JUDGMENT OF THE COURT

2 July 2002 *

In Case C-115/00,

REFERENCE to the Court under Article 234 EC by the Finanzgericht Münster (Germany) for a preliminary ruling in the proceedings pending before that court between

Andreas Hoves Internationaler Transport-Service Sàrl

and

Finanzamt Borken,

on the interpretation of Article 6 of Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ 1993 L 279, p. 1) and Article 5 of Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures (OJ 1993 L 279, p. 32),

* Language of the case: German.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.-P. Puissochet, M. Wathelet (Rapporteur), R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Andreas Hoves Internationaler Transport-Service Sàrl, by B. Jansen-Weber and A. Hoves, directors of that company,

— the French Government, by K. Rispal-Bellanger and S. Seam, acting as Agents,

— the Commission of the European Communities, by M. Wolfcarius and E. Traversa, acting as Agents, assisted by A. Böhlke, Rechtsanwalt,

having regard to the Report for the Hearing,

after hearing the oral observations of Finanzamt Borken, represented by W. Busch, acting as Agent, of the United Kingdom Government, represented by P. Whipple, Barrister, and of the Commission, represented by M. Wolfcarius, assisted by A. Böhlke, at the hearing on 16 October 2001,

after hearing the Opinion of the Advocate General at the sitting on 27 November 2001,

gives the following

Judgment

1 By order of 23 February 2000, received at the Court on 27 March 2000, the Finanzgericht Münster (Finance Court, Münster) referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Article 6 of Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ 1993 L 279, p. 1) and Article 5 of Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures (OJ 1993 L 279, p. 32).

2 Those questions were raised in a dispute between Andreas Hoves Internationaler Transport-Service Sàrl ('the Hoves company') and the Finanzamt (Tax Office) Borken concerning a tax on motor vehicles claimed by the latter under German law in respect of lorries registered by Hoves in Luxembourg and carrying out cabotage operations in Germany.

Legal background

Community legislation

3 An initial transitional system governing cabotage was established by Council Regulation (EEC) No 4059/89 of 21 December 1989 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ 1989 L 390, p. 3).

4 That regulation provided that, with effect from 1 July 1990, any road haulage carrier for hire and reward established in a Member State (the 'Member State of establishment'), in accordance with its legislation and authorised in that State to operate international road haulage services, was to be entitled, provided he held a cabotage authorisation, to operate on a temporary basis national road haulage services in another Member State (the 'host Member State'), without having a registered office or other establishment there.

5 The regulation fixed a Community quota corresponding to a certain number of two-month cabotage authorisations, capable of being increased each year by the Commission, and determined the method of allocating those authorisations between the various Member States. The Commission sent the cabotage authorisations to the Member States of establishment. The competent authorities of those States then issued them to carriers who applied for them.

6 That transitional system was applicable until 31 December 1992, it being provided in Article 9 of Regulation No 4059/89 that, before 1 July 1992, the Council was to adopt a regulation laying down the definitive system of cabotage which was to enter into force on 1 January 1993.

7 By judgment of 16 July 1992 in Case C-65/90 *Parliament* v *Council* [1992] ECR I-4593, the Court of Justice annulled Regulation No 4059/89 for breach of essential procedural requirements, but maintained its effects until the adoption of new legislation in due and proper form.

8 On 25 October 1993, the Council adopted Regulation No 3118/93, applicable from 1 January 1994. That regulation provided for the admission to national road haulage services of any carrier of goods holding the Community licence provided for in Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States (OJ 1992 L 95, p. 1).

9 Regulation No 3118/93 organised a new transitional system of authorisation and Community quotas for cabotage haulage services. It fixed a Community quota corresponding to a certain number of two-month cabotage authorisations and laid down the method of allocating those authorisations amongst the various Member States. The annual increase of that quota was laid down by that regulation in accordance with a fixed proportion.

10 Article 12(2) of Regulation No 3118/93 provided that the Community authorisation and quota system for cabotage operations laid down in Article 2 was to cease to apply on 1 July 1998. The first subparagraph of Article 12(3) provided that, from that date, any non-resident carrier meeting the conditions laid down in that regulation was to be entitled to operate, on a temporary basis and without quantitative restrictions, national road haulage services in another Member State, without having a registered office or other establishment in that State.

11 Article 1(1) of Regulation No 3118/93 is worded as follows:

'Any road haulage carrier for hire or reward who is a holder of the Community authorisation provided for in Regulation (EEC) No 881/92 shall be entitled, under the conditions laid down in this Regulation, to operate on a temporary basis national road haulage services for hire and reward in another Member State, hereinafter referred to respectively as "cabotage" and as the "host Member State", without having a registered office or other establishment therein.'

12 The first and second subparagraphs of Article 3(3) of Regulation No 3118/93 provide:

'A cabotage authorisation shall be made out in the name of the carrier.... [It] may be used by only one vehicle at a time.

"Vehicle" means a motor vehicle registered in the Member State of establishment or a coupled combination of vehicles of which at least the motor vehicle is registered in the Member State of establishment and which are used exclusively for the carriage of goods.'

13 Under Article 6(1) and (3) of Regulation No 3118/93, which are worded almost identically with Article 5(1) and (2) of Regulation No 4059/89:

'1. The performance of cabotage transport operations shall be subject, save as otherwise provided in Community Regulations, to the laws, regulations and

administrative provisions in force in the host Member State in the following areas:

(a) rates and conditions governing the transport contract;

(b) weights and dimensions of road vehicles...;

(c) requirements relating to the carriage of certain categories of goods, in particular dangerous goods, perishable foodstuffs, live animals;

(d) driving and rest time;

(e) value added tax (VAT) on transport services....

...

3. The provisions referred to in paragraph 1 shall be applied to non-resident transport operators on the same conditions as those which that Member State imposes on its own nationals, so as to prevent any open or hidden discrimination on grounds of nationality or place of establishment.'

14 On 25 October 1993, the Council also adopted Directive 93/89. That directive is designed to eliminate distortions of competition between transport undertakings in the Member States by harmonising levy systems and establishing fair mechanisms for charging infrastructure costs to hauliers. In accordance with the first subparagraph of Article 13(1) of that directive, it was to be implemented before 1 January 1995.

15 The first paragraph of Article 1 of that directive thus provides that Member States are, if necessary, amongst other things, to adjust their systems of vehicle taxes.

16 In accordance with Article 2 of Directive 93/89, 'vehicle' is defined for the purposes of the directive as 'a motor vehicle or articulated vehicle combination intended exclusively for the carriage of goods by road and with a maximum permissible gross laden weight of not less than 12 tonnes'.

17 The taxes on vehicles referred to by Directive 93/89 are listed in Article 3(1) of the directive, which mentions:

'— Germany: Kraftfahrzeugsteuer,

...

— Luxembourg: taxe sur les véhicules automoteurs,

...'

18 Article 5 of Directive 93/89 provides:

'As regards vehicles registered in the Member States, the taxes referred to in Article 3 shall be charged solely by the Member State of registration.'

19 By judgment of 5 July 1995 in Case C-21/94 *Parliament* v *Council* [1995] ECR I-1827, the Court of Justice annulled Directive 93/89, but maintained its effects until the adoption of new legislation. The latter is 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), which entered into force on 20 July 1999.

National legislation

20 The relevant national legislation, as described by the national court in the order for reference, is the following.

21 The first piece of legislation in question is the Kraftfahrzeugsteuergesetz (Law on Motor Vehicle Tax; the 'KraftStG'), Paragraph 1 of which, entitled 'Object of taxation', provides, in the version which applied until 31 December 1994:

'1. The following shall be subject to motor vehicle tax:

...

(2) the keeping of foreign motor vehicles for use on the public highway, if the vehicles are in the Federal Republic of Germany;

(3) unlawful use of motor vehicles;...'

22 In the version which applied from 1 January 1995, that provision of the KraftStG reads:

'1. The following shall be subject to motor vehicle tax:

...

(2) the keeping of foreign motor vehicles for use on the public highway, if the vehicles are in the Federal Republic of Germany. Exemptions shall apply to motor vehicles and articulated vehicle combinations intended exclusively for the carriage of goods by road and with a maximum permissible gross laden weight under road transport law of not less than 12 000 kg, which are registered in another Member State of the European Community in accordance with Article 5 of Council Directive 93/89/EEC of 25 October 1993 (OJ 1993 L 279, p. 32); this shall not apply to cases under section 3;

(3) unlawful use of motor vehicles;...'

23 Paragraph 2 of the KraftStG, headed 'Definition of terms, participation by transport authorities', provides:

'...

(4) A motor vehicle is a foreign motor vehicle where it is registered under the registration procedure of another State.

(5) Unlawful use within the meaning of this Law exists where a motor vehicle is used on public roads in the Federal Republic of Germany without the registration required under road transport law. Tax in respect of unlawful use shall not be imposed where the keeping of the motor vehicle would be exempt from the tax or the tax has already been imposed pursuant to Paragraph 1(1)(1) or (2).'

24 The second piece of legislation in question is the Strassenverkehrs-Zulassungsordnung (Road Transport Registration Code; the 'StVZO'), Paragraph 18 of which, headed 'Obligation to register', reads:

'Motor vehicles with a maximum speed determined by their type of more than 6 km/h and their trailers (vehicles carried behind motor vehicles with the exception of non-operational vehicles, which are being towed and towing axles) may be operated on public roads only if they have been registered to operate through the

issue of an operating permit or an EC type approval and through the allocation of a registration number for motor vehicles or trailers by the administrative authority (registration office).'

25 Paragraph 23(1) of the StVZO, headed 'Allocation of registration number', provides:

'The person enjoying the right of disposal shall apply for the allocation of the registration number for a motor vehicle or a motor vehicle trailer to the administrative authority (registration office) in whose district the vehicle has its regular base....'

26 Thirdly, Paragraph 1(1) of the Verordnung über internationalen Kraftfahrzeugverkehr (Regulation on International Motor Vehicle Traffic; the 'IntKfzVO') of 12 November 1934 (RGBl. 1934 I, p. 1137), in the version in force during the period in question, provides:

'Foreign motor vehicles and motor vehicle trailers shall be registered to operate temporarily within the area of application of this Regulation where a competent authority has issued for it a valid

...

(b) foreign registration certificate and a regular base has not been established within the area of application of this Regulation....'

The dispute in the main proceedings and the questions referred

27 The order for reference shows that the Hoves company, formed in Luxembourg by a company agreement of 6 June 1989, is a company under Luxembourg law established in the Grand Duchy of Luxembourg. Since 13 September 1993, Mr Hoves has been its sole shareholder. He was initially the sole manager of the company, then, by notarial act of 24 March 1998, Bettina Jansen-Weber was also appointed as a manager. The two managers are jointly authorised to represent the company. Mr Hoves is also manager of the German company Hoves Speditionsgesellschaft mbH, Rhede (Germany) (hereinafter referred to as 'the GmbH').

28 The object of the Hoves company is national and international carriage of goods. Until the end of 1995, it operated solely as a carrier for the GmbH. That activity was governed by a written contract of 27 January 1993. Under that contract, the operational plans for vehicles and drivers were handled by the GmbH. After freight orders were carried out, the account was settled with the Hoves company by way of a credit entry.

29 Fifteen lorries were registered in the name of the Hoves company in Luxembourg. The company paid the Luxembourg tax on motor vehicles in respect of those

vehicles. The Luxembourg authorities issued cabotage authorisations to that company in accordance with Article 5 of Regulation No 4059/89. The company employed eight drivers, all living in Germany.

30 In connection with a tax dispute concerning the years 1993 and 1994, separate from the present dispute in the main proceedings and pending before the Finanzgericht Köln (Germany), the Bundesamt für Finanzen asked the Luxembourg authorities for judicial and administrative assistance in order to determine the place of management of the Hoves company. By letter of 12 July 1996, on the basis of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15), the Luxembourg Direction des Contributions Directes provided a certain amount of information.

31 According to that information, as set out by the referring court, the Hoves company did not have either its own garage or parking spaces for the lorries in Luxembourg. Since the activity in Luxembourg was essentially restricted to administration of haulage operations and major decisions concerning that company were taken solely by Mr Hoves, who was domiciled in Germany and, for the most part, resided there, the company's place of management within the meaning of Article 3(6) of the Luxembourg/Germany Double Taxation Convention of 23 August 1958 (BGBl. 1959 II, p. 1270), in its amended version of 15 July (read: June) 1973 (BGBl. 1978 II, p. 111) was not in Luxembourg, but in Germany. However, a clear answer could not be given as to whether the offices in Remich and Esch/Alzette (Luxembourg) were a permanent establishment within the meaning of the Double Taxation Convention. A permanent establishment may have existed in Bertrange (Luxembourg) from 9 February 1996.

32 The German tax authorities concurred with the view of the Luxembourg authorities. They held that the seat of management of the Hoves company was in Rhede and they therefore assessed the bases for corporation tax and turnover tax

for 1989-1995, capital tax for 1992 and wages tax for 1989-1994. The appeals lodged against those assessments were not yet decided at the date the order for reference was pronounced.

33 The Finanzamt Borken also assessed the basis of taxation in respect of motor vehicle tax for the vehicles registered in the name of the Hoves company and assessed the motor vehicle tax for periods from 1991 to 1996. The action before the Finanzgericht Münster is directed against those decisions and tax notices concerning motor vehicle tax.

34 The national court notes that the regular base for the purposes of Paragraph 23(1) of the StVZO, as interpreted by the case-law, is the place from which the vehicle is directly placed into circulation on the public highway and where it is parked at the end of its journey. In the case of inter-regional transport, as in the main proceedings, it is the place where decisions are taken concerning the use of the vehicle, including the rest time of drivers. In this case, in the national court's view, the regular base of the vehicles is in Rhede.

35 Having a regular base in Germany, the vehicles should be registered there in accordance with Article 18 of the StVZO. Liability to the German tax on motor vehicles arises from Paragraph 1(1)(2) of the KraftStG for the period up to 31 December 1994, and from the second half of the second sentence of Paragraph 1(1)(2) of the KraftStG in conjunction with Paragraph 1(1)(3) thereof as from 1 January 1995. In the view of the national court, the vehicles have been used unlawfully within the meaning of the first sentence of Paragraph 2(5) of the KraftStG.

36 According to the national court, neither national law nor the Double Taxation Convention of 23 August 1958 provides grounds for exemption from the tax. The court examines several national provisions in succession and states that the bilateral convention on the tax regime for motor vehicles concluded with the Grand Duchy of Luxembourg (see the decree of the Reichsminister der Finanzen of 1 July 1930, RStBl. 1930, p. 454), also assumes a purely temporary stay of the vehicles in Germany.

37 The national court has doubts, however, as to the conformity of that legal situation with Community provisions, particularly Article 6 of Regulation No 3118/93 and Article 5 of Directive 93/89.

38 The Finanzgericht Münster notes that, in accordance with the judgment in Case C-212/97 *Centros* [1999] ECR I-1459, the seat of a company should be determined by its constitution. The Hoves company has its seat in Luxembourg and an establishment there, and the question whether its place of management is there also is irrelevant. During the period at issue in the main proceedings, that company had no subsidiary, agency, branch or other secondary establishment in Germany, in the sense of a fixed establishment for an indefinite period, that is to say a stable establishment for the purposes of tax law. Neither the management of vehicles of the Hoves company by the GmbH nor the fact that the manager of the Hoves company lived in Germany support the argument that such an establishment exists. Moreover, the Grand Duchy of Luxembourg granted the road haulage authorisations.

39 Concerning the aim of preventing tax avoidance and excluding the possibility of abuse, the national court points out that the Hoves company has done no more than make use of legal possibilities existing within the European Community, even if it was with the aim of economising on taxes by paying the tax on motor vehicles in a Member State with an advantageous tax system.

40 In the light of those factors, the Finanzgericht Münster decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does Article 6 of Council Regulation (EEC) No 3118/93 of 25 October 1993 (OJ 1993 L 279, p. 1) preclude national rules which result in motor vehicle tax being charged for the use of commercial goods vehicles which are registered in another Member State of the European Union, for which a cabotage authorisation has been issued in that Member State, which carry out cabotage operations in the Federal Republic of Germany and which have their regular base there?

2. Does Article 5 of Council Directive 93/89/EEC of 25 October 1993 (OJ 1993 L 279, p. 32), in cases like that mentioned in Question 1, preclude national rules such as the second half of the second sentence of Paragraph 1(1)(2) of the Kraftfahrzeugsteuergesetz in conjunction with Paragraph 1(1)(3) of the KraftStG?'

The first question

41 By its first question, the national court essentially asks whether Article 6 of Regulation No 3118/93 precludes national provisions of a host Member State which entail the latter levying vehicle duty in respect of transport of goods by road on the ground that those vehicles have their regular base in the territory of that host Member State, even though they are registered in the Member State of

establishment and are used in the host Member State for cabotage by road, in accordance with authorisations lawfully issued by the Member State of establishment.

Arguments before the Court

42 Stating its opinion on both questions at the same time, the Hoves company suggests that they should be answered in the affirmative. It argues that the Luxembourg Ministry of Transport issued Community licences or authorisations for cabotage in respect of all the vehicles, and that it checks each year for compliance with the various conditions to which the granting of the latter is subject, including determination of the principal office of the company and the normal base of the vehicles, as well as verification of compliance with technical and economic rules. To maintain that the issuing of transport authorisations in Luxembourg was devoid of significance would imply that the action of the Luxembourg Ministry of Transport was not in accordance with Community law, since the issuing of licences and transport undertakings' access to the market are governed in a harmonised manner at Community level.

43 The Hoves company does not deny that it never had a real depot in Luxembourg or parking spaces for the lorries. It considers, however, that that was not compulsory. In its submission, if those were conditions precedent for operating a transport undertaking, the Ministry of Transport would not have issued the corresponding licences.

44 Concerning the 'regular base' of a vehicle for determining whether the tax is due, the Hoves company does not accept that it may be defined as 'the place where decisions are taken concerning the use of the vehicle'. If that were the case, any

large transport company could avoid vehicle tax by moving its department that takes such decisions to a Member State where the tax is lower. To apply the regular base criterion laid down by the German statute would affect many companies in Europe, since the GmbH governed the use not only of the vehicles of the Hoves company but also of transport companies established in Italy, Spain and Portugal, in which it had no stake.

45 In the submission of the Hoves company, the centre of operations must be defined by objective criteria. It points out in that regard that:

— the great majority of the vehicles were used abroad;

— the rest periods of the lorries in Luxembourg were at least as long as those applicable in Germany;

— the registration and taxation of the vehicles took place in Luxembourg;

— the technical inspections were carried out in Luxembourg;

— the vehicles were refuelled mainly in Luxembourg;

— the lorries were insured in Luxembourg, and the drivers were registered and insured in that Member State;

— Luxembourg transport licences, which had to be applied for each year, were used;

— the regulations and conditions of access to the occupation of road haulier in force in Luxembourg were complied with;

— the Hoves company was regularly inspected and assessed for the tax.

46 The French Government, in its written observations, and the Finanzamt Borken, in its oral observations at the hearing, argue that Article 6 of Regulation No 3118/93 does not preclude national provisions concerning the tax on motor vehicles, even if they entail the levying of the tax on vehicles used for the transport of goods by road which are registered in another Member State and in respect of which a cabotage authorisation has been issued in that State. The tax on motor vehicles was not expressly mentioned in that provision, but the latter

was applicable 'save as otherwise provided in Community Regulations'. The matter of taxes on certain vehicles used for the transport of goods by road formed the subject-matter of Directive 93/89, but the period prescribed for the transposition of the latter in the legal systems of the Member States did not expire until 1 January 1995. Until that date, Regulation No 3118/93, as such, did not preclude application of the legislation of the Member States concerning the taxation of motor vehicles.

47 In its observations submitted at the hearing, the United Kingdom Government has argued that each Member State has power to determine the circumstances in which it may require the registration and taxation of a vehicle. Community law lays down a number of exceptions to that freedom, of which Regulation No 3118/93 is one. To require payment of road tax in respect of a vehicle using the roads of a Member State temporarily pursuant to a cabotage authorisation would go against the objective of that regulation, which is precisely to permit temporary transport in another Member State.

48 The Commission considers that, since the provisions referred to in Article 6 of Regulation No 3118/93 are exhaustive, and do not include the tax on motor vehicles, that article precludes the levying of such a tax by the host Member State for the duration of the cabotage authorisation issued by the Member State of establishment, whatever the regular base of the motor vehicle used for the transport of goods by road during the period in question.

49 It points out that the Hoves company has enjoyed cabotage authorisations, of two months' duration, which have been issued successively over many years, but it adds that the regularity of the issuing of the cabotage authorisations by the Luxembourg authorities during those years is not the subject-matter of the dispute. It argues in that respect that, in its capacity as the host Member State, the

Federal Republic of Germany may check the lawfulness of the cabotage transport operations and, in case of serious irregularity, adopt sanctions or request the intervention of the Member State of establishment. However, it did not appear that any such steps were taken with the Luxembourg authorities.

Answer of the Court

50 In accordance with Article 61 of the EC Treaty (now, after amendment, Article 51 EC), freedom to provide services in the field of transport is to be governed by the provisions of the Title relating to transport.

51 Article 75 of the EC Treaty (now, after amendment, Article 71 EC) provides that, for the purpose of implementing the common transport policy, and taking into account the distinctive features of transport, the Council is required to establish, in accordance with a given procedure, *inter alia*, the conditions under which non-resident carriers may operate transport services within a Member State. The Council carried out that obligation by successively adopting Regulations Nos 4059/89 and 3118/93, both based on Article 75 of the Treaty.

52 Under Article 1 of Regulation No 3118/93, the beneficiaries of that freedom to operate national road haulage services in another Member State are '[a]ny road haulage carrier for hire or reward who is a holder of the Community authorisation provided for in Regulation (EEC) No 881/92'. That latter regulation states, in Article 3(2), that Community authorisation is to be issued to 'any haulier carrying goods by road for hire or reward who... is established in a Member State... in accordance with the legislation of that Member State', and who 'is entitled in that Member State, in accordance with the legislation of the Community and of that State concerning admission to the occupation of road haulage operator to carry out the international carriage of goods by road'.

53 It follows that a company such as the Hoves company, lawfully constituted in accordance with Luxembourg legislation and empowered, in the Grand Duchy of Luxembourg, to carry out the international carriage of goods by road, is one of the beneficiaries of the freedom to operate national road haulage services in another Member State, so long as it obtains cabotage authorisations issued by the competent authorities of the Member State of establishment, which, in the case at issue in the main proceedings, means the Luxembourg authorities.

54 As Article 6 of Regulation No 3118/93 provides, the performance of cabotage transport operations is to be subject to the laws, regulations and administrative provisions in force in the host Member State in a number of areas. The wording of that provision shows that the areas listed in Article 6(1)(a) to (e) constitute an exhaustive list which does not include either the obligation to register the vehicle in the host Member State or the obligation to pay the tax on motor vehicles.

55 In that respect, to require the carrier to register the vehicle in the host Member State would be the very negation of the freedom to provide the cabotage service by road, the exercise of which presupposes, as the second subparagraph of Article 3(3) of Regulation No 3118/93 provides, that the motor vehicle is registered in the Member State of establishment.

56 Similarly, to require a carrier to pay a tax on the motor vehicles in the host Member State, even though he has already paid such a tax in the Member State of establishment, would be contrary to the objective of Regulation No 3118/93,

which, according to the second recital in its preamble, is aimed at removing all restrictions against the person providing the services on the grounds of his nationality or the fact that he is established in a different Member State from the one in which the service is to be provided.

57 It is irrelevant in that respect that, under German law, the regular base of the vehicles, justifying the levying of the German tax on motor vehicles, is situated in Germany by reason of the fact that it is in that Member State that the place where decisions are taken concerning the use of the vehicles is situated. A company such as the Hoves company was entitled to collaborate with a company situated in another Member State and to entrust to the latter certain decisions concerning the organisation of transport operations, without thereby ceasing to be a company providing cabotage services by road.

58 In any event, Article 8(1) of Regulation No 3118/93 provides that Member States are to assist one another in applying that regulation. If the German authorities had doubts as to the lawfulness of cabotage authorisations issued by the Luxembourg authorities, it was their responsibility to refer that question to those authorities so that, if need be, the latter could re-examine the situation. In their capacity as authorities of the host Member State, the German authorities were, however, not entitled to decline to recognise cabotage authorisations issued by the Member State of establishment or to impose a condition for carrying out cabotage by road not laid down by Regulation No 3118/93 (see, to that effect, Case C-202/97 *FTS* v *Bestuur van het Landelijk Instituut Sociale Verzekeringen* [2000] ECR I-883, paragraphs 51 to 56, and Case C-178/97 *Banks and Others* v *Théâtre Royal de la Monnaie* [2000] ECR I-2005, paragraphs 38 to 43).

59 Having regard to the above considerations, the answer to the first question must be that Article 6 of Regulation No 3118/93 precludes national provisions of a host Member State which entail the latter levying vehicle tax on the use of motor vehicles for the carriage of goods by road on the ground that those vehicles have

their regular base in the territory of that host Member State, when they are registered in the Member State of establishment and are used in the host Member State to carry out cabotage by road, in accordance with authorisations lawfully issued by the Member State of establishment.

The second question

60 By its second question, the national court essentially asks whether Article 5 of Directive 93/89 precludes national provisions of a host Member State, within the meaning of Article 1(1) of Regulation No 3118/93, entailing the levying by the latter of vehicle tax on the use of motor vehicles for the carriage of goods by road on the ground that those vehicles have their regular base in the territory of that host Member State, when they are registered and the tax referred to in Article 3(1) of that directive is paid in the Member State of establishment and those vehicles are used in the host Member State to carry out cabotage by road in accordance with authorisations lawfully issued by the Member State of establishment.

Arguments before the Court

61 The Finanzamt Borken emphasises the connection which exists between the right of a Member State to require registration of a vehicle and the right to require payment of the tax on that vehicle. Since there is no Community harmonisation provision on the matter of registration, two Member States might take the view that registration was necessary in a given situation and, in consequence, both demand the tax. In the Finanzamt's submission, Article 5 of Directive 93/89 does not prevent that.

62 The French Government draws attention to the purpose of Directive 93/89 as it appears in the first recital in its preamble, namely 'the harmonisation of levy systems'. In its submission, that harmonisation takes the form of an exclusive allocation of the right to levy vehicle tax to the Member State of registration, and, correspondingly, an exemption from similar taxes applicable in other Member States. It considers it self-explanatory in that regard that the State of registration is the State of legal registration of the vehicles.

63 At the hearing, the United Kingdom Government stated its agreement with the French Government and the Commission. It proposes that the answer to the second question should be that Article 5 of Directive 93/89 precludes national rules linking liability to the tax referred to in Article 3(1) of Directive 93/89 with unlawful use of a vehicle on the public highway where that unlawful use is defined as absence of registration.

64 The Commission maintains that the directive creates an indissoluble link between the right to tax and registration, without however becoming involved in registration itself. Since the criteria relating to the registration of vehicles used for carriage of goods by road have not yet been harmonised, conflicts in the matter of registration are inevitable and must be resolved. They do not however, as such, authorise the breaking of the indissoluble link between the right to tax and registration. They cannot lead to the creation *contra legem* of facts giving rise to a tax on motor vehicles other than that resulting from registration.

65 The Commission therefore considers that, according to Directive 93/89, tax on motor vehicles is the consequence of registration and not a substitute for it. It therefore proposes that the answer to the question should be that, for the duration of registration in another Member State, Article 5 of the directive

precludes a national provision which attaches the levying of the tax referred to in Article 3 of the directive to unlawful use of the vehicle, namely its use on the public highway without its being lawfully registered in accordance with road traffic legislation.

Answer of the Court

66 The dispute in the main proceedings arises from a positive conflict of laws concerning the registration of vehicles, and thus concerning their taxation. On the one hand, Luxembourg legislation requires registration of the Hoves company's vehicles in so far as that company has its principal office in Luxembourg, whereas, on the other hand, German legislation requires registration of those same vehicles on the ground that they have their regular base in Germany. By reason of the link between the registration of vehicles and their taxation, levying of the tax on motor vehicles is required pursuant to the legislation of both countries.

67 It should be noted in that respect that, in order to eliminate distortions of competition between the transport undertakings of Member States, Directive 93/89 has harmonised the national systems of taxes on certain commercial vehicles of more than a certain gross laden weight.

68 That directive lays down minimum rates of tax to be applied to the vehicles concerned and provides that those taxes may be levied only by the Member State of registration.

69 The general scheme of Directive 93/89 shows that the latter assumes the existence of a single Member State where the vehicles are registered. Thus Article 5 of that directive provides that the taxes are levied 'solely by the Member State of registration'.

70 Directive 93/89 does not, however, contain any conflict of law rule to determine which Member State is competent as regards registration.

71 However, the objective of Regulation No 3118/93, namely to encourage the development of cabotage services by road, combined with the harmonisation of taxes on certain commercial vehicles effected by Directive 93/89, could not be achieved if the host Member State were able, on the ground that a vehicle falls within the scope of the national law on the taxation of vehicles, to require a carrier using that vehicle for cabotage in accordance with authorisations lawfully issued by the Member State of establishment, to pay in respect of that vehicle one of the taxes referred to in Article 3(1) of that directive, when such a tax has already been paid in the Member State of establishment.

72 The answer to the second question must therefore be that Article 5 of Directive 93/89 precludes national provisions of a host Member State, within the meaning of Article 1(1) of Regulation No 3118/93, which entail the levying by the latter of vehicle tax on the use of motor vehicles for the carriage of goods by road on the ground that those vehicles have their regular base in the territory of that host Member State, when they are registered and the tax referred to in Article 3(1) of that directive has been paid in the Member State of establishment and those vehicles are used in the host Member State for cabotage by road, in accordance with authorisations lawfully issued by the Member State of establishment.

Costs

73 The costs incurred by the French and United Kingdom 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.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Finanzgericht Münster by order of 23 February 2000, hereby rules:

1. **Article 6 of Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State precludes national provisions of a host Member State which entail the latter levying vehicle tax on the use of motor vehicles for the carriage of goods by road on the ground that those vehicles have their regular base in the territory of that host Member State, when they are registered in the Member State of establishment and are used in the host Member State to carry out cabotage by road, in**

accordance with authorisations lawfully issued by the Member State of establishment.

2. Article 5 of Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures precludes national provisions of a host Member State, within the meaning of Article 1(1) of Regulation No 3118/93, which entail the levying by the latter of vehicle tax on the use of motor vehicles for the carriage of goods by road on the ground that those vehicles have their regular base in the territory of that host Member State, when they are registered and the tax referred to in Article 3(1) of that directive has been paid in the Member State of establishment and those vehicles are used in the host Member State for cabotage by road, in accordance with authorisations lawfully issued by the Member State of establishment.

Rodríguez Iglesias Jann Macken

Colneric von Bahr Gulmann

Edward La Pergola Puissochet

Wathelet Schintgen

Skouris Cunha Rodrigues

Delivered in open court in Luxembourg on 2 July 2002.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President