Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 6 April 2017 [1]

Case C-65/16

Istanbul Lojistik Ltd
v
Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság

(Request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság (Szeged Administrative and Labour Court, Hungary))

(Reference for a preliminary ruling — International road haulage — Agreement establishing an Association between the European Economic Community and Turkey — Article 9 — Decision No 1/95 of the EC-Turkey Association Council — Articles 4, 5 and 7 — Free movement of goods — Motor vehicle tax — Tax levied on heavy goods vehicles registered in Turkey crossing Hungary in transit — Bilateral agreement concluded by a Member State with Turkey — Article 3(2) TFEU — Regulation (EC) No 1072/2009 — Article 1)

I. Introduction

1. The request for a preliminary ruling has been made by the Szegedi Közigazgatási és Munkaügyi Bíróság (Szeged Administrative and Labour Court, Hungary) in proceedings between a Turkish haulage company and a Hungarian tax authority which required that company to pay the motor vehicle tax provided for by Hungarian law.

2. Under that law, a tax is levied on heavy goods vehicles registered in a country that is not an EU Member State — in this case Turkey — which are used for the carriage of goods, each time they cross the Hungarian border to travel through Hungarian territory in transit to reach another Member State.

3. The referring court asks the Court of Justice whether such national rules are compatible with the requirements of EU law, in particular with the rules derived from the Agreement establishing an Association between the European Economic Community and the Republic of Turkey [2] ('the EEC-Turkey Association Agreement'). [3]

1 Original language: French.

2 Agreement signed on 12 September 1963 at Ankara by the Republic of Turkey, of the one part, and by the Member States of the EEC and the Community, of the other part, which was concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1).

3 A similar issue has been submitted to the Court in pending Case *CX* (C-629/16).

4. It asks first of all whether the provisions of Decision No 1/95 of the EC-Turkey Association Council [4] ('Decision No 1/95 of the Association Council') preclude the application of a tax such as that at issue in the main proceedings, in so far as it constitutes a charge having equivalent effect to a customs duty within the meaning of Article 4 of that decision or else a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 5 of that decision, a measure that might, in some circumstances, be justified by the grounds for derogation provided for in Article 7 thereof.

5. Next, the referring court asks whether that type of tax is contrary to Article 9 of the EEC-Turkey Association Agreement, which prohibits any discrimination on grounds of nationality.

6. Lastly, the referring court asks the Court to determine whether Article 3(2) TFEU and Article 1(2) and (3)(a) of Regulation (EC) No 1072/2009, on common rules for access to the international road haulage market, [5] preclude the authorities of a Member State from applying such a tax on the basis of a bilateral transport agreement concluded with a third country, in the present case an agreement concluded by Hungary with the Republic of Turkey.

7. For the reasons set out below, I consider that the answer to the first question asked should be in the affirmative, in that a national measure such as that at issue in the main proceedings constitutes a charge having equivalent effect to a customs duty which is contrary to Article 4 of Decision No 1/95 of the Association Council, and that it will not, therefore, be necessary for the Court to reply to the other questions, although I shall make observations on those questions in the alternative.

II. Legal context

A. EU law

1. The EEC-Turkey Association Agreement and the Additional Protocol thereto

8. Article 9 of the EEC-Turkey Association Agreement provides that 'the Contracting Parties recognise that within the scope of this Agreement and without prejudice to any special provisions which may be laid down pursuant to Article 8, any discrimination on grounds of nationality shall be prohibited in accordance with the principle laid down in Article 7 of the Treaty establishing the Community'.

9. The Additional Protocol to the EEC-Turkey Association Agreement, which was signed at Brussels on 23 November 1970, [6] forms an integral part of that agreement. [7] Article 41 of that protocol states that the Association Council's task is to determine, in accordance with the principles set out in Articles 13 and 14 of the agreement, the timetable and rules for the progressive abolition by the Contracting Parties, between themselves, of restrictions on freedom of establishment and on freedom to provide services.

10. Article 42(1) of that protocol provides that 'the Council of Association shall extend to Turkey, in accordance with the rules which it shall determine, the transport provisions of the Treaty establishing the Community with due regard to the geographical situation of Turkey. In the same way it may extend to Turkey measures taken by the Community in applying those provisions in respect of transport by … road …'.

4 Decision of 22 December 1995 on implementing the final phase of the Customs Union (OJ 1996 L 35, p. 1).

5 Regulation of the European Parliament and of the Council of 21 October 2009 (OJ 2009 L 300, p. 72).

6 Protocol concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1977 L 361, p. 60).

7 Under Article 62 of that protocol.

2. Decision No 1/95 of the Association Council

11. Article 1 of Decision No 1/95 of the Association Council provides that 'without prejudice to the provisions of the [EEC-Turkey Association Agreement], its Additional and Supplementary Protocols, the Association Council hereby lays down the rules for implementing the final phase of the Customs Union, laid down in Articles 2 and 5 of the abovementioned Agreement'.

12. Article 4 of that decision, in Section I entitled 'Elimination of customs duties and charges having equivalent effect' of Chapter 1 entitled 'Free movement of goods and commercial policy', provides that 'import or export customs duties and charges having equivalent effect shall be wholly abolished between the Community and Turkey on the date of entry into force of this Decision. The Community and Turkey shall refrain from introducing any new customs duties on imports or exports or any charges having equivalent effect from that date. These provisions shall also apply to customs duties of a fiscal nature'.

13. Article 5, in Section II of that Chapter 1, entitled 'Elimination of quantitative restrictions or measures having equivalent effect', provides that 'quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between the Parties'.

14. Article 7 of Decision No 1/95 of the Association Council provides that 'the provisions of Articles 5 and 6 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties'.

15. Article 66 of that decision, in Chapter VI entitled 'General and final provisions', states that 'the provisions of this Decision, in so far as they are identical in substance to the corresponding provisions of the Treaty establishing the European Community shall be interpreted for the purposes of their implementation and application to products covered by the Customs Union, in conformity with the relevant decisions of the Court of Justice of the European Communities'.

3. Regulation No 1072/2009

16. Article 1 of Regulation No 1072/2009, entitled 'Scope', provides:

'1. This Regulation shall apply to the international carriage of goods by road for hire or reward for journeys carried out within the territory of the Community.

2. In the event of carriage from a Member State to a third country and vice versa, this Regulation shall apply to the part of the journey on the territory of any Member State crossed in transit. It shall not apply to that part of the journey on the territory of the Member State of loading or unloading, as long as the necessary agreement between the Community and the third country concerned has not been concluded.

3. Pending the conclusion of the agreements referred to in paragraph 2, this Regulation shall not affect:

(a) provisions relating to the carriage from a Member State to a third country and vice versa included in bilateral agreements concluded by Member States with those third countries;

…'

17. Article 2(1) of that regulation defines 'vehicle' for the purposes of that regulation as 'a motor vehicle registered in a Member State, or a coupled combination of vehicles the motor vehicle of which at least is registered in a Member State, used exclusively for the carriage of goods'.

B. National law

1. The Hungary-Turkey Agreement

18. The international road haulage agreement concluded between the Presidential Council and the Government of the Hungarian People's Republic, of the one part, and the Government of the Republic of Turkey, of the other part, was signed at Budapest on 14 September 1968 [8] ('the Hungary-Turkey Agreement').

19. Article 18(2) of that agreement provides that 'vehicles carrying goods between the territories of the two Contracting Parties, including on the empty run, shall be exempt from any charges, surcharges, duties and fees that are payable in the territory of the other Contracting Party in respect of the corresponding transport activity or for operating the vehicle or for use of the roads'. Article 18(3) provides that 'vehicles carrying goods through the territory of the other Contracting Party, including on the empty run, shall be subject to any charges, surcharges, duties and fees that are payable in respect of the carriage of goods and to cover costs in connection with the maintenance and repair of roads ...'.

2. Law on motor vehicle tax

20. According to the preamble to the gépjárműadóról szóló 1991. évi LXXXII. törvény (Law LXXXII of 1991 on motor vehicle tax) [9] ('the Law on motor vehicle tax'), 'the National Assembly, in the interests of a more proportionate sharing of public costs in relation to motor vehicle traffic, increasing the revenue of the local authorities or, in the case of the capital, of the boroughs, and expanding the sources of funding needed to maintain and develop the public road network, adopts the present law on motor vehicle tax'.

21. Article 1 of that law reads as follows:

'1. Motor vehicle tax is payable on any vehicle or trailer with Hungarian registration plates and any heavy goods vehicle registered abroad being driven on Hungarian territory (jointly referred to as the "vehicle") …

2. The scope of the present law does not include …, in the category of heavy goods vehicles registered abroad, those registered in a Member State of the European Union.'

22. Chapter II of the Law on motor vehicle tax lays down the details of the 'tax on national vehicles'. The amount of the annual tax to be paid on heavy goods vehicles registered in Hungary varies according to the mass of the vehicle concerned, its suspension system and its environmental classification.

23. Article 6 of that law provides that the tax base is the unladen mass of the heavy goods vehicle stated in the official register, plus 50% of the loading capacity (payload).

8 The Hungarian Government refers in this regard to the provisions of Regulation having statutory effect No 29/1969 promulgating that agreement in Hungary, *Magyar Közlöny* 1969/78 (X.11.).

9 *Magyar Közlöny* 1991/145 (XII.26.).

24. According to Article 7(2) of that law, the tax is calculated on a scale of 850 Hungarian forints (HUF) (approximately EUR 3) for each tranche of 100 kilograms, or part thereof, of the tax base for heavy goods vehicles with air suspension or with an equivalent suspension system, and HUF 1 380 (approximately EUR 5) for other heavy goods vehicles.

25. Article 8 of the same law sets out the criteria whereby tax relief may be claimed — a reduction of 20% to 30% — depending on the environmental classification code of the heavy goods vehicle concerned.

26. Chapter III of the Law on motor vehicle tax lays down the details of the 'tax on vehicles registered abroad'.

27. According to Article 10 of that law, 'the tax is payable by the person operating the vehicle' and, according to Article 11, 'tax liability begins on the day of entry into Hungarian territory'.

28. Article 15 of that law provides:

'1. In the case … of a vehicle with a maximum laden weight of more than 12 tonnes, being driven under a transport licence used for service purposes, tax of HUF 30 000 (approximately EUR 100) must be paid in respect of both the outward and the return journey. In the case … of a vehicle with a maximum laden weight of more than 12 tonnes, being driven under a transport licence used for transit purposes, a tax of HUF 60 000 (approximately EUR 200) must be paid in respect of both the outward and the return journey. …

2. The amounts of tax laid down in paragraph 1 are payable in respect of an outward or a return journey and for a stay on Hungarian territory not exceeding 48 hours per journey. If the stay lasts longer, the tax shall be paid, in accordance with the provisions of paragraph 1 above, in respect of each additional 48-hour period or part thereof. …

3. The amount of the tax payable under paragraph 1 shall be paid through the purchase of a revenue stamp to be affixed to the road transport licence — in the case of transport for service purposes, throughout the period of transport and, in the case of transport for transit purposes, separately for the outward and the return journey — at the time of entry into Hungarian territory. Once the stamp/stamps is/are affixed, the person liable for the tax is required to mark on it/them the date and time of entry (year-month-day-time). If the obligation to pay the tax (revenue stamp) is not met, it is possible to drive with a transport licence that is subject to tax and not incur a penalty only within a maximum radius of 5 km from the point of entry into Hungarian territory.'

29. Article 17(2) of the same law provides that 'if the person liable for the tax has failed in part or in full to meet his obligation to pay the tax the customs authority shall declare the existence of a tax debt and impose a tax penalty equivalent to five times the amount of that debt ...'.

3. *Law on road transport and Government Decree No 156/2009*

30. Article 20(1)(a) of the közúti közlekedésről szóló 1988. évi I. törvény (Law No I of 1988 on road transport) [10] ('the Law on road transport') provides that a fine may be imposed on anyone who infringes the provisions relating to national or international road transport services (transport of persons or goods) that are subject to authorisation and the possession of a document, as provided for in that law or in specific legislation or in acts of EU law.

10 *Magyar Közlöny* 1988/15 (IV.21.).

31. Article 2(b) of the közúti árufuvarozáshoz, személyszállításhoz és a közúti közlekedéshez kapcsolódó egyes rendelkezések megsértése esetén kiszabható bírságok összegéről, valamint a bírságolással összefüggő hatósági feladatokról szóló 156/2009. (VII. 29.) Korm. rendelet (Government Decree No 156/2009 (VII. 29.) on the amounts of the fines liable to be imposed for infringements of certain provisions relating to the carriage by road of goods and persons and to road traffic, and on the administrative tasks in connection with the imposition of fines),[11] in the version applicable in the present case, provides:

'For the purposes of Article 20(1)(a) of the [Law on road transport], and save as otherwise provided, a fine of an amount laid down in Annex 1 shall be imposed on anyone who … infringes the provisions relating to the authorisations and documents required in order to operate road transport services, laid down in Articles 3 to 34 of [Government Decree No 261/2011[12]].'

32. Point 5(a) of Annex 1 to that decree states that a haulier without a valid road haulage licence must pay a fine of HUF 300 000 (approximately EUR 980).

III. The dispute in the main proceedings, the questions referred and the procedure before the Court

33. Istanbul Lojistik Ltd is a company registered in Turkey which carries goods by road from Turkey to Member States of the European Union, crossing through Hungary inter alia, on behalf of undertakings established in Turkey and in the European Union.

34. On 30 March 2015, the Nemzeti Adó- és Vámhivatal (the National Tax and Customs Authority, Hungary, 'the first-instance tax authority') carried out an inspection in the vicinity of Nagylak (Hungary), near the border with Romania, on a coupled combination of vehicles[13] with a maximum laden weight exceeding 12 tonnes, registered in Turkey and operated by Istanbul Lojistik. That company held a Hungarian-Turkish transit licence for the heavy goods vehicle concerned, which it was using to transport textiles from Turkey to Germany via Hungary. That licence contained all the information required under the Hungarian rules but the revenue stamp for the amount of motor vehicle tax required which showed that that tax had been paid had not been affixed to the licence.

35. In the administrative decisions it adopted on 31 March 2015, after that inspection, the first-instance tax authority declared that Istanbul Lojistik had not complied with its obligation to pay tax under the Hungarian Law on motor vehicle tax and that, therefore, its transit licence was not valid. That authority required Istanbul Lojistik to pay a sum of HUF 60 000 (approximately EUR 200) in respect of that tax, a tax penalty of HUF 300 000 (approximately EUR 980) and an administrative fine of HUF 300 000, amounting to a total of HUF 660 000 (approximately EUR 2 150).

36. Istanbul Lojistik challenged those administrative decisions before the Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatóság (Appeals Division of the National Tax and Customs Authority, Hungary, 'the second-instance tax authority') which, by decisions of 13 May 2015, upheld the contested decisions.

37. The company brought an administrative action against those decisions before the Szegedi Közigazgatási és Munkaügyi Bíróság (Szeged Administrative and Labour Court).

11 *Magyar Közlöny* 2009/107 (VII.29.).

12 Díj ellenében végzett közúti árutovábbítási, a saját számlás áruszállítási, valamint az autóbusszal díj ellenében végzett személyszállítási és a saját számlás személyszállítási tevékenységről, továbbá az ezekkel összefüggő jogszabályok módosításáról szóló 261/2011. (XII.7.) Korm. rendelet (Government Decree No 261/2011 (XII.7.) on commercial road haulage, own-account road haulage, commercial passenger transport by coach, own-account passenger transport, amending the relevant rules), *Magyar Közlöny* 2011/146 (XII.7.).

13 In EU law, the term 'a coupled combination of vehicles' appears, inter alia, in Article 2(1) of Regulation No 1072/2009.

38. In support of its action, Istanbul Lojistik submits that the provisions of the Law on motor vehicle tax at issue infringe Articles 4 to 6 of Decision No 1/95 of the Association Council. It argues that the tax that is levied on vehicles registered in countries that are not EU Member States in the case of transit via Hungary could be considered to be a charge having equivalent effect to a customs duty within the meaning of Article 30 TFEU and, hence, within the meaning of Article 4 of that decision. In the applicant's view, that tax has an effect that is both discriminatory and protective and constitutes a restriction on the free movement of goods that is contrary to EU law.

39. In defence, the second-instance tax authority contends that the action should be dismissed. It argues that it acted under national rules relating to transport, an area in which Article 4(2)(g) TFEU allows Hungary to legislate and apply rules that have already been adopted. It adds that the motor vehicle tax constitutes a cost incurred in connection with international transport that cannot be regarded as a customs duty or a charge having equivalent effect. Furthermore, it states that, even if the customs union provisions were declared applicable in the present case, Hungary would have the right to restrict the free movement of goods coming from Turkey under the public interest exceptions contained in Article 36 TFEU, in particular those relating to road safety and public policy in connection with the prosecution of offences. Lastly, it asserts that Regulation No 1072/2009 does not preclude Hungary from regulating international road haulage between its own territory and that of Turkey by means of bilateral agreements.

40. In that context, by an order of 18 January 2016 received at the Court on 8 February 2016, the Szegedi Közigazgatási és Munkaügyi Bíróság (Szeged Administrative and Labour Court) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 4 of [Decision No 1/95 of the Association Council] be interpreted as meaning that a tax such as that governed by the Hungarian Law on motor vehicle tax, which, in accordance with that law, is levied on a goods vehicle with a Turkish registration number operated by a Turkish haulier and used for the carriage of goods, by reason of the fact that it crosses the Hungarian border in order to arrive at another Member State — starting from Turkey and passing through Hungary as the transit Member State — constitutes a charge having equivalent effect to a customs duty and is not, therefore, compatible with Article 4 of that decision?

(2) (a) If the answer to the first question is no, must Article 5 of [Decision No 1/95 of the Association Council] be interpreted as meaning that a tax such as that governed by the Hungarian Law on motor vehicle tax, which, in accordance with that law, is levied on a goods vehicle with a Turkish registration number operated by a Turkish haulier and used for the carriage of goods, by reason of the fact that it crosses the Hungarian border in order to arrive at another Member State — starting from Turkey and passing through Hungary as the transit Member State — constitutes a measure having equivalent effect to a quantitative restriction and is not, therefore, compatible with Article 5 of that decision?

(b) Must Article 7 of [Decision No 1/95 of the Association Council] be interpreted as meaning that it is permissible, on road safety grounds and for the purposes of the prosecution of offences, for a tax such as that governed by the Hungarian law on motor vehicle tax, which, in accordance with that law, is levied on a goods vehicle with a Turkish registration number operated by a Turkish haulier and used for the carriage of goods, to be applied, by reason of the fact that it crosses the Hungarian border in order to arrive at another Member State, starting from Turkey and passing through Hungary as the transit Member State?

(3) Must Article 3(2) TFEU and Article 1(2) and (3)(a) of Regulation No 1072/2009 be interpreted as precluding, on the basis of a bilateral transport agreement concluded with Turkey, the Member State of transit from applying a tax such as that governed by the Hungarian Law on motor vehicle tax, which, in accordance with that law, is levied on a goods vehicle with a Turkish registration

number operated by a Turkish haulier and used for the carriage of goods, by reason of the fact that it crosses the Hungarian border in order to arrive at another Member State, starting from Turkey and passing through Hungary as the transit Member State?

(4) Must Article 9 of the [EEC-Turkey Association Agreement] be interpreted as meaning that a tax such as that governed by the Hungarian Law on motor vehicle tax, which, in accordance with that law, is levied on a goods vehicle with a Turkish registration number operated by a Turkish haulier and used for the carriage of goods, by reason of the fact that it crosses the Hungarian border in order to arrive at another Member State — starting from Turkey and passing through Hungary as the transit Member State — entails discrimination on grounds of nationality and is not, therefore, compatible with Article 9 of that agreement?'

41. Written observations were submitted by Istanbul Lojistik, by the Hungarian and Italian Governments and by the European Commission. By letter of 24 November 2016, the Court, under Article 61(1) of its Rules of Procedure, put a question for a written answer before the hearing to the Hungarian Government, which answered that question. Istanbul Lojistik, the Hungarian Government and the Commission were represented at the hearing on 19 January 2017.

IV. Analysis

A. Introductory remarks

42. According to the preamble to the Hungarian Law on motor vehicle tax adopted in 1991, the main objective of that tax is to finance the maintenance of the public road network. The tax is levied on all vehicles which are registered in Hungary and all heavy goods vehicles which are registered abroad and which are driven in Hungary, with the exception of those registered in another EU Member State. [14] The precise reason for the latter exemption is not clear from the order for reference. [15]

43. The frequency of charging and the method for calculating that tax vary according to the place of registration of the vehicle concerned. If the vehicle is registered in Hungary, the tax must be paid annually and the amount of the payment depends on various characteristics of the vehicle, such as its unladen mass and its loading capacity, whether or not it has air suspension and its environmental impact. [16] However, if it is a heavy goods vehicle registered in a third country, the person operating the vehicle is required to pay the tax, by purchasing a revenue stamp, every time it enters Hungarian territory. Where, as in the dispute in the main proceedings, the foreign vehicle has a licence to transit that territory, the cost of the stamp, HUF 60 000 (approximately EUR 200), is payable in respect of both the outward and the return journey and payment must be renewed once the time spent in that territory exceeds 48 hours. [17]

14 See Article 1(1) and (2) of that law.

15 According to the Italian Government, the fact that the user of a vehicle transporting goods which is registered in another EU Member State is exempt from payment of tax in respect of its transit through Hungarian territory is justified under Article 5 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), which provides that the vehicle taxes listed in Article 3 of that directive are to be 'charged solely by the Member State of registration'.

16 According to the provisions of Chapter II of the Law on motor vehicle tax, the main content of which is set out in points 22 to 25 of this Opinion.

17 See the provisions of Chapter III of the Law on motor vehicle tax, the main content of which is set out in point 26 et seq. of this Opinion. As the Commission notes, Article 15(3) of that law provides for a 5 km 'tolerance zone' around the point of entry into Hungarian territory, in which no penalty is incurred.

44. That law states that failure to pay the tax is to be penalised by the imposition of a tax penalty of an amount equivalent to five times the amount that has not been paid.[18] In addition, the Law on road transport of 1988 provides for an administrative fine, to be paid for driving in Hungarian territory without being in possession of the necessary documents, the amount of which is set at HUF 300 000 (approximately EUR 980) by Government Decree No 156/2009.[19]

45. It was under those national provisions that the Hungarian tax authority imposed on the applicant in the main proceedings, a Turkish haulage company, two fines, in addition to payment of the motor vehicle tax which that company should have paid because a vehicle which it was operating and was registered in Turkey had entered Hungary.

46. The referring court asks, first of all, whether a tax such as that provided for by the rules at issue in the main proceedings should be classified as a charge having equivalent effect to a customs duty within the meaning of Article 4 of Decision No 1/95 of the Association Council, interpreted in the light of the case-law relating to Article 30 TFEU. In view of the reasoning contained in the order for reference, it would appear to me that the referring court raises the three other questions only in the alternative, in case the Court's answer to its first question is in the negative.

47. For the reasons set out below, I shall propose that the Court should reply in the affirmative to the first question and, hence, not give a ruling on the other questions raised. However, for the purposes of completeness, I shall make a relatively brief examination of those questions.

48. By the first two and the fourth questions, which in my view should be analysed in that order, the referring court asks the Court how the principles of free movement of goods and non-discrimination should be interpreted in the light of obligations under the EEC-Turkey Association Agreement. The third question concerns, on the other hand, the sharing of competence between the European Union and the Member States in the matter of bilateral agreements concluded with third countries in the field of international road haulage.

B. Adverse effect on the free movement of goods in the light of Articles 4, 5 and 7 of Decision No 1/95 of the Association Council (first and second questions)

49. The first two questions referred for a preliminary ruling concern whether requiring Turkish hauliers to pay the motor vehicle tax is incompatible with the provisions of Decision No 1/95 of the EC-Turkey Association Council, which, as provided in Article 1 of that decision, lays down the rules for implementing the final phase of the customs union resulting from the EEC-Turkey Association Agreement.

50. Those questions relate specifically to Articles 4, 5 and 7 of Decision No 1/95 of the Association Council. Article 4 requires that import or export customs duties and charges having equivalent effect must be wholly abolished in trade between the European Union and Turkey. Article 5 prohibits quantitative restrictions on imports and measures having equivalent effect, in the same context, whilst Article 7 allows a derogation from that prohibition, providing that such measures may be justified on grounds, inter alia, of public policy, public security or the protection of health and life of humans.

18 See Article 17(2) of the Law on motor vehicle tax.

19 See point 30 et seq. of this Opinion.

51. This request for a preliminary ruling has no precedent. However, it is clear from Article 66 of Decision No 1/95 of the Association Council that the provisions of the decision that are identical in substance to the corresponding provisions of the EC Treaty (now the FEU Treaty) are to be interpreted in conformity with the relevant decisions of the Court.[20] Since the wording of Articles 4, 5 and 7 of that decision is equivalent to that of Articles 30, 34 and 36 TFEU, respectively, it is appropriate, therefore, to interpret the former articles by applying the case-law of the Court relating to the latter.

1. Classification as a charge having equivalent effect to a customs duty within the meaning of Article 4 of Decision No 1/95 of the Association Council (first question)

52. The first question referred requests the Court to determine whether a tax such as that at issue in the main proceedings constitutes a charge having equivalent effect to a customs duty, which would be contrary to Article 4 of Decision No 1/95 of the Association Council. In that regard, the referring court points out that, under Article 1(1) and (2) of the Law on motor vehicle tax, persons operating vehicles registered in another EU Member State are exempt from payment of that tax, whilst persons operating vehicles registered in a third country, in particular in Turkey, are subject to that tax, in respect of transit through Hungarian territory.

53. It is clear from the case-law of the Court concerning the interpretation of Article 30 TFEU, which is identical in substance to Article 4 of Decision No 1/95 of the Association Council,[21] that the concept 'charge having equivalent effect to a customs duty', within the meaning of those provisions, must be interpreted broadly, as encompassing *any pecuniary charge, however small, imposed unilaterally*,[22] *whatever its designation and mode of application*, which applies to *goods by reason of the fact that they cross a frontier* and is not a customs duty in the strict sense. Any consideration of the purpose for which the tax in question was introduced and the destination of the revenue obtained therefrom is irrelevant.[23]

54. As noted by the referring court, Istanbul Lojistik, the Italian Government and the Commission, the definition of that concept is focused essentially on the negative effects which such a pecuniary charge produces. That charge must have the same protectionist, and hence restrictive, effect as a customs duty, which is the case, in particular, where it leads to an artificial increase in the cost price of imported or exported goods in relation to national goods.[24] That appears to me to be so in the present case.

20 As noted by the referring court, the Court has consistently held that the interpretation given to the provisions of EU law concerning the internal market can be applied to the interpretation of an agreement concluded by the European Union with a non-member State where there are express provisions to that effect in the agreement in question (see, in particular, judgment of 24 September 2013, *Demirkan*, C-221/11, EU:C:2013:583, paragraph 44 and the case-law cited).

21 Article 30 TFEU prohibits customs duties on imports and exports and charges having equivalent effect between Member States of the European Union, whilst Article 4 of Decision No 1/95 of the Association Council lays down the same rule in respect of the parties to the EEC-Turkey Association Agreement.

22 That is to say, a tax introduced by a Member State on its own, as opposed to a tax adopted pursuant to requirements of EU law (see, in particular, judgment of 21 February 1984, *St. Nikolaus Brennerei und Likörfabrik*, 337/82, EU:C:1984:69, paragraph 15). In the present case, it seems to me undisputed that the national rules at issue do not stem from such requirements. I shall not, therefore, give any specific consideration to that condition.

23 See, inter alia, judgments of 1 July 1969, *Commission* v *Italy* (24/68, EU:C:1969:29, paragraphs 7 and 9); of 8 November 2005, *Jersey Produce Marketing Organisation* (C-293/02, EU:C:2005:664, paragraph 55); of 21 June 2007, *Commission* v *Italy* (C-173/05, EU:C:2007:362, paragraph 42); and of 2 October 2014, *Orgacom* (C-254/13, EU:C:2014:2251, paragraphs 23 and 35).

24 See, inter alia, judgments of 14 December 1962, *Commission* v *Luxembourg and Belgium* (2/62 and 3/62, EU:C:1962:45, p. 432, penultimate paragraph); of 3 February 1981, *Commission* v *France* (90/79, EU:C:1981:27, paragraph 12); and of 21 March 1991, *Commission* v *Italy* (C-209/89, EU:C:1991:139, paragraph 7).

55. First of all, it is true that vehicles registered in Hungary are also subject to the tax under the law adopted by the Hungarian Parliament in 1991. However, it is clear from the provisions of that law [25] that the arrangements for collecting that tax and the additional costs resulting therefrom in respect of those vehicles are significantly different from those applying to vehicles registered in a third country. As I explained above, [26] the conditions for the application of that tax are by no means equivalent in respect of a vehicle registered in Hungary and, as in the present case, in respect of a vehicle registered in Turkey. In addition, the Hungarian Government acknowledges, as pointed out by Istanbul Lojistik, that the number of transit licences exempt from tax, which is intended to ensure equal competition between Hungarian and Turkish hauliers, [27] is not sufficient to meet the actual demands of the latter, which are obliged to pay the tax at issue once the annual quota of free licences has been used up. [28]

56. It is immaterial, according to the case-law cited above, [29] that the impact of the tax at issue on the end price of goods may be minimal, as the Hungarian Government contended at the hearing. Suffice it to say, hauliers operating vehicles registered in Turkey are required to bear an additional charge, however small, as compared to those operating vehicles registered in Hungary.

57. Furthermore, I consider that it is no small matter that a Turkish haulage company such as the applicant in the main proceedings should be obliged to pay tax amounting to HUF 60 000 (approximately EUR 200), in respect of both the outward and the return journey, and every time one of its vehicles travels in transit through Hungarian territory for a period exceeding 48 hours. In order to avoid that considerable, recurrent charge the only options are to make a long detour so as not to pass through that territory or to choose other modes of transport, solutions which introduce restrictions that are clearly significant and which themselves give rise to additional costs. [30] In my view there is a genuine likelihood that Turkish hauliers will find themselves less competitive in that situation. [31]

58. The Hungarian and Italian Governments, however, argue that there can be no adverse effect on the free movement of goods since the tax at issue in the main proceedings does not apply directly to the goods being transported as such, but to the service of cross-border road haulage, and that that field is not liberalised in the context of the EEC-Turkey Association Agreement and Decision No 1/95 of the Association Council. [32] They contend that that tax is levied on all persons operating heavy goods vehicles registered in a third country travelling through Hungarian territory and that the amount of the tax is set without regard to either the origin or the destination of the goods being transported, or to their nature or quantity, and the vehicle being taxed may even be empty.

25 See the provisions of Chapters II and III of the Law on motor vehicle tax cited in points 22 to 25 and 26 et seq. of this Opinion.

26 See point 43 of this Opinion.

27 According to the provisions of the Hungary-Turkey Agreement.

28 Istanbul Lojistik argues, on the basis of a report dated 14 October 2014, entitled 'Study on the economic impact of an agreement between the EU and the Republic of Turkey', which was prepared by ICF Consulting Ltd at the request of the Commission and is available on the following website: http://ec.europa.eu/transport/modes/road/studies/road_en (in particular, pp. v to vi and p. 39), that the Hungarian system involves road transport quotas, which restrict trade between the European Union and Turkey since they increase the cost of goods coming from Turkey.

29 See point 53 of this Opinion.

30 Istanbul Lojistik and the Commission consider, also, that the tax at issue is likely to increase the cost of the goods being carried, since the foreign haulier must either pay the sum charged or opt for a longer and therefore more costly alternative route.

31 See, by analogy, judgment of 21 December 2011, *Commission* v *Austria* (C-28/09, EU:C:2011:854, paragraphs 115 and 116), in which the Court held that the existence of alternative modes of transport or routes does not negate the possibility of a restriction of the free movement of goods.

32 In that connection, I would merely point out that the Court has held that at the current stage of development of the EEC-Turkey Association, there are no specific rules in the field of transport, but that transport services provided in the context of that Association cannot be removed from the ambit of the general rules applicable to the provision of services, and in particular Article 41(1) of the Additional Protocol to the EEC-Turkey Association Agreement, which prohibits a Member State from introducing any new restrictions on the freedom of establishment and the freedom to provide services, from the date of entry into force of that protocol with regard to it (see judgments of 21 October 2003, *Abatay and Others*, C-317/01 and C-369/01, EU:C:2003:572, paragraphs 92 to 102, and of 24 September 2013, *Demirkan*, C-221/11, EU:C:2013:583, paragraph 37 et seq.).

59. However, I should point out that the amount of the tax levied on such persons is adjusted, inter alia, according to the maximum permissible laden weight of the vehicle concerned and depending on whether transport is taking place for service purposes or in order to transit Hungarian territory, [33] criteria which, in my view, are in reality linked to the quantity of goods that can be carried and to the place to which they are to be delivered, respectively. Hence, like the referring court, whose questions to the Court are put from the point of view of the free movement of goods, I consider that the tax at issue in the main proceedings does not concern the service that is provided by foreign hauliers but rather the goods which are being moved over that territory by those hauliers.

60. Like Istanbul Lojistik and the Commission, I also note that the Court has held that 'a charge which is imposed not on a product as such, but on a necessary activity in connection with the product may fall within the scope of [Article 30 TFEU]'. [34] In my view, the carriage of goods constitutes such an activity in that it is inextricably linked to moving those goods and hence to their free movement. Therefore, even if it is considered that the chargeable event giving rise to the tax at issue is purely the transport, it seems to me that this does not preclude the tax being classified as a charge having equivalent effect to a customs duty within the meaning of Article 30 TFEU and Article 4 of Decision No 1/95 of the Association Council. [35]

61. The Hungarian and Italian Governments also contend that the tax in question is not levied by reason of the fact that goods cross a border, as the case-law of the Court requires. The taxation is linked not to the act of crossing the Hungarian border, but to travel through Hungarian territory, since that is likely to cause damage to the roads and the environment.

62. However, that analysis conflicts with the analysis adopted by the referring court, as is shown inter alia by the wording of the questions the latter refers for a preliminary ruling. Furthermore, I note that that tax must always be paid, at the time of 'entry into Hungarian territory', 'in respect of both the outward and the return journey', in the case of both transport for service purposes and transport for transit purposes, and solely on vehicles registered in a country that is not an EU Member State. [36] The substantive link with the movement of goods therefore seems clear to me. [37]

63. In addition, as stated by the referring court, Istanbul Lojistik and the Commission, it is settled case-law that the prohibition on charges having equivalent effect to a customs duty laid down in Article 30 TFEU includes the movement of goods coming directly from a non-member State, which as in the present case are merely transiting the territory of a Member State in order to then be exported to other Member States. The Court has held that the customs union between the Member States necessarily means that there should be free movement of goods between them, which is one of the fundamental principles of that Treaty and entails the existence of a general principle of free transit of goods within the European Union. [38] The same approach should, in my view be adopted with regard to Article 4 of Decision No 1/95 of the Association Council, since the proper functioning of the customs union resulting from the EEC-Turkey Association Agreement would otherwise be undermined, as the Court has acknowledged in connection with other agreements concluded with third countries. [39]

33 See Article 15(1) of the Law on motor vehicle tax.

34 See Opinion of Advocate General Mengozzi in *Essent Netwerk Noord and Others* (C-206/06, EU:C:2008:33, points 48 to 50), and judgment of 17 July 2008, *Essent Netwerk Noord and Others* (C-206/06, EU:C:2008:413, paragraph 44).

35 See, by analogy, with regard to charges classified as internal taxation, judgment of 8 November 2007, *Stadtgemeinde Frohnleiten and Gemeindebetriebe Frohnleiten* (C-221/06, EU:C:2007:657, paragraph 43 et seq. and the case-law cited).

36 See Articles 1, 11 and 15 of the Law on motor vehicle tax.

37 Unlike other circumstances, in which the Court held that the tax concerned came under the general system of internal taxation on goods (see, inter alia, judgments of 5 October 2006, *Nádasdi and Németh*, C-290/05 and C-333/05, EU:C:2006:652, paragraphs 40 to 42, and of 18 January 2007, *Brzeziński*, C-313/05, EU:C:2007:33, paragraphs 23 to 25).

38 See, inter alia, judgments of 21 June 2007, *Commission* v *Italy* (C-173/05, EU:C:2007:362, paragraphs 30 to 32 and the case-law cited), and of 21 December 2011, *Commission* v *Austria* (C-28/09, EU:C:2011:854, paragraph 113 and the case-law cited).

39 See, inter alia, judgments of 5 October 1995, *Aprile* (C-125/94, EU:C:1995:309, paragraph 39 et seq.), and of 21 June 2007, *Commission* v *Italy* (C-173/05, EU:C:2007:362, paragraphs 33 and 40).

64. I would add that the Hungarian Government's argument that this is a 'tax' [40] which is justified, inter alia, on grounds of maintaining and developing the public road network is ineffective, since neither the purpose of the measure concerned nor the designation given to it by the national authorities is determinative according to the abovementioned case-law of the Court. [41]

65. For the sake of completeness, I should like to make clear that, like the Commission, I take the view that national rules such as those at issue in the main proceedings do not fall within any of the exceptions to the prohibition of charges having equivalent effect to a customs duty that the Court has accepted are possible, [42] in specific circumstances where strictly applied. [43] In particular, the Court has held that grounds relating to the repair and maintenance of the road network cannot allow the imposition of a specific tax on operators which transport goods across the borders of the territory concerned, since that service does not specifically benefit those operators and cannot therefore justify requiring financial consideration from them. [44]

66. Consequently, in the light of the case-law of the Court concerning Article 30 TFEU, I take the view that a national measure such as that at issue in the main proceedings does constitute a charge having equivalent effect to a customs duty within the meaning of Article 4 of Decision No 1/95 of the Association Council and is, therefore, prohibited by that article as regards the goods coming under the customs union that exists between the European Union and the Republic of Turkey.

2. *The existence of a measure having equivalent effect to a quantitative restriction on imports and its possible justification in the light of Articles 5 and 7 of Decision No 1/95 of the Association Council (second question)*

67. Both parts of the second question referred, which concern in turn Articles 5 and 7 of Decision No 1/95 of the Association Council, are raised by the referring court solely in case the Court rules that the national measure forming the subject of the dispute in the main proceedings cannot be classified as a charge having equivalent effect to a customs duty within the meaning of Article 4 of that decision.

68. Since I propose that the Court's answer to the first question should be that that measure does constitute a charge of that type, I suggest that no answer need be given to the second question, irrespective of the objection raised by Istanbul Lojistik, which considers that a ruling should be given on that point in any event. However, as that party itself notes, it is clear from the case-law of the Court concerning the relationship between the provisions of the FEU Treaty concerning the free movement of goods that measures of a fiscal nature, such as the measure at issue in this case, fall in

40 The Hungarian Government constructs its reasoning around the idea that the tax at issue may in fact constitute an internal taxation measure, within the meaning of the case-law relating to Article 110 TFEU. I note that similar provisions, although they contain a prohibition, also appear in Article 50 of Decision No 1/95 of the Association Council. However, I see no point in the Court giving a ruling in that regard since the referring court is not asking it about the interpretation of those provisions and an interpretation does not seem to be necessary for the purposes of resolving the dispute in the main proceedings (see by analogy, in particular, judgment of 19 September 2013, *Martin Y Paz Diffusion*, C-661/11, EU:C:2013:577, paragraph 48). Moreover, the tax system applying to vehicles registered in Hungary is so different from that applying to vehicles registered in a third country that it is impossible, in my view, to classify it as 'internal taxation' (as regards that concept, see, in particular, judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413, paragraph 41).

41 See footnote 23 to this Opinion.

42 The grounds for justification set out in Article 36 TFEU, and in Article 7 of Decision No 1/95 of the Association Council (on that subject, see point 75 et seq. of this Opinion), are applicable solely with regard to measures having equivalent effect to a quantitative restriction, not with regard to charges having equivalent effect to a customs duty (see, in particular, judgment of 14 June 1988, *Dansk Denkavit*, 29/87, EU:C:1988:299, paragraph 32).

43 Thus, a pecuniary charge that meets the criteria for classification as a charge having effect equivalent to a customs duty may nonetheless fall outside the prohibition under those criteria where it constitutes 'payment for a service actually rendered in an amount proportionate to that service or if it relates to a general system of internal dues applied systematically and in accordance with the same criteria to domestic products and imported and exported products alike, or again, subject to certain conditions, if it is levied on account of inspections carried out for the purpose of fulfilling obligations imposed by Community law' (see, inter alia, judgments of 21 March 1991, *Commission* v *Italy*, C-209/89, EU:C:1991:139, paragraph 9, and of 8 November 2005, *Jersey Produce Marketing Organisation*, C-293/02, EU:C:2005:664, paragraph 56).

44 See judgment of 9 September 2004, *Carbonati Apuani* (C-72/03, EU:C:2004:506, paragraph 32).

principle within the scope of specific provisions, namely those of Article 30 TFEU, not that of the prohibition on quantitative restrictions on imports, referred to in Articles 34 and 36 TFEU; accordingly, there is no need to examine a national measure with regard to the latter unless the first of those articles is not applicable.[45] Given that those articles are equivalent, in essence, to Articles 4, 5 and 7, respectively, of Decision No 1/95 of the Association Council, it is clear from the above that an affirmative answer to the first question would make an answer to the second question redundant. Nonetheless, I shall examine it in the alternative in order to cover the situation envisaged by the referring court.

(a) Interpretation of Article 5 of Decision No 1/95 of the Association Council (first part of the second question)

69. The first part of the second question referred concerns whether the tax imposed on vehicles registered in a third country which travel through Hungarian territory in transit may be classified as a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 5 of Decision No 1/95 of the Association Council and is therefore prohibited by that provision.

70. In the grounds for its decision, the referring court establishes a correlation between that Article 5 and Article 34 TFEU,[46] whose provisions are in fact identical in substance.[47] In view of their equivalence, it is appropriate, as provided in Article 66 of Decision No 1/95 of the Association Council, to interpret Article 5 of that decision in the light of the judgments of the Court concerning Article 34 TFEU.[48]

71. According to settled case-law, all rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, trade within the European Union must be considered to be measures having an effect equivalent to quantitative restrictions.[49] The same should in my view apply by analogy with regard to rules enacted by a Member State which are likely to hinder, in identical circumstances, trade within the customs union resulting from the EEC-Turkey Association Agreement.

72. In the present case, in order to reject the classification of measure having equivalent effect to a quantitative restriction, the Hungarian Government maintains that although the motor vehicle tax at issue in the main proceedings probably does have an effect on the free movement of goods that may be reflected in the prices of certain products, that effect is too uncertain and indirect to be objectionable, within the meaning of the case-law of the Court in that matter.[50] The Italian Government also submits that the charge resulting from the rule at issue is imposed on the means of transport, not on the goods themselves being transported by the latter.

45 See, inter alia, judgments of 16 December 1992, *Lornoy and Others* (C-17/91, EU:C:1992:514, paragraphs 14 and 15); of 17 June 2003, *De Danske Bilimportører* (C-383/01, EU:C:2003:352, paragraph 32 et seq.); and of 18 January 2007, *Brzeziński* (C-313/05, EU:C:2007:33, paragraph 50).

46 In the suggestions the Commission gives by way of an answer — in the alternative — to the second question, it includes not only those provisions concerning quantitative restrictions on imports which are mentioned by the referring court, but also those concerning quantitative restrictions on exports which appear in Article 6 of Decision No 1/95 of the Association Council and Article 35 TFEU. However, I consider it better to restrict my observations to the subject matter of the question as submitted by the referring court.

47 Article 34 TFEU prohibits quantitative restrictions on imports and all measures having equivalent effect between Member States of the European Union, whilst Article 5 of Decision No 1/95 of the Association Council lays down the same prohibition with regard to the parties to the EEC-Turkey Association Agreement.

48 See also point 51 of this Opinion.

49 See, inter alia, judgments of 16 January 2014, *Juvelta* (C-481/12, EU:C:2014:11, paragraph 16), and of 27 October 2016, *Audace and Others* (C-114/15, EU:C:2016:813, paragraph 66 and the case-law cited).

50 In that regard, the Hungarian Government cites, inter alia, the judgments of 14 July 1994, *Peralta* (C-379/92, EU:C:1994:296, paragraph 24), and of 21 September 1999, *BASF* (C-44/98, EU:C:1999:440, paragraph 21).

73. However, assuming the Court finds that the rules at issue in the main proceedings do not fall within the scope of Article 4 of Decision No 1/95 of the Association Council, I consider that they may give rise to a restriction on trade between the European Union and the Republic of Turkey which is contrary to Article 5 of that decision. Like Istanbul Lojistik and the Commission, I consider that the tax at issue should, in that case, be classified as a measure that might hinder that trade since it gives rise to additional costs in respect of the goods that are carried by vehicles registered in Turkey and therefore increases the end prices of those goods.[51] Furthermore, even if those Hungarian rules affect mainly transport services provided by Turkish hauliers, they may in my view be considered to constitute such a measure, since the exercise of free movement of goods is necessarily linked to the carriage of those goods.[52] Thus, it seems to me that the restrictive effect of the additional charge in question is not too indirect for it to be taken into account.

74. In the light of those factors, I propose, in the alternative, to accept that the implementation of a tax such as that at issue in the main proceedings may be classified as a measure having equivalent effect to a quantitative restriction on imports of goods covered by the customs union entered into with Turkey, within the meaning of Article 5 of Decision No 1/95 of the Association Council, and therefore fall within the prohibition laid down by that provision.

*(**b**) Interpretation of Article 7 of Decision No 1/95 of the Association Council (second part of the second question)*

75. Should the Court hold that the tax at issue in the main proceedings does constitute a measure having equivalent effect to a quantitative restriction prohibited by Article 5 of Decision No 1/95 of the Association Council, the second part of the second question referred requires it to determine, further, whether application of that measure might, nonetheless, find valid justification on grounds of road safety and the prosecution of offences, in the light of the provisions of Article 7 of that decision.

76. Like the referring court, Istanbul Lojistik and the Commission, I consider that, under the rule laid down in Article 66 of Decision No 1/95 of the Association Council, Article 7 of that decision must be interpreted in accordance with the case-law of the Court relating to Article 36 TFEU, since the wording of Article 7 is the same in substance to that of Article 36 TFEU.[53]

77. It is clear from that case-law that the list of justifications contained in Article 36 TFEU — which allow restrictions on imports, exports and goods in transit where they pursue public-interest objectives — is exhaustive and must be interpreted strictly, since this involves a derogation from the principle of the free movement of goods.[54] The same approach should, in my view, be taken as regards the list contained in Article 7 of Decision No 1/95 of the Association Council.

51 See also point 55 of this Opinion.

52 In that connection, the referring court rightly states that the Court has repeatedly held, with regard to the principle of the free movement of goods laid down in the FEU Treaty, that measures affecting transport may constitute an obstacle to intra-Community trade in such goods. In that regard, it is referring, inter alia, to the judgment of 21 December 2011, *Commission* v *Austria* (C-28/09, EU:C:2011:854), in which the Court actually acknowledged that national rules prohibiting the use of certain modes of transport in certain places hinder the free movement of the goods being transported by them (see paragraph 114 et seq. and the case-law cited). See also point 60 of this Opinion.

53 The factors allowing a derogation from the prohibitions contained in Articles 34 and 35 TFEU that are listed in Article 36 TFEU are the same as those listed in Article 7 of Decision No 1/95 of the Association Council as regards the prohibitions contained in Articles 5 and 6 of that decision. In addition, both Article 36 TFEU and Article 7 of Decision No 1/95 of the Association Council provide that those derogations must not constitute 'a means of arbitrary discrimination or a disguised restriction on trade' between Member States, in the first case, or between the parties to the EEC-Turkey Association Agreement in the second case.

54 See, inter alia, judgments of 17 June 1981, *Commission* v *Ireland* (113/80, EU:C:1981:139, paragraph 7), and of 19 October 2016, *Deutsche Parkinson Vereinigung* (C-148/15, EU:C:2016:776, paragraph 29).

78. Istanbul Lojistik maintains that that list of exceptions does not expressly contain the grounds relied on in the present case by the Hungarian authorities in an attempt to justify the rules at issue, namely requirements concerning road safety and the prosecution of offences, set out in the defence lodged in the dispute in the main proceedings by the second-instance tax authority. [55]

79. However, I would point out that the Court has recognised that road safety may be taken into consideration in respect of Article 30 EC, now Article 36 TFEU. [56] It cannot be excluded that the prevention of road accidents may be linked to objectives of 'public policy' and/or 'public security', for the purposes of that article. The same applies, in my view, as regards the need to ensure the prosecution of offences, which is put forward as a justification by the defendant in the main proceedings. [57] It seems to me, therefore, that the substantive scope of Article 36 TFEU and, by analogy, that of Article 7 of Decision No 1/95 of the Association Council could, in principle, include such grounds for justification.

80. Furthermore, it is clear from established case-law of the Court that, in addition to the grounds listed in Article 36 TFEU, overriding reasons in the general interest may also be taken into account to justify obstacles to the free movement of goods. [58] I consider that that case-law could be applied with regard to Article 7 of Decision No 1/95 of the Association Council. I note that the Court has held that the fight against crime and ensuring road safety may constitute reasons of that type. [59] However, the possibility of relying on those reasons is in principle limited to cases where the national measures at issue apply without discrimination, [60] which in my view is not so in the present case. [61]

81. Moreover, it is not established that the grounds cited by the defendant in the main proceedings, and reiterated in the second question referred, do in fact correspond to the objectives pursued by the Hungarian legislature when it adopted the rules at issue. In that regard, I note that considerations that differ from those grounds, since they are mainly of a budgetary nature, appear in the preamble to the Law on motor vehicle tax. [62] The Court has repeatedly held that economic arguments can never serve as justification for hindering the free movement of goods. [63]

55 See point 39 of this Opinion.

56 See judgment of 11 June 1987, *Gofette and Gilliard* (406/85, EU:C:1987:274, paragraph 7).

57 In that connection, in judgments of 17 June 1987, *Commission* v *Italy* (154/85, EU:C:1987:292, paragraphs 13 and 14), and of 30 April 1991, *Boscher* (C-239/90, EU:C:1991:180, paragraph 23), the Court did not exclude the objective of prevention of the dealing in stolen goods from constituting a public policy ground within the meaning of Article 36 TFEU, even though it held that the measures in question did not comply with the principle of proportionality.

58 The possibility offered by the judgment of 20 February 1979, *Rewe-Zentral* (120/78, EU:C:1979:42, paragraph 8 et seq.), known as '*Cassis de Dijon*', has been repeated by the Court many times subsequently (see, in particular, judgment of 16 April 2013, *Las*, C-202/11, EU:C:2013:239, paragraph 28).

59 See, inter alia, judgments of 10 April 2008, *Commission* v *Portugal* (C-265/06, EU:C:2008:210, paragraph 38); of 10 February 2009, *Commission* v *Italy* (C-110/05, EU:C:2009:66, paragraph 60); and of 6 October 2015, *Capoda Import-Export* (C-354/14, EU:C:2015:658, paragraph 43).

60 See, in particular, judgment of 17 June 1981, *Commission* v *Ireland* (113/80, EU:C:1981:139, paragraph 10). It seems to me that in its more recent case-law the Court has focused less on that condition (see, inter alia, judgments of 1 July 2014, *Ålands Vindkraft*, C-573/12, EU:C:2014:2037, paragraphs 75 and 76, and of 12 November 2015, *Visnapuu*, C-198/14, EU:C:2015:751, paragraphs 108 and 110).

61 See also point 84 of this Opinion.

62 See point 20 of this Opinion. In its written and oral submissions, the Hungarian Government confirmed that the preamble to that law states that that tax was considered necessary in order to increase the budget allocations available to maintain road infrastructure. It added that the damage caused particularly by heavy goods vehicles justified increasing the tax base in order to tackle also, at least indirectly, environmental and road safety problems.

63 See, in particular, judgment of 25 October 2001, *Commission* v *Greece* (C-398/98, EU:C:2001:565, paragraph 30 and the case-law cited).

82. In any event, as the referring court points out, it is settled case-law that, in order to be justified by a public interest objective, a restrictive measure must not only be necessary and appropriate for attaining the legitimate objective pursued, but also be proportionate to that objective.[64] It is incumbent on the national authority seeking to rely on the provisions of Article 36 TFEU and, by analogy, Article 7 of Decision No 1/95 of the Association Council to show that those criteria are actually met in that particular case.[65]

83. In the present case, like Istanbul Lojistik and the Commission, I consider that the Hungarian authorities have not adduced evidence of sufficiently probative value to that effect. It seems to me that the tax concerned does not constitute an appropriate instrument for attaining the public interest objectives claimed, since it is doubtful whether levying that tax, without any other control, and doing so at a more restrictive level only with regard to certain categories of heavy goods vehicles being driven in Hungary — namely, those registered in a third country, as opposed to those registered in Hungary or in another Member State — could genuinely help to improve road safety and promote the prosecution of offences on that territory.

84. Furthermore, even assuming that the above conditions were all met, it is clear from the final wording of the two articles mentioned above that such a measure must not constitute either a means of arbitrary discrimination or a disguised restriction. Given that the motor vehicle tax system for vehicles being driven on Hungarian territory is different depending on whether the vehicle concerned is registered in Hungary, in another EU Member State or in a third country,[66] it seems to me that the differential and more unfavourable treatment that is applied in the latter case, without any objective reason being demonstrated, constitutes an arbitrary discriminatory factor.[67]

85. Those considerations, in my view, preclude acceptance of the justifications put forward by the Hungarian authorities. In conclusion, I take the view that if the tax at issue in the main proceedings were to be classified as a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 5 of Decision No 1/95 of the Association Council, the reasons submitted in defence would not be sufficient to justify such a national measure under Article 7 of that decision.

C. Infringement of the principle of non-discrimination on grounds of nationality in the light of Article 9 of the EEC-Turkey Association Agreement (fourth question)

86. The fourth question referred follows on from the first and second questions, since it concerns the same legislative framework as those questions, namely the obligations arising under the agreements concluded between the EC (now the European Union) and Turkey.[68] It therefore seems to me desirable to deal with the fourth question before examining the third question raised by the referring court.

64 See, in particular, judgment of 21 June 2016, *New Valmar* (C-15/15, EU:C:2016:464, paragraph 48).

65 See, inter alia, judgments of 8 November 1979, *Denkavit Futtermittel* (251/78, EU:C:1979:252, paragraph 24), and of 5 February 2004, *Commission* v *Italy* (C-270/02, EU:C:2004:78, paragraph 22 et seq.).

66 Regarding those different systems, see points 43 and 55 of this Opinion.

67 Among other discriminatory factors, I note that an adjustment of the tax is provided in respect of vehicles with air suspension, which cause less damage to roads and/or protect the environment, but only if they are registered in Hungary (see points 24 and 25 of this Opinion), not if they are registered abroad.

68 Although the fourth question relates to the EEC-Turkey Association Agreement whilst the first two questions relate to Decision No 1/95 of the Association Council, those instruments are closely linked to one another, since the decision was adopted in order to implement the final phase of the customs union established between the parties which concluded that agreement, as indicated both by the title of that decision and by the preamble and Article 1 thereof.

87. In essence, the Court is being asked whether Article 9 of the EEC-Turkey Association Agreement, which prohibits any discrimination on grounds of nationality within the scope of that agreement, must be interpreted as precluding rules such as those at issue in the main proceedings where they require persons operating heavy goods vehicles registered abroad, in this case in Turkey, to pay a special tax whereas persons operating such vehicles registered in a Member State of the European Union are exempt from it.[69]

88. In the grounds of its order, the referring court asks whether the tax at issue discriminates against Turkish hauliers and must, therefore, be considered to be incompatible with Article 9 of the EEC-Turkey Association Agreement and with Article 18 TFEU. The wording of those two articles is equivalent, since paragraph 1 of Article 18 TFEU sets out the principle that any discrimination on grounds of nationality is prohibited within the scope of application of the Treaties.[70] Article 9 of the Association Agreement expressly refers to the same 'principle [of non-discrimination] laid down in Article 7 of the Treaty establishing the [EEC]', which corresponds to Article 18 TFEU.[71]

89. The Commission considers it unnecessary to reply specifically to the fourth question referred, since the issue of any discrimination on grounds of nationality should already have been examined in relation to the first two questions, if the Court accepts that the national rules concerned fall within the scope of Articles 4 to 7 of Decision No 1/95 of the Association Council and, hence, within that of the EEC-Turkey Association Agreement.[72]

90. It is true, in particular, that Member States may adopt measures restricting the free movement of goods that are justified on one of the grounds listed in Article 36 TFEU only on condition that they do not constitute a means of arbitrary discrimination,[73] a criterion that should be analysed in the context of the second part of the second question,[74] if the Court intends to give a ruling on that question.

91. In view of the affirmative answer that I propose should be given to the first question, I consider it unnecessary to reply to the fourth question, since it is sufficient for the Court to find the existence of a single ground of non-compliance with EU law from among all those put forward by the referring court. More specifically, if the Court considers, as I recommend, that the rules at issue fall within the prohibition on charges having an effect equivalent to a customs duty which is contained in Article 4 of Decision No 1/95 of the Association Council, there will be no need in my view, in the light of the case-law regarding the relationship between Article 18 TFEU and the provisions of the FEU Treaty concerning the fundamental freedoms of movement,[75] to provide an interpretation of Article 9 of the EEC-Turkey Association Agreement.

69 With regard to that exemption, see point 42 of this Opinion.

70 A principle also laid down in Article 21(2) of the Charter of Fundamental Rights of the European Union ('the Charter'). In the judgment of 2 June 2016, *Commission* v *Netherlands* (C-233/14, EU:C:2016:396, paragraph 76), the Court noted that the prohibition contained in Article 18 TFEU is applicable in all situations falling within the material scope of EU law.

71 Article 37 of the Additional Protocol to that agreement provides for specific application of that principle in the field of work, stating that 'as regards conditions of work and remuneration, the rules which each Member State applies to workers of Turkish nationality employed in the Community shall not discriminate on grounds of nationality between such workers and workers who are nationals of other Member States of the Community'.

72 In that regard, it cites the judgment of 30 April 2014, *Pfleger and Others* (C-390/12, EU:C:2014:281, paragraphs 31 to 36), in which the Court noted that where a Member State relies on overriding requirements in the public interest in order to justify rules which are liable to obstruct the exercise of one of the freedoms provided for by the Treaties, such justification must be interpreted in the light of the general principles of EU law, in particular the fundamental rights guaranteed by the Charter, which include the principle of non-discrimination grounds of nationality.

73 An equivalent rule appears both in Article 7 of Decision No 1/95 of the Association Council and in Article 29 *in fine* of the Additional Protocol to the EEC-Turkey Association Agreement.

74 See point 75 et seq. of this Opinion.

75 See, inter alia, judgments of 19 June 2014, *Strojírny Prostějov and ACO Industries Tábor* (C-53/13 and C-80/13, EU:C:2014:2011, paragraph 31 et seq.); of 18 December 2014, *Generali-Providencia Biztosító* (C-470/13, EU:C:2014:2469, paragraph 30 et seq.); and of 29 October 2015, *Nagy* (C-583/14, EU:C:2015:737, paragraph 24), which note that Article 18 TFEU does not apply where provisions of the FEU Treaty relating to the free movement of goods, persons, services or capital apply and provide specific rules on non-discrimination.

D. Division of competence between the European Union and the Member States as regards Article 3(2) TFEU and Article 1(2) and (3)(a) of Regulation No 1072/2009 (third question)

92. It is clear from the grounds of the order for reference that the third question referred is raised only in case the Court holds that the tax at issue in the main proceedings does not constitute either a charge having equivalent effect to a customs duty or a measure having equivalent effect to a quantitative restriction on imports within the meaning of Articles 4 and 5, respectively, of Decision No 1/95 of the Association Council. In view of the affirmative answer which I propose should be given to the first question referred to the Court, I consider it unnecessary to reply to the third question. However, for the sake of completeness I shall make some observations on that question.

93. In essence, the third question concerns the division of competence between the European Union and the Member States in the area of international road haulage agreements concluded with third countries. It is apparent from the order for reference that the defendant in the main proceedings, the second-instance tax authority, has contended that Hungary is free to regulate international road haulage by means of bilateral agreements, under Article 4(2)(g) TFEU, which provides that 'shared competence between the Union and the Member States applies[, inter alia, in] transport', and in the light of the provisions of Regulation No 1072/2009. That is also the view of the Hungarian and Italian Governments and of the Commission. Istanbul Lojistik, on the other hand, claims that the European Union has implied exclusive competence in this matter.

94. In precise terms, the referring court wishes to ascertain whether the Hungarian authorities continue to be entitled to implement the bilateral agreement which Hungary signed with the Republic of Turkey in 1968, Article 18(3) of which provides for the imposition of taxes on Turkish vehicles carrying goods in transit through Hungarian territory.[76] It asks whether the tax forming the subject of the dispute in the main proceedings may, therefore, be implemented on the basis of that provision.

95. In that regard, the referring court points to the exclusive competence of the European Union to enter into international agreements, which is provided for in Article 3(2) TFEU,[77] and it notes that, according to the case-law of the Court, 'each time the Community, with a view to implementing a common policy envisaged by the Treaty, adopts provisions laying down common rules, whatever form these may take, the Member States no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules'.[78] I note that the principle thus laid down was subsequently delimited by the Court, which clarified in particular that, since the European Union has only conferred powers,[79] any competence it may have, especially where it is exclusive, must have its basis in a detailed analysis of the provisions concerned.[80]

76 The obligation to pay taxes 'in respect of the carriage of goods and to cover costs in connection with the maintenance and repair of roads' applies to such Turkish vehicles even in respect of empty journeys in transit. Under Article 18(3), Hungarian vehicles which cross Turkey in transit must, on a reciprocal basis, pay similar taxes applying in its territory. It is clear from Article 18(2) that vehicles registered in either of the States party to that bilateral agreement are, on the other hand, exempt from taxes payable 'in respect of the carriage of goods, ownership of the vehicle or use of the roads' where the territory of the other State Party is their final destination.

77 Under Article 3(2) TFEU, 'the Union shall … have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope'.

78 The referring court cites paragraphs 17 to 19 of judgment of 31 March 1971, *Commission* v *Council* (22/70, EU:C:1971:32), commonly known as the '*AETR* judgment'.

79 According to Article 5(1) and (2) TEU.

80 See, inter alia, the case-law cited in View of Advocate General Jääskinen relating to Opinion 1/13 ((Accession of third States to the Hague Convention), EU:C:2014:2292, point 58 et seq.), and in Opinion 1/13 (Accession of third States to the Hague Convention) of 14 October 2014 (EU:C:2014:2303, paragraph 71 et seq.) and also in Opinion 3/15 (Marrakesh Treaty on access to published works) of 14 February 2017 (EU:C:2017:114, paragraph 108).

96. In support of its request, the referring court states that Regulation No 1072/2009 did lay down common rules for access to the international road haulage market which are valid throughout the European Union and that, according to recital 3 [81] and the first sentence of Article 1(2) thereof, [82] that instrument is intended to apply in any Member State which, as was the case of Hungary in the dispute in the main proceedings, is crossed in transit by a vehicle carrying goods from a third country to a Member State (or vice versa). [83]

97. It asks the Court, specifically, whether, although the European Union has legislated on the matter, the Hungarian authorities could continue to bring about the operation of the Hungary-Turkey Agreement [84] by relying on Article 1(3)(a) of Regulation No 1072/2009, which provides that 'pending the conclusion of the agreements referred to in paragraph 2, this Regulation shall not affect provisions relating to the carriage from a Member State to a third country and vice versa included in bilateral agreements concluded by Member States with those third countries'. [85]

98. It is clear from the *second sentence* of Article 1(2) of Regulation No 1072/2009 that that regulation does '*not apply* to that part of the journey on the territory of the Member State of loading or unloading, *as long as the necessary agreement between the Community and the third country concerned has not been concluded*', [86] unlike the applicability of that regulation, which is provided for in the *first sentence* of Article 1(2) of Regulation No 1072/2009 with regard to situations in which a Member State of the European Union is only crossed in transit. [87]

99. However, in my view, that second sentence is not relevant in the present case since, as stated by Istanbul Lojistik and as acknowledged by the referring court itself, Hungarian territory was only a transit route here and not the place of loading or unloading of the goods concerned.

100. Above all, like the Hungarian and Italian Governments and the Commission, I would point out that the dispute in the main proceedings does not fall within the substantive scope of Regulation No 1072/2009, given that Article 2(1) thereof provides that that instrument refers only to vehicles for the carriage of goods which are registered in a Member State of the European Union, [88] whereas the vehicle that was made subject to the Hungarian tax by the contested decisions was registered in Turkey.

101. Consequently, I consider, in the alternative, that since Regulation No 1072/2009 does not apply in a situation such as that at issue in the main proceedings, its provisions cannot preclude the Hungarian authorities relying on Article 18(3) of the Hungary-Turkey Agreement in order require payment of the tax in question in that situation.

81 Recital 3 reads: 'To ensure a coherent framework for international road haulage throughout the Community, [Regulation No 1072/2009] should apply to all international carriage on Community territory. Carriage from Member States to third countries is still largely covered by bilateral agreements between the Member States and those third countries. Therefore, this Regulation should not apply to that part of the journey within the territory of the Member State of loading or unloading as long as the necessary agreements between the Community and the third countries concerned have not been concluded. It should, however, apply to the territory of a Member State crossed in transit.'

82 The first sentence of Article 1(2) of Regulation No 1072/2009 states that that regulation applies, 'in the event of carriage from a Member State to a third country and vice versa, … to the part of the journey on the territory of any Member State crossed in transit'.

83 In the present case, the vehicle subject to the tax in question had set off from Turkey to travel to Germany via Hungary.

84 The referring court and Istanbul Lojistik disagree over whether that possibility is confirmed or contradicted by the report of ICF Consulting Ltd mentioned in footnote 28 to this Opinion (see p. 6, point 2.1, and p. 8, point 2.2 of that report).

85 The Hungarian Government contends that the European Union does not have exclusive competence in this area, on the grounds that that provision of Regulation No 1072/2009, which takes expressly into account bilateral agreements concluded by Member States with third countries, provides that such agreements will remain in force until they are replaced by provisions adopted at EU level.

86 Emphasis added. Similar provisions already appeared in the third recital and Article 1 of 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), which Regulation No 1072/2009 replaced.

87 See, also, recital 3 of Regulation No 1072/2009, cited in footnote 81 of this Opinion.

88 Article 2(1) of Regulation No 1072/2009 defines 'vehicle' for the purposes of that regulation as meaning any 'motor vehicle registered in a Member State, or a coupled combination of vehicles the motor vehicle of which at least is registered in a Member State, used exclusively for the carriage of goods'.

V. Conclusion

102. In the light of the above considerations, I propose that the Court should answer the questions raised by the Szegedi Közigazgatási és Munkaügyi Bíróság (Szeged Administrative and Labour Court, Hungary) as follows:

Article 4 of Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union must be interpreted as meaning that a motor vehicle tax such as that at issue in the main proceedings, which is levied on all persons operating heavy goods vehicles registered in a country that is not an EU Member State crossing the territory of Hungary in transit to reach another Member State, and which must be paid each time the Hungarian border is crossed, constitutes a charge having equivalent effect to a customs duty in respect of the goods covered by that union and is therefore prohibited by that article.

In the light of the answer to the first question referred for a preliminary ruling, it is unnecessary to reply to the second, third and fourth questions referred.