JUDGMENT OF THE COURT
2 December 1997 *

In Case C-188/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Østre Landsret, Denmark, for a preliminary ruling in the proceedings pending before that court between

Fantask A/S and Others

and

Industriministeriet (Erhvervsministeriet)

on the interpretation of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412), as most recently amended by Council Directive 85/303/EEC of 10 June 1985 (OJ 1985 L 156, p. 23),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. Gulmann, H. Ragnemalm and M. Wathelet (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, P. J. G. Kapteyn, J. L. Murray, D. A. O. Edward, J.-P. Puissochet (Rapporteur), G. Hirsch, P. Jann and L. Sevón, Judges,

* Language of the case: Danish.

Advocate General: F. G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Fantask A/S, by Thomas Rørdam, of the Copenhagen Bar,

— Norsk Hydro Danmark A/S, Tryg Forsikring skadesforsikringsselskab A/S and Tryg Forsikring livsforsikringsselskab A/S, by Kai Michelsen, Claus Høeg Madsen and Henning Aasmul-Olsen, of the Copenhagen Bar,

— Aalborg Portland A/S, by Karen Dyekjær-Hansen, of the Copenhagen Bar,

— Forsikrings-Aktieselskabet Alka, Robert Bosch A/S, Uponor A/S, Uponor Holding A/S and Pen-Sam ApS and others, by Vagn Thorup, Henrik Stenbjerre, Jørgen Boe and Lau Normann Jørgensen, from the firm Kromann and Münter, of the Copenhagen Bar,

— the Danish Government, by Peter Biering, Head of Division in the Ministry of Foreign Affairs, acting as Agent, assisted by Karsten Hagel-Sørensen, of the Copenhagen Bar,

— the French Government, by Catherine de Salins, Assistant Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Frédéric Pascal, Administrative Attaché in the same Directorate, acting as Agents,

— the Swedish Government, by Erik Brattgård, Adviser in the Trade Department of the Ministry of Foreign Affairs, acting as Agent,

— the United Kingdom Government, by John E. Collins, Assistant Treasury Solicitor, acting as Agent, assisted by Eleanor Sharpston, Barrister,

— the Commission of the European Communities, by Anders C. Jessen and Enrico Traversa, of its Legal Service, acting as Agents, assisted by Susanne Helsteen and Jens Rostock-Jensen, from the firm Reumert & Partnere, of the Copenhagen Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Fantask A/S, represented by Preben Jøker Thorsen, of the Copenhagen Bar; Norsk Hydro Danmark A/S, Tryg Forsikring skadesforsikringsselskab A/S and Tryg Forsikring livsforsikringsselskab A/S, represented by Henning Aasmul-Olsen; Aalborg Portland A/S, represented by Lars Hennenberg, of the Copenhagen Bar; Forsikrings-Aktieselskabet Alka, Robert Bosch A/S, Uponor A/S, Uponor Holding A/S and Pen-Sam ApS and others, represented by Henrik Peytz, of the Copenhagen Bar; the Industriministeriet (Erhvervsministeriet), represented by Karsten Hagel-Sørensen; the Danish Government, represented by Peter Biering; the French Government, represented by Gautier Mignot, Foreign Affairs Secretary in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent; the Italian Government, represented by Danilo Del Gaizo, Avvocato dello Stato; the United Kingdom Government, represented by John E. Collins, assisted by Eleanor Sharpston; and the Commission, represented by Anders C. Jessen and Enrico Traversa, assisted by Jens Rostock-Jensen and Hans Henrik Skjødt, of the Copenhagen Bar, at the hearing on 29 April 1997,

after hearing the Opinion of the Advocate General at the sitting on 26 June 1997,

gives the following

Judgment

1 By order of 8 June 1995, received at the Court on 15 June 1995, the Østre Landsret (Eastern Regional Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty eight questions on the interpretation of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412; 'the Directive'), as most recently amended by Council Directive 85/303/EEC of 10 June 1985 (OJ 1985 L 156, p. 23).

2 Those questions were raised in actions brought by Fantask A/S ('Fantask') and a number of other companies or groups of companies against the Industriministeriet (Erhvervsministeriet) [Danish Ministry of Industry (Ministry of Trade)] relating to charges levied on registration of new public and private limited companies and on the capital of such companies being increased.

3 Law No 468 of 29 September 1917, the First Law on Public Limited Companies (*Lovtidende* A 1917, p. 1117), made it compulsory for public limited companies and increases in their capital to be entered in a companies register. Entries in the register were subject to a charge at a rate to be determined by the competent minister. Substantially recast for the first time in 1930, the Law was subject to general amendment by Law No 370 of 13 June 1973 on Public Limited Companies (*Lovtidende* A 1973, p. 1025). On the same day Law No 371 on Private Limited Companies (*Lovtidende* A 1973, p. 1063) was adopted, which lays down, in relation to such companies, registration formalities analogous to those applicable to public limited companies.

4 Article 154(3) of the Law on Public Limited Companies and Article 124(3) of the Law on Private Limited Companies initially gave the competent minister the power to determine the rates of the registration charges for those two categories of company.

5 From the adoption of the First Law on Public Limited Companies until 1992, there was no change in the charging structure for the registration of new companies and of increases in their capital. It consisted of a fixed basic charge and a supplementary charge calculated in proportion to the nominal value of the capital raised. The rates, on the other hand, were amended on several occasions.

6 Between 1 January 1974 and 1 May 1992, the basic charge ranged from DKR 500 to DKR 1 700 for the registration of new public and private limited companies and from DKR 200 to DKR 900 for the registration of an increase in the capital of either category of company. During that period, the supplementary charge was DKR 4 per DKR 1 000 of the subscribed capital on registration of a new company and the same percentage of the capital raised on registration of an increase in capital.

7 The registry of public limited companies set up by Law No 468 constituted a directorate of the Ministry of Trade and was responsible for the registration of entries relating to public limited companies and, from 1974, to private limited companies. By Law No 851 of 23 December 1987 amending, in particular, the Law on Public Limited Companies and the Law on Private Limited Companies (*Lovtidende* A 1987, p. 3229), the registry became the Erhvervs-og Selskabsstyrelsen (Trade and Companies Office). Apart from carrying out its registration duties and setting and collecting the related charges, the Trade and Companies Office is involved in the drafting of legislation in the fields of company and business law and ensures its application. It also performs various functions involving the provision of advice and information.

8 Following a report from the Danish Court of Auditors, which found that the Trade and Companies Office had enjoyed significant surpluses of income over expenditure as a result of the levying of the supplementary charge and questioned whether that charge was allowed under Danish law, the supplementary charge was abolished by Order No 301 of 30 April 1992 (*Lovtidende* A 1992, p. 1149) with effect from 1 May 1992. At the same time the basic charge was increased to DKR 2 500 for the registration of a new public limited company and to DKR 1 800 for that of a new private limited company. The fee for registration of an increase in the capital of either category of company was raised to DKR 600.

9 Fantask and a number of other companies or groups of companies then asked the Trade and Companies Office to refund the supplementary charges which they had been obliged to pay to that directorate between 1983 and 1992. Only Fantask also claimed repayment of the basic charge.

10 Since their requests for a refund were rejected, the companies in question commenced proceedings in the Østre Landsret against the Ministry of Industry. In their actions they submitted *inter alia* that, in the light, in particular, of the judgment in Joined Cases C-71/91 and C-178/91 *Ponente Carni and Cispadana Costruzioni* v *Amministrazione delle Finanze dello Stato* [1993] ECR I-1915 ('*Ponente Carni*'), the supplementary charge — and in Fantask's case the basic charge too — was contrary to Articles 10 and 12 of the Directive.

11 In those circumstances the Østre Landsret stayed proceedings and referred the following eight questions to the Court of Justice for a preliminary ruling:

'1. Does Community law impose requirements upon the Member States' delimitation of the concept of "fees or dues" in Article 12(1)(e) of Directive 69/335/EEC or are the individual Member States free to decide what may be regarded as "fees or dues" for a specific service?

2. May the basis for the calculation of duties charged under Article 12(1)(e) of Directive 69/335/EEC by a Member State for registration of formation or increase in capital of a public limited company or a private limited company include the following types of costs or some of them:

— the cost of salaries and pension contributions for officials not involved in effecting the registration, such as the registration authority's administrative staff or staff of the registration authority or other authorities who are engaged on preparatory legal work in the field of company law.

— the cost of effecting registration of other matters relating to companies, in respect of which the Member State has determined that no specific consideration is to be paid.

— the cost of performing duties, other than registration, required of the registration authority in pursuance of company legislation and legislation related thereto, such as examination of companies' accounts and supervision of companies' bookkeeping.

— payment of interest and depreciation of all capital costs which are regarded by the registration authority as concerning the field of company law and related fields of law.

— the cost of official journeys not connected with the specific work of registration.

— the cost of the registration authority's external dissemination of information and guidance not connected with the specific work of registration, such as lecturing, preparation of articles and brochures and holding of meetings with trade organizations and other interested groups.

3. (a) Is Article 12(1)(e) of Directive 69/335/EEC to be interpreted as meaning that a Member State is precluded from fixing standardized charges by rules valid without limitation of time?

(b) If that is not possible, is a Member State required to adjust its scale of charges every year or at other fixed intervals?

(c) Is it of any significance for the answer whether charges are fixed in proportion to the amount of the capital to be raised, as notified for registration?

4. Is Article 12(1)(e) in conjunction with Article 10(1) of Directive 69/335/EEC to be interpreted as meaning that the amount charged as consideration for a specific service — such as, for example, registration of the formation or increase in capital of a public limited company or a private limited company — is to be calculated on the basis of the actual cost of the specific service — registration — or can the duty for the individual registration be fixed at, for example, a basic charge together with DKR 4 per DKR 1 000 of the nominal value of the capital subscribed, so that the amount of the duty is independent of the registration authority's time used and other costs necessary for effecting the registration?

5. Is Article 12(1)(e) in conjunction with Article 10(1) of Directive 69/335/EEC to be interpreted as meaning that the Member State in calculating any amount to be recovered must work on the basis that the duty must reflect the cost of the specific

service at the time at which the service is performed, or is the Member State entitled to make a comprehensive assessment over a longer period, for example an accounting year or within the period in which it will be possible under national law to assert a claim for recovery?

6. If national law contains a general principle that, in determining claims for recovery of charges made without the requisite authority, importance should be attached to the fact that the charge was made in pursuance of rules which have been in force over a long period without either the authorities or other parties having been aware that the charge was unauthorized, will Community law preclude dismissal on those grounds of an action for recovery of charges levied contrary to Directive 69/335/EEC?

7. Does Community law make it impossible under national law for the authorities of a Member State, in cases of claims for recovery concerning charges made contrary to Directive 69/335/EEC, to contend and establish that national limitation periods start to run from a time at which an unlawful implementation of Directive 69/335/EEC occurred?

8. Does Article 10(1) in conjunction with Article 12(1)(e) of Directive 69/335/EEC as interpreted in the foregoing questions result in rights on which citizens in the individual Member States may rely before the national courts?'

12 First, the objectives and the content of the Directive, as set out in the judgment in *Ponente Carni*, should be noted.

13 As the recitals in its preamble indicate, the Directive aims at encouraging the free movement of capital which is regarded as essential for the creation of an economic union whose characteristics are similar to those of a domestic market. As far as concerns taxes on the raising of capital, the pursuit of such an objective presupposes the abolition of indirect taxes in force in the Member States until then and imposing in place of them a duty charged only once in the common market and at the same level in all the Member States.

14 The Directive thus provides for charging a capital duty on the raising of capital, which, according to the sixth and seventh recitals in the preamble, should be harmonized with regard both to its structures and to its rates, so as not to interfere with the movement of capital (Case 161/78 *Conradsen* v *Ministeriet for Skatter og Afgifter* [1979] ECR 2221, paragraph 11). That capital duty is governed by Articles 2 to 9 of the Directive.

15 Article 3 defines the capital companies to which the Directive applies and they include, in particular, public and private limited companies under Danish law.

16 Articles 4, 8 and 9 list, subject to the provisions of Article 7, the transactions subject to capital duty and those which the Member States may exempt. Under Article 4(1)(a) and (c) transactions subject to capital duty include the formation of a capital company and an increase in the capital of such a company by contribution of assets of any kind.

17 According to the last recital in its preamble, the Directive also provides for the abolition of other indirect taxes with the same characteristics as the capital duty or the stamp duty on securities, whose retention might frustrate the purposes of the

legislation. Those indirect taxes, the levying of which is prohibited, are listed in Articles 10 and 11 of the Directive. Article 10 provides:

'Apart from capital duty, Member States shall not charge, with regard to companies, firms, associations or legal persons operating for profit, any taxes whatsoever:

...

(c) in respect of registration or any other formality required before the commencement of business to which a company, firm, association or legal person operating for profit may be subject by reason of its legal form'.

18 Article 12(1) of the Directive lays down an exhaustive list of taxes and duties other than capital duty which, in derogation from Articles 10 and 11, may be imposed on capital companies in connection with the transactions referred to in those latter provisions (see, to that effect, Case 36/86 *Ministeriet for Skatter og Afgifter* v *Dansk Sparinvest* [1988] ECR 409, paragraph 9). Article 12(1)(e) of the Directive covers 'duties paid by way of fees or dues'.

Questions 1 to 5

19 In its first five questions, which should be answered together, the national court essentially asks whether, on a sound construction of Article 12(1)(e) of the Directive, in order for charges levied on registration of public and private limited companies and on their capital being increased to be by way of fees or dues, their

amount must be calculated solely on the basis of the cost of the formalities in question, or whether it may be set so as to cover the whole or part of the costs of the authority responsible for registrations.

20 Since Article 12 of the Directive derogates, in particular, from the prohibitions laid down in Article 10, it is necessary to consider at the outset whether the charges at issue fall under any of those prohibitions.

21 Article 10 of the Directive, read in the light of the last recital in the preamble, prohibits in particular indirect taxes with the same characteristics as capital duty. It thus applies, *inter alia*, to taxes in any form which are payable in respect of the formation of a capital company or an increase in its capital (Article 10(a)), or in respect of registration or any other formality required before the commencement of business, to which a company may be subject by reason of its legal form (Article 10(c)). That latter prohibition is justified by the fact that, even though the taxes in question are not imposed on capital contributions as such, they are nevertheless imposed on account of formalities connected with the company's legal form, in other words on account of the instrument employed for raising capital, so that their continued existence would similarly risk frustrating the aims of the Directive (Case C-2/94 *Denkavit Internationaal and Others* v *Kamer van Koophandel en Fabrieken voor Midden-Gelderland and Others* [1996] ECR I-2827, paragraph 23).

22 In this case, in so far as the basic charge and the supplementary charge are paid on the registration of new public and private limited companies, they are directly referred to in the prohibition laid down by Article 10(c) of the Directive. A similar conclusion must also be reached where those charges are payable on the registration of increases in the capital of such companies, since they too are imposed on account of an essential formality connected with the legal form of the companies in question. While registration of an increase in capital does not formally amount to a procedure which is required before a capital company commences business, it is none the less necessary for the carrying on of that business.

23 The Danish and Swedish Governments maintain that the term 'duties paid by way of fees or dues' in Article 12 of the Directive also covers charges whose amount is calculated so as to offset not only the registration costs directly at issue but also all the expenses of the charging authority which are linked, in particular, to the drafting and application of legislation in the field of company law.

24 The Danish Government points out in particular that the Directive did not harmonize the laws of the Member States concerning the duties paid by way of fees or dues referred to in Article 12(1)(e) and that their definition continues to be a matter for national law. However, the discretion granted to the Member States is not unlimited inasmuch as the assessment of the costs borne by the authority responsible for registrations must, according to the judgment in *Ponente Carni*, be fixed in a reasonable manner. It therefore considers that, unlike the position in that case, a Member State may not, when calculating the charges, take account of expenditure which has no link whatsoever with the administration of company law.

25 According to Fantask, the other applicants in the main proceedings which lodged observations and the Commission, it is, on the contrary, clear from *Ponente Carni* that the term 'duties paid by way of fees or dues' is one of Community law and that such charges must be calculated solely on the basis of the cost of effecting the registration in respect of which they are paid. Thus, a charge set as a proportion of the subscribed capital, such as the supplementary charge, cannot, by its very nature, fall within the derogation provided for in Article 12(1)(e) of the Directive. While a Member State is entitled to set charges paid by way of fees or dues in advance, without limitation in time and on the basis of a flat-rate assessment of the cost of effecting registrations, it must review them periodically, for example once a year, so as to ensure that they continue not to exceed the costs incurred.

26 It should be noted in that regard that the term 'duties paid by way of fees or dues' is contained in a provision of Community law which does not refer to the law of the Member States in order to determine the term's meaning and scope. Furthermore, the objectives of the Directive would be undermined if the Member States were entirely free to retain taxes with the same characteristics as capital duty by categorizing them as duties paid by way of fees or dues. It follows that the interpretation of the term at issue, considered in its entirety, cannot be left to the discretion of each Member State (see Case 270/81 *Felicitas* v *Finanzamt für Verkehrsteuern* [1982] ECR 2771, paragraph 14).

27 Moreover, the Court has already held, in its judgment in *Ponente Carni* at paragraphs 41 and 42, that the distinction between taxes prohibited by Article 10 of the Directive and duties paid by way of fees or dues implies that the latter cover only payments collected on registration whose amount is calculated on the basis of the cost of the service rendered. A payment the amount of which had no link with the cost of the particular service or was calculated not on the basis of the cost of the transaction for which it is consideration but on the basis of all the running and capital costs of the department responsible for that transaction would have to be regarded as a tax falling solely under the prohibition of Article 10 of the Directive.

28 It follows that charges levied on registration of public and private limited companies and on their capital being increased cannot be by way of fees or dues within the meaning of Article 12(1)(e) of the Directive if their amount is calculated so as to cover costs of the kind specified by the national court in the first three indents of its second question. The costs in question are in fact unrelated to the registrations in respect of which the contested charges are paid. However, for the reasons given by the Advocate General in paragraphs 37 and 45 of his Opinion, a Member State may impose charges for major transactions only and pass on in those charges the costs of minor services performed without charge.

29 As regards the setting of the amount of duties paid by way of fees or dues, the Court stated in *Ponente Carni*, at paragraph 43, that it may be difficult to determine the cost of certain transactions such as the registration of a company. In such a case the assessment of the cost can only be on a flat-rate basis and must be fixed in a reasonable manner, taking account, in particular, of the number and qualification of the officials, the time taken by them and the various material costs necessary for carrying out the transaction.

30 It must be stated in that regard that, in calculating the amount of duties paid by way of fees or dues, the Member States are entitled to take account not only of the material and salary costs which are directly related to the effecting of the registrations in respect of which they are incurred, but also, in the circumstances indicated by the Advocate General in paragraph 43 of his Opinion, of the proportion of the overheads of the competent authority which can be attributed to those registrations. To that extent only, the costs specified by the national court in the first three indents of its second question may form part of the basis for calculating the charges.

31 Charges with no upper limit which increase directly in proportion to the nominal value of the capital raised cannot, by their very nature, amount to duties paid by way of fees or dues within the meaning of the Directive. Even if there may be a link in some cases between the complexity of a registration and the amount of capital raised, the amount of such charges will generally bear no relation to the costs actually incurred by the authority on the registration formalities.

32 Finally, as is evident from the judgment in *Ponente Carni*, at paragraph 43, the amount of duties paid by way of fees or dues does not necessarily have to vary in accordance with the costs actually incurred by the authority in effecting each registration and a Member State is entitled to prescribe in advance, on the basis of the projected average registration costs, standard charges for carrying out registration formalities in relation to capital companies. Furthermore, there is nothing to prevent those charges from being set for an indefinite period, provided that the Member State checks at regular intervals, for example once a year, that they continue not to exceed the registration costs.

33 It is for the national court to review, on the basis of the above considerations, the extent to which the charges at issue are paid by way of fees or dues and, where appropriate, to order a refund on that basis.

34 The reply to the first five questions should therefore be that, on a sound construction of Article 12(1)(e) of the Directive, in order for charges levied on registration of public and private limited companies and on their capital being increased to be by way of fees or dues, their amount must be calculated solely on the basis of the cost of the formalities in question. It may, however, also cover the costs of minor services performed without charge. In calculating their amount, a Member State is entitled to take account of all the costs related to the effecting of registration, including the proportion of the overheads which may be attributed thereto. Furthermore, a Member State may impose flat-rate charges and fix their amount for an indefinite period, provided that it checks at regular intervals that they continue not to exceed the average cost of the registrations at issue.

Question 6

35 By its sixth question, the national court seeks to ascertain whether Community law precludes actions for the recovery of charges levied in breach of the Directive from being dismissed on the ground that those charges were imposed as a result of an excusable error by the authorities of the Member State inasmuch as they were levied over a long period without either those authorities or the persons liable to them having been aware that they were unlawful.

36 It is settled case-law that the interpretation which, in the exercise of the jurisdiction conferred upon it by Article 177 of the Treaty, the Court of Justice gives to a rule of Community law clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its entry into force.

37 It follows that the rule as so interpreted may, and must, be applied by the courts to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions enabling an action relating to the application of that rule to be brought before the courts having jurisdiction are satisfied (see Case 61/79 *Amministrazione delle Finanze dello Stato* v *Denkavit Italiana* [1980] ECR 1205, paragraph 16, and Joined Cases C-197/94 and C-252/94 *Bautiaa and Société Française Maritime* [1996] ECR I-505, paragraph 47).

38 It is also settled case-law that entitlement to the recovery of sums levied by a Member State in breach of Community law is a consequence of, and an adjunct to, the rights conferred on individuals by the Community provisions as interpreted by the Court (Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595, paragraph 12). The Member State is therefore in principle required to repay charges levied in breach of Community law (Joined Cases C-192/95 to C-218/95 *Comateb and Others* v *Directeur Général des Douanes et Droits Indirects* [1997] ECR I-165, paragraph 20).

39 Accordingly, while the recovery of such charges may, in the absence of Community rules governing the matter, be sought only under the substantive and procedural conditions laid down by the national law of the Member States, those conditions must nevertheless be no less favourable than those governing similar domestic claims nor render virtually impossible or excessively difficult the exercise of rights conferred by Community law (see, for example, Case C-312/93 *Peterbroeck* v *Belgian State* [1995] ECR I-4599, paragraph 12).

40 A general principle of national law under which the courts of a Member State should dismiss claims for the recovery of charges levied over a long period in breach of Community law without either the authorities of that State or the persons liable to pay the charges having been aware that they were unlawful, does not satisfy the above conditions. Application of such a principle in the circumstances described would make it excessively difficult to obtain recovery of charges which are contrary to Community law. It would, moreover, have the effect of encouraging infringements of Community law which have been committed over a long period.

41 The reply to the sixth question should therefore be that Community law precludes actions for the recovery of charges levied in breach of the Directive from being dismissed on the ground that those charges were imposed as a result of an excusable error by the authorities of the Member State inasmuch as they were levied over a long period without either those authorities or the persons liable to them having been aware that they were unlawful.

Question 7

42 By its seventh question, the national court essentially asks whether Community law prevents a Member State from relying on a limitation period under national law to resist actions for the recovery of charges levied in breach of the Directive as long as that Member State has not properly transposed the Directive.

43 It is clear from the order for reference that under Danish law the right to recovery of a whole range of debts becomes statute-barred after five years and that that period generally runs from the date on which the debt became payable. On the expiry of that period the debt is normally no longer exigible, unless the debtor has in the meantime acknowledged the debt or the creditor has commenced legal proceedings.

44 When a number of the applicants in the main proceedings brought their applications for repayment, the relevant time-limit for at least some of their claims had expired.

45 The applicants and the Commission consider, on the basis of Case C-208/90 *Emmott* v *Minister for Social Welfare and the Attorney General* [1991] ECR I-4269, that a Member State may not rely on a limitation period under national law

as long as the Directive, in breach of which charges have been wrongly levied, has not been properly transposed into national law. According to them, until that date individuals are unable to ascertain the full extent of their rights under the Directive. A limitation period under national law thus does not begin to run until the Directive has been properly transposed.

46 The Danish, French and United Kingdom Governments consider that a Member State is entitled to rely on a limitation period under national law such as the period at issue, since it complies with the two conditions, of equivalence and of effectiveness, laid down by the Court's case-law (see, in particular, *Amministrazione delle Finanze dello Stato* v *San Giorgio* and *Peterbroeck* v *Belgian State*, both cited above). In their view, the judgment in *Emmott* must be confined to the quite particular circumstances of that case, as the Court has, moreover, confirmed in its subsequent case-law.

47 As the Court has pointed out in paragraph 39 of this judgment, it is settled case-law that, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules for actions seeking the recovery of sums wrongly paid, provided that those rules are not less favourable than those governing similar domestic actions and do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law.

48 The Court has thus acknowledged, in the interests of legal certainty which protects both the taxpayer and the authority concerned, that the setting of reasonable limitation periods for bringing proceedings is compatible with Community law. Such periods cannot be regarded as rendering virtually impossible or excessively difficult the exercise of rights conferred by Community law, even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought (see, in particular, Case 33/76 *Rewe* v *Landwirtschaftskammer Saarland* [1976] ECR 1989, paragraph 5, Case 45/76 *Comet* v *Produktschap voor Siergewassen* [1976] ECR 2043, paragraphs 17 and 18, and Case C-261/95 *Palmisani* v *Istituto Nazionale della Previdenza Sociale* [1997] ECR I-4025, paragraph 28).

49 The five-year limitation period under Danish law must be considered to be reasonable (Case C-90/94 *Haahr Petroleum* v *Åbenrå Havn and Others* [1997] ECR I-4085, paragraph 49). Furthermore, it is apparent that that period applies without distinction to actions based on Community law and those based on national law.

50 It is true that the Court held in *Emmott*, at paragraph 23, that until such time as a directive has been properly transposed, a defaulting Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred upon him by the provisions of the directive and that a period laid down by national law within which proceedings must be initiated cannot begin to run before that time.

51 However, as was confirmed by the judgment in Case C-410/92 *Johnson* v *Chief Adjudication Officer* [1994] ECR I-5483, at paragraph 26, it is clear from Case C-338/91 *Steenhorst-Neerings* v *Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen* [1993] ECR I-5475 that the solution adopted in *Emmott* was justified by the particular circumstances of that case, in which the time-bar had the result of depriving the applicant of any opportunity whatever to rely on her right to equal treatment under a Community directive (see also *Haahr Petroleum*, cited above, paragraph 52, and Joined Cases C-114/95 and C-115/95 *Texaco and Olieselskabet Danmark* [1997] ECR I-4263, paragraph 48).

52 The reply to the seventh question must therefore be that Community law, as it now stands, does not prevent a Member State which has not properly transposed the Directive from resisting actions for the repayment of charges levied in breach thereof by relying on a limitation period under national law which runs from the date on which the charges in question became payable, provided that such a period is not less favourable for actions based on Community law than for actions based on national law and does not render virtually impossible or excessively difficult the exercise of rights conferred by Community law.

Question 8

53 By its eighth question, the national court asks whether Article 10 of the Directive in conjunction with Article 12(1)(e) thereof gives rise to rights on which individuals may rely before national courts.

54 It is settled case-law that where the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may be relied upon in national courts by individuals against the State where the State fails to implement the directive in national law by the end of the period prescribed or where it fails to implement the directive correctly (see, in particular, Case C-236/92 *Comitato di Coordinamento per la Difesa della Cava and Others* v *Regione Lombardia and Others* [1994] ECR I-483, paragraph 8).

55 In this case, it is sufficient to observe that the prohibition laid down in Article 10 of the Directive and the derogation from that prohibition in Article 12(1)(e) are expressed in sufficiently precise and unconditional terms to be invoked by individuals in their national courts in order to contest a provision of national law which infringes the Directive.

56 The reply to the eighth question must therefore be that Article 10 of the Directive in conjunction with Article 12(1)(e) thereof gives rise to rights on which individuals may rely before national courts.

Costs

57 The costs incurred by the Danish, French, Italian, Swedish and United Kingdom Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Østre Landsret by order of 8 June 1995, hereby rules:

1. **On a sound construction of Article 12(1)(e) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as most recently amended by Council Directive 85/303/EEC of 10 June 1985, in order for charges levied on registration of public and private limited companies and on their capital being increased to be by way of fees or dues, their amount must be calculated solely on the basis of the cost of the formalities in question. It may, however, also cover the costs of minor services performed without charge. In calculating their amount, a Member State is entitled to take account of all the costs related to the effecting of registration, including the proportion of the overheads which may be attributed thereto. Furthermore, a Member State may impose flat-rate charges and fix their amount for an indefinite period, provided that it checks at regular intervals that they continue not to exceed the average cost of the registrations at issue.**

2. **Community law precludes actions for the recovery of charges levied in breach of Directive 69/335, as amended, from being dismissed on the ground that those charges were imposed as a result of an excusable error by the authorities of the Member State inasmuch as they were levied over a long period without either those authorities or the persons liable to them having been aware that they were unlawful.**

3. **Community law, as it now stands, does not prevent a Member State which has not properly transposed Directive 69/335, as amended, from resisting actions for the repayment of charges levied in breach thereof by relying on a limitation period under national law which runs from the date on which the charges in question became payable, provided that such a period is not less favourable for actions based on Community law than for actions based on national law and does not render virtually impossible or excessively difficult the exercise of rights conferred by Community law.**

4. **Article 10 of Directive 69/335, as amended, in conjunction with Article 12(1)(e) thereof gives rise to rights on which individuals may rely before national courts.**

Rodríguez Iglesias Gulmann Ragnemalm

Wathelet Mancini Moitinho de Almeida

Kapteyn Murray Edward

Puissochet Hirsch Jann Sevón

Delivered in open court in Luxembourg on 2 December 1997.

R. Grass G. C. Rodríguez Iglesias

Registrar President