the submission of toll declarations to the body responsible for collecting the toll and for toll payment under this Law; however, during the use of those sections of the tolled road, at least one of the conditions for the proper operation of the on-board unit, set out in the Decree adopted pursuant to the powers conferred by this Law, is not satisfied, and prior to using a section of tolled road, the person liable to pay the toll failed to purchase a route ticket for the section of tolled road that they use.'

- 12 Article 15 of that Law provides:

'(1) The amount of the fine shall be set in such a way as to encourage persons liable to pay the toll actually to pay the toll required.

(2) The income from the fines imposed shall be paid to the central budget as a budgetary receipt entered under the heading referred to in Paragraph 14(4)(d) of Law No CXCV of 2011 on the public finances. Payment of the fine shall be made in [Hungarian] forints [(HUF)] by transfer to the bank account defined by an act adopted under the present Law.'

13 Article 16 of that Law provides:

'Unauthorised road use under this Law shall qualify as an offence, for which a fine may be imposed pursuant to the Law on road transport.'

14 Paragraph 29/A(1), (4), (6) and (7) of the Law on road tolls, inserted into that Law by Law No LIV of 2014, with effect from 9 November 2014, provides:

'(1) In the circumstances set out in subparagraphs (2) to (4), applicants who present an application to the body designated to collect the toll ("the body responsible for collecting the toll"), in accordance with the provisions of subparagraphs (6) and (7) ("the application"), shall be exempt under the provisions of this Law from the payment of the fine imposed for driving without authorisation along a route defined in Paragraph 14(a), at a time between 1 July 2013 and 31 March 2014.

...

(4) On the basis of an application that is well founded under subparagraph (7), the applicant shall be exempt from the payment of the fine imposed for breach of Paragraph 14(a) where the imposition of the fine was triggered by use of a section of a toll road system or a road in the same direction — within the period of validity of the route ticket and on no more than one occasion at a particular checkpoint for each direction of travel — that is considered to be functionally parallel, from the point of view of the road system, to the section in respect of which the vehicle in question had an authorisation to travel at the same period of time, and did not in fact use that authorisation during its period of validity.

...

(6) In addition to what is provided for in Paragraphs (2) to (4), in order to obtain an exemption from the fine, before making the application, the applicant is required to have paid to the body responsible for collecting the toll, in respect of each fine, a service charge in the sum of HUF 12 000 [approximately EUR 39], including VAT, and this payment must have been paid at the time that the application is lodged. ...

(7) An application may be lodged within 60 days following the entry into force of Law No LIV of 2014, amending [the Law on road tolls]. The body responsible for collecting the toll, on the basis of an application that is lodged, where the content of the application complies with the requirements of this Law and the information does not differ from the data held by the body responsible for collecting the toll, shall issue a certificate stating that the applicant is exempt from payment of the fine since it satisfies the conditions under Paragraphs (2) and (4). Such a certificate shall not be issued where the data contained in the application does not accord with the information held in the database of the body responsible for collecting the toll. The body responsible for collecting the toll shall issue the certificate within 120 days following receipt of the application. ...'

Governmental Decree No 410/2007

15 Paragraph 1(1) of the a közigazgatási bírsággal sújtandó közlekedési szabályszegések köréről, az e tevékenységekre vonatkozó rendelkezések megsértése esetén kiszabható bírságok összegéről, felhasználásának rendjéről és az ellenőrzésben történő közreműködés feltételeiről szóló 410/2007.

(XII. 29.) Korm. Rendelet (Governmental Decree No 410 on road traffic offences subject to an administrative fine, the amounts of the fines due in respect of road traffic offences, the use of fines and the conditions for cooperation in roadside checks) of 29 December 2007 ('Governmental Decree No 410/2007') provides:

'In accordance with Paragraph 21(1) of [the Law on road transport], in the event of an offence under the provisions in Paragraphs 2 and 8a, an administrative fine shall be imposed on the person responsible for operating the vehicle ... in the amount laid down in this Law.'

16 Paragraph 8/A of Governmental Decree No 410/2007 states:

'(1) In relation to Paragraph 21(1)(h) of [the Law on road transport], in the event of an infringement of the provisions contained in Annex 9, the person responsible for operating the vehicle shall be required to pay a fine, the amount of which shall be determined according to the category of the vehicle.

(2) The person responsible for operating the vehicle shall not be penalised more than once by a fine referred to in subparagraph (1) for driving without authorisation with the same vehicle until eight hours have elapsed from the first finding of unauthorised driving with that vehicle.

...'

17 Annex 9 to that decree provides:

'A		B		
		B1	B2	B3
1. Offence under the provisions laid down in Law LXVII of 2013		Amount of the fine, according to the category of the vehicle		
		J2	J3	J4
2. Paragraph 14(a), of Law LXVII of 2013		140,000	150,000	165,000
3. Paragraph 14(b), of Law LXVII of 2013		80,000	90,000	110,000
4. Paragraph 14(c), of Law LXVII of 2013		140,000	150,000	165,000'

Governmental Decree No 209/2013

18 Paragraph 24(3) of the az ED törvény végrehajtásáról szóló 209/2013 (VI. 18.) Korm. rendelet (Governmental Decree No 209 implementing the Law on road tolls) of 18 June 2013 ('Governmental Decree No 209/2013') states:

'A route ticket constitutes authorisation for a vehicle the parameters of which were specified at the time of purchase to use, without interruption, a specific route. The route ticket is non-transferable and neither the route nor the vehicle parameters specified at the time of purchase may be changed. A route ticket may be used for a journey begun on a day selected in advance, in accordance with the following provisions:

(a) if the start of the validity period is the day the route ticket is purchased, the ticket shall be valid from the day of purchase until the end of the next day,

- (b) if it is purchased up to a maximum of 30 days in advance, it shall be valid from the start of the specified calendar day until the end of the next day.'

19 Paragraph 26(1)(a) of Government Decree No 209/2013 provides:

'Before starting the use of a section of tolled road, the person liable to pay the toll shall ensure that he has a legal relationship with a toll service provider under which he is actually capable of using the electronic toll system operated by the toll collector, and, in that context, he shall also ensure that a route ticket is purchased that corresponds to the road actually used.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

- 20 Euro-Team, the applicant in the main proceedings in Case C-497/15, is an undertaking established in Hungary. In order for a goods transporter which it operates to be able, on 6 September 2014, to use the 'Budapest-Gyula' section of toll road, it bought, in advance, the required permit in accordance with the legislation on road tolls.
- 21 On 6 September 2014, an error in that vehicle's navigation system led its driver, employed by Euro-Team, to miss the exit at which he should have left the M5 motorway to continue his journey on the No 5 main road, of a lower category, for which he held a route ticket. He therefore continued his journey on the M5 motorway without holding a valid toll ticket and without having paid the fee proportionate to the distance travelled on that section of the motorway.
- 22 That motorway section, of approximately 5km in length, is functionally parallel to the No 5 main road. The amount of the toll for that section is HUF 324 (approximately EUR 1), that is to say a tariff lower than that invoiced for the comparable section of the No 5 main road, which, at the material time, was HUF 520 (approximately EUR 1.70). According to the findings of the referring court, Euro-Team neither gained any advantage nor caused any loss as regards the itinerary specified on the route ticket purchased in advance.
- 23 The Budapest Rendőrfőkapitánya (Commander in chief of police, Budapest, Hungary), by decision delivered on 8 December 2014, nonetheless imposed an administrative fine of HUF 165 000 (approximately EUR 535) on Euro-Team in accordance with Governmental Decree No 410/2007, on the ground that, by failing to buy a ticket in advance corresponding to the toll due for the use of the motorway section between kilometre markers 85 and 90, that undertaking had failed to fulfil its obligations under the Law on road tolls.
- 24 Euro-Team brought an action against that decision before the referring court, arguing, in particular, that the penalty laid down in Governmental Decree No 410/2007 ran counter to EU law since the amount of the fine imposed was disproportionate.
- 25 Spirál-Gép, the applicant in the main proceedings in Case C-498/15, is also an undertaking established in Hungary. In order for a goods transporter which it operates to be able, on 25 April 2014, to use the 'Kaba-Bököny' section of toll road, it bought, in advance, the required permit in accordance with the legislation on road tolls.
- 26 On the same date, however, the driver of that vehicle, employed by Spirál-Gép, through inattention, missed the exit by which he ought to have left the M35 motorway. He therefore continued his journey on the M35 motorway between kilometre markers 24 and 35, although that section did not form part of the intended itinerary for which a user charge had been paid. After realising his mistake and being unable to make a U-turn, the driver stopped the vehicle on the hard shoulder of that motorway and, by telephone and on his own initiative, paid the amount of the toll for that section.

- 27 In that regard, the referring court found that, in respect of the amount of the toll paid in advance and the amount of the toll paid spontaneously by the driver of the vehicle in the sum of HUF 1 597 (approximately EUR 5.20), Spirál-Gép neither gained any advantage nor caused any loss.
- 28 The Budapest Rendőrfőkapitánya (Commander in chief of police, Budapest), by decision delivered on 16 March 2015, imposed an administrative fine of HUF 140 000 (approximately EUR 454) on Spirál-Gép in accordance with Governmental Decree No 410/2007, on the ground that, by failing to buy a ticket in advance corresponding to the toll due for the use of the motorway section between kilometre markers 24 and 35, that undertaking had failed to fulfil its obligations under the Law on road tolls.
- 29 Spirál-Gép brought an action against that decision before the referring court, arguing, in particular, that the penalty laid down in that Governmental Decree was disproportionate and thus ran counter to EU law.
- 30 In both cases, the referring court indicates that, by virtue of Paragraph 21 of the Law on road transport, the operator of the vehicle is objectively liable, since the amount of the administrative fine imposed is due independently of any fault. Accordingly, except for those cases specified under the law, the authorities cannot take into consideration the individual and particular situation of the vehicle operator nor investigate whether or not the offence is actually attributable to that operator, that is to say, whether or not the commission of the offence was the result of express intention or mere negligence.
- 31 Accordingly, the fact that, in Case C-497/15, Euro-Team held a valid road use authorisation for a section of road parallel to that on which the offence was committed and that the amount of the toll due for that section was lower than the price paid for the intended itinerary is irrelevant. The same is true in Case C-498/15, where the driver of the vehicle, employed by Spirál-Gép paid, of his own volition, within 20 minutes of the commission of the offence, the amount of toll required for use of that motorway.
- 32 The referring court notes that, under Article 9a of Directive 1999/62, the Member States enjoy a wide discretion as regards the penalties that they can impose to ensure payment of tolls. Nevertheless, having regard to the particular nature of the offences committed in the cases pending before it, it entertains doubts as to whether the fine imposed on one of the applicants, the amount of which is more than 500 times higher than that due for the toll, can be regarded as proportionate.
- 33 The referring court is of the view, however, that the provision in Paragraph 29/A of the Law on road tolls, inapplicable *rationae temporis* to the facts of these cases by reason of the dates of the offences, enables fines proportionate to the gravity of the offences to be imposed.
- 34 Against that background, the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged) stayed the proceedings and referred the following questions, identical in both cases, to the Court for a preliminary ruling:
- ‘(1) Must the requirement for proportionality laid down in Article 9a of Directive 1999/62 ... be interpreted as meaning that it precludes a system of penalties such as that laid down in Annex 9 to [Governmental Decree No 410/2007], which provides for the imposition of a fine at a certain amount — unrelated to the gravity of the offence — in the event of failure to comply with the requirements relating to the acquisition of a route ticket?
- (2) Does the administrative fine prescribed in Annex 9 to [Governmental Decree No 410/2007] comply with the requirement imposed in Article 9a of Directive 1999/62, according to which penalties established under national law must be effective, proportionate and dissuasive?

(3) Must the requirement for proportionality laid down in Article 9a of Directive 1999/62 be interpreted as precluding, on the one hand, a system of penalties such as that at issue in the main proceedings, which provides for the strict liability of the person responsible for an offence and, on the other, the amount of the fine laid down under that system?’

35 By decision of the President of the Court of 19 October 2015, Cases C-497/15 and C-498/15 were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the questions referred

The first and second questions

36 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 9a of Directive 1999/62 must be interpreted as meaning that the requirements of effectiveness, proportionality and deterrence of the penalties which it covers preclude a system of penalties, such as that at issue in the main proceedings, which provides for the imposition of a flat-rate fine for all offences, whatever their nature and gravity, under the rules on the obligation to make prior payment of the toll for use of a road infrastructure.

37 As a preliminary point, it must be borne in mind that, under Article 9a of Directive 1999/62, Member States are to establish appropriate controls and determine the system of penalties applicable to infringements of the national provisions adopted under that directive. They are to take all measures necessary to ensure that the penalties are implemented. Those sanctions must be effective, proportionate and dissuasive.

38 However, it is clear that that directive does not contain more precise rules with regard to the establishment of those national penalties and, in particular, that it does not establish any express criterion for the assessment of the proportionality of such penalties.

39 According to settled case-law, in the absence of harmonisation of EU legislation in the field of penalties applicable where conditions laid down by arrangements under that legislation are not complied with, Member States are empowered to choose the penalties which seem to them to be appropriate. They must, however, exercise that power in accordance with EU law and its general principles, and consequently in accordance with the principle of proportionality (see, in particular, judgments of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, point 23, and of 19 October 2016, *EL-EM-2001*, C-501/14, EU:C:2016:777, paragraph 37).

40 In the present case, the measures imposing penalties permitted under the national legislation at issue in the main proceedings must not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see judgment of 19 October 2016, *EL-EM-2001*, C-501/14, EU:C:2016:777, paragraph 39 and the case-law cited).

41 In the context of Directive 1999/62, the objectives pursued are, as is apparent from the first recital thereof, both the harmonisation of levy systems and the establishment of fair mechanisms for charging infrastructure costs to hauliers in order to eliminate distortions of competition between transport undertakings in the Member States.

- 42 In that context, the Court has held that the severity of penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely deterrent effect, while respecting the general principle of proportionality (judgment of 19 October 2016, *EL-EM-2001*, C-501/14, EU:C:2016:777, paragraph 40).
- 43 Furthermore, the Court has held that Member States are required to comply with the principle of proportionality not only as regards the determination of factors constituting an infringement and the determination of the rules concerning the severity of fines, but also as regards the assessment of the factors which may be taken into account in the fixing of a fine (judgment of 19 October 2016, *EL-EM-2001*, C-501/14, EU:C:2016:777, paragraph 41).
- 44 In the present case, it must be noted that Paragraph 21(2) of the Law on road transport penalises, by a fine in an amount between HUF 10 000 and HUF 300 000 (approximately EUR 32 to EUR 974), the operator of a vehicle which infringes the rules on the obligation to pay a distance-related fee for use of a section of tolled road. It is against that background that Annex 9 of Governmental Decree No 410/2007 institutes fines for the offences at issue, which vary according to the category of vehicle, established on the basis of the number of the vehicle's axles, the lump-sum amount of which falls between HUF 140 000 and HUF 165 000 (approximately EUR 454 and EUR 535).
- 45 The penalties for infringements of the national provisions adopted by application of Directive 1999/62 must be not only proportionate to the offences committed but also effective and dissuasive. In the present case, in Case C-497/15, the amount of the fine imposed on Euro-Team is more than 500 times greater than the amount of the unpaid toll, which is lower than the amount actually paid for the comparable section of No 5 main road. In Case C-498/15, it is more than 87 times greater than the toll which was paid late.
- 46 Having regard to the amount of the fines imposed when compared with the cost of the toll actually payable and not paid in advance, it is indisputable that the Hungarian system of penalties, in light of the severity of the penalties and their regular imposition, is effective and dissuasive.
- 47 As regards compliance with the principle of proportionality, it must be noted that the only adjustment of the fines laid down under that system, which is apparent from Governmental Decree No 410/2007, relates to the category of the vehicle concerned, which is established on the basis of its number of axles. However, such an adjustment, devoid of any connection with the conduct of the operator of the vehicle or its driver, fails to take account of the nature and gravity of the offence committed. As the European Commission notes in its written observations, the competent authority cannot, for example, take into account the distance travelled without the toll having been paid. The amount of the fine penalising the failure to comply with the payment obligation at issue in the main proceedings is therefore a flat rate and does not vary with either the kilometres travelled without authorisation or whether the offender did or did not pay a toll in advance for a specified itinerary.
- 48 Furthermore, in accordance with the requirements of Directive 1999/62, set out in particular in Articles 7 to 7m thereof, the system of road tolls at issue in the main proceedings has been designed in such a way that users' contributions to the maintenance of the infrastructure is proportional to their use of it and takes account of the emission class of the vehicle used. However, the lack of adjustment of the fines according to the gravity of the offence committed is likely to run counter to that principle of participation.
- 49 The Court has previously held that the imposition of flat-rate fines for all breaches of certain obligations laid down by law, without adjustment of the amount of the penalty in line with the seriousness of the breach, appears to be disproportionate in the light of the objectives pursued by the EU legislation (see judgment of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, paragraph 41).

50 Having regard to the foregoing, the answer to the first and second questions is that Article 9a of Directive 1999/62 must be interpreted as meaning that the requirement set out therein of proportionality of the penalties which it covers precludes a system of penalties, such as that at issue in the main proceedings, which provides for the imposition of a flat-rate fine for all offences, whatever their nature and gravity, under the rules on the obligation to make prior payment of the toll for use of a road infrastructure.

The third question

51 By its third question, the referring court asks, in essence, whether Article 9a of Directive 1999/62 must be interpreted as meaning that the requirement of proportionality referred to therein precludes, on the one hand, a system of penalties, such as that at issue in the main proceedings, which imposes strict liability on persons committing offences and, on the other, the level of the penalties provided for under that system.

52 It must be borne in mind that it is apparent from the file submitted to the Court that Annex 9 to Governmental Decree No 410/2007 places the national authorities responsible for its implementation in a situation of circumscribed powers as regards the flat-rate amount of the fine laid down in respect of an offence under the Law on road tolls. Accordingly, those authorities are not able to take account of the actual and specific circumstances of each case and, thus, adjust that amount to those circumstances.

53 With regard, firstly, to the compatibility of the institution of strict liability with the principle of proportionality, the Court has already ruled on a number of occasions that such a system penalising breaches of EU law is not in itself incompatible with that law (see, inter alia, judgment of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, paragraph 47 and the case-law cited).

54 According to the Court, the imposition of a system of strict liability is not disproportionate in relation to the objectives pursued if that system is such as to encourage the persons concerned to comply with the provisions of a regulation and where the objective pursued is a matter of public interest which may justify the introduction of such a system (judgment of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, paragraph 48 and the case-law cited).

55 Next, it must be borne in mind that Directive 1999/62 requires the national legislatures to impose payment of a fee on heavy goods vehicles for the use of the road infrastructures. The national system at issue in the main proceedings, which transposes that directive, thus provides that the operators of those vehicles are required to pay a fee to use those infrastructures and institutes a penalty mechanism intended to ensure compliance with the payment obligation. Under the national legislation, there is an infringement of that obligation when the user of a tolled road infrastructure failed to pay, before using it, the required amount of the toll. Such a system of strict liability thus encourages the operators of heavy goods vehicles in circulation to make prior payment of the amount of the toll which they are due to pay.

56 Given that, on the one hand, that system of strict liability is such as to encourage vehicle operators to comply with the obligations of prior payment of the fees due in respect of the use of the road infrastructure and, on the other, the objectives pursued by the Hungarian legislation, namely those of combating distortions of competition between transport undertakings and applying the ‘polluter pays’ principle, are in the public interest, the institution, by that legislation, of a system of strict liability may be regarded as justified.

57 Accordingly, the establishment of a system of strict liability such as that at issue in the main proceedings, which penalises infringement of those obligations, is not, of itself, incompatible with EU law.

- 58 Secondly, with regard to the setting of the amount of the fine corresponding to each type of offence, provided for by the system of penalties at issue in the main proceedings, it is appropriate to recall the case-law cited in paragraphs 39 and 40 of the present judgment, according to which the Member States are empowered to choose the sanctions which seem to them to be appropriate. The Member States are, however, required to exercise that power in accordance with EU law and its general principles, and consequently in accordance with the principle of proportionality. Measures imposing penalties must not, therefore, *inter alia*, exceed the limits of what is necessary in order to attain the objectives legitimately pursued by the legislation in question or be disproportionate to those aims.
- 59 It must be recalled in that regard that the Member States are required to comply with the principle of proportionality not only as regards the determination of factors constituting an infringement and the determination of the rules concerning the severity of fines, but also as regards the assessment of the factors which may be taken into account in the fixing of a fine (see, *inter alia*, judgments of 9 February 2012, *Urbán*, C-210/10, EU:C:2012:64, paragraph 54, and of 19 October 2016, *EL-EM-2001*, C-501/14, EU:C:2016:777, paragraph 41).
- 60 That having been said, it must be stated that the obligation on the national authorities responsible for penalising infringements of the obligations to pay the fees for the use of a road infrastructure to impose a fine at a flat rate of between HUF 140 000 and HUF 165 000 (approximately EUR 454 to EUR 535), without being able to take account of the actual circumstances of the individual case or, if appropriate, to reduce the amount of that fine, does not satisfy the conditions required by the case-law referred to in paragraphs 39 and 40 of the present judgment.
- 61 Accordingly, the Hungarian penalty system appears disproportionate, particularly in cases such as those in the main proceedings.
- 62 In that regard, it must be pointed out that it is not in dispute that, firstly, in Case C-497/15, the driver of the vehicle concerned, because of an error in the navigation system, passed the exit by which he ought to have left the motorway to continue his journey on a lower category road, for which he held a road use authorisation. That driver therefore travelled approximately 5km on that motorway without having first paid the toll, the section in question being parallel to the lower category road. The amount due in respect of the 5km section travelled on the motorway was lower than that invoiced for use of the comparable section of the lower category road. As the referring court has found, Euro-Team did not either obtain any advantage or cause any financial loss to the State budget by that offence.
- 63 Secondly, in Case C-498/15, the driver of the vehicle in question, who held a ticket authorising him to use a road infrastructure for a different itinerary, paid the amount of the toll required on his own initiative, after having realised his mistake and stopped his vehicle on the hard shoulder of the motorway, since he could not make a U-turn. In that case, it is clear from the order for reference that that driver used a motorway in error for 20 minutes, because he had failed to take his intended exit. In that case, too, in accordance with the findings of the referring court, Spirál-Gép neither obtained any advantage nor caused any loss.
- 64 In those circumstances, firstly, with regard to the condition that a measure imposing a penalty must not exceed the limits of what is necessary in order to attain the objectives legitimately pursued by the legislation at issue in the main proceedings, it must be stated that it would also be possible for the competent national authorities to achieve the objectives pursued through the use of less restrictive measures, given that the offences committed did not adversely affect the objectives pursued by Directive 1999/62, namely the harmonisation of levy systems and the establishment of fair mechanisms for charging infrastructure costs to hauliers in order to eliminate distortions of competition between transport undertakings in the Member States.

- ⁶⁵ Secondly, with regard to the condition that the measure imposing a penalty must not be disproportionate to the aims pursued, it is apparent from the order for reference in Case C-497/15 that the amount of the fine imposed on Euro-Team is more than 500 times greater than the amount of the unpaid toll, which is lower than the amount actually paid for the comparable section of the No 5 main road. In Case C-498/15, the referring court states that that amount is more than 87 times greater than the amount of the toll paid out of time. Consequently, the severity of the penalty appears, in the main proceedings, to be disproportionate to the offence committed.
- ⁶⁶ Having regard to the foregoing, the answer to the third question is that Article 9a of Directive 1999/62 must be interpreted as meaning that the requirement of proportionality referred to therein does not preclude a system of penalties, such as that at issue in the main proceedings, which institutes strict liability. However, it must be interpreted as precluding the level of the penalty provided for by that system.

Costs

- ⁶⁷ 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 (Tenth Chamber) hereby rules:

- 1. Article 9a of Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, as amended by Directive 2011/76/EU of the European Parliament and of the Council of 27 September 2011, must be interpreted as meaning that the requirement set out therein of proportionality of the penalties which it covers precludes a system of penalties, such as that at issue in the main proceedings, which provides for the imposition of a flat-rate fine for all offences, whatever their nature and gravity, under the rules on the obligation to make prior payment of the toll for use of a road infrastructure.**
- 2. Article 9a of Directive 1999/62, as amended by Directive 2011/76, must be interpreted as meaning that the requirement of proportionality referred to therein does not preclude a system of penalties, such as that at issue in the main proceedings, which institutes strict liability. However, it must be interpreted as precluding the level of the penalty provided for by that system.**

[Signatures]