



Reports of Cases

Case C-552/15

**European Commission
v
Ireland**

(Failure of a Member State to fulfil obligations — Freedom to provide services — Motor vehicles — Rental or leasing of a motor vehicle by a resident of one Member State from a supplier established in another Member State — Registration tax — Payment of the full amount of tax at the time of registration — Conditions for refunding tax — Proportionality)

Summary — Judgment of the Court (Grand Chamber), 19 September 2017

1. *Actions for failure to fulfil obligations — Pre-litigation procedure — Purpose — Definition of the subject matter of the dispute*
(Art. 258 TFEU)
2. *Actions for failure to fulfil obligations — Right of the Commission to bring judicial proceedings — Period prescribed for exercising that right — None — Discretion to choose when to initiate proceedings*
(Art. 258 TFEU)
3. *Actions for failure to fulfil obligations — Examination of the merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion*
(Art. 258 TFEU)
4. *Actions for failure to fulfil obligations — Application initiating proceedings — Statement of subject matter and pleas in law — Formal requirements — Unambiguous wording of the form of order sought*
(Art. 258 TFEU; Statute of the Court of Justice, Art. 21, first para.; Rules of Procedure of the Court of Justice, Art. 120(c))
5. *Freedom to provide services — Restrictions — National legislation requiring residents to pay in advance the full amount of the registration tax applicable in the event of permanent registration, irrespective of the proposed actual duration of use of the vehicle imported into the Member State concerned — Unlawful — Justification — Protection of the environment — No such justification — Breach of the principle of proportionality*

(Art. 56 TFEU)

6. *Freedom to provide services — Restrictions — National legislation requiring residents to pay in advance the full amount of the registration tax applicable in the event of permanent registration, irrespective of the proposed actual duration of use of the vehicle imported into the Member State concerned — Subsequent refund of the registration tax without payment of interest and subject to a deduction of EUR 500 — Unlawful*

(Art. 56 TFEU)

1. See the text of the decision.

(see paras 28, 29)

2. See the text of the decision.

(see paras 34, 36)

3. See the text of the decision.

(see paras 35, 63)

4. See the text of the decision.

(see para. 38)

5. A Member State fails to fulfil its obligations under Article 56 TFEU by imposing the obligation to pay in advance the full amount of the vehicle registration tax applicable in the event of permanent registration, whatever the actual limited duration of the proposed use in that State of a vehicle imported there, and although the temporary duration of the lease or rental has been determined precisely and is known in advance.

Such an obligation is liable to render the rental or leasing of vehicles from a company established in another Member State more onerous than when the rental or leasing contract is entered into with a company established in the Member State concerned, in the light, in particular, of the discriminatory nature of such an obligation with respect to amortisation of the tax, to the detriment of rental or leasing undertakings established in another Member State.

In fact, that obligation to pay in advance the full amount of registration tax is liable to deter both residents from calling on vehicle rental or leasing services offered by service providers established in other Member States and those service providers from offering vehicle rental or leasing services to residents. Such an obligation thus constitutes a restriction on the freedom to provide services, prohibited, in principle, by Article 56 TFEU.

As regards whether such a restriction is justified, objectives concerning compensating for the costs, generated by the use of vehicles, relating to road infrastructure, traffic control, emergency services and registration services cannot however justify the obligation to pay in advance the full amount of registration tax irrespective of the duration of the vehicle's use in the Member State concerned.

Purely economic objectives cannot constitute an overriding reason in the public interest justifying a restriction on the freedom to provide services.

On the other hand, the overriding reasons in the public interest recognised by the Court include environmental protection. In particular, discouraging the leasing or rental of vehicles with heavy fuel consumption may have a public-interest objective.

As regards whether such a national system observes the principle of proportionality, the introduction of an additional factor corresponding to the duration of use envisaged in the Member State concerned at the time of initial payment of the registration tax would enable the objective of protecting the environment that is pursued to be achieved by means of a less restrictive measure, without calling into question the basis of taxation constituted by the vehicle's open market value and its level of carbon dioxide emissions.

(see paras 78, 82, 88-90, 102, 108, operative part 1)

6. A Member State fails to fulfil its obligations under Article 56 TFEU by imposing the obligation to pay in advance the full amount of the vehicle registration tax applicable in the event of permanent registration, whatever the actual limited duration of the proposed use in that State of a vehicle imported there, and although the temporary duration of the lease or rental has been determined precisely and is known in advance, and by failing to provide for the payment of interest when that vehicle registration tax is refunded and deducting the sum of EUR 500 by way of an administration charge from the amount of registration tax to be refunded.

Where a procedure for refunding such a tax is provided for, the fact that that procedure is subject to disproportionate conditions is, in itself, such as to give rise to a deterrent effect, irrespective of whether or not the temporary duration of the rental or lease may be determined precisely and known in advance.

A system founded on the presumption that part of the registration tax paid initially will constitute an overpayment and will therefore have to be refunded, without the payment of interest on those sums being provided for, does not enable the cash-flow disadvantage caused by payment in advance of the full amount of tax to be alleviated. The failure to pay interest therefore does not comply with the principle of proportionality.

Furthermore, the obligation to pay a sum of EUR 500 by way of an administration charge is liable to deter a taxpayer from initiating the refund procedure and thus runs counter to the aim pursued by such a procedure. Where a Member State organises the levying of registration tax in such a way that refund of part thereof is inevitable in certain situations, the expenditure connected with the organisation of that system cannot be financed by deductions from amounts due to persons entitled to repayment. The existence of a deduction of EUR 500, by way of an administration charge, from the amount of registration tax to be refunded therefore likewise does not comply with the principle of proportionality.

(see paras 108, 112, 117, 120, 122-124, operative part 1, 2)