JUDGMENT OF THE COURT
4 February 1988 *

In Case 391/85

Commission of the European Communities, represented by H. Etienne, Principal Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by the Minister for Foreign Affairs, appearing through R. Hoebaer, Director at the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, and by J. Dussart, General Inspector at the Ministry of Finance, both acting as Agents, assisted by G. Van Hecke and K. Lenaerts, of the Brussels Bar, with an address for service in Luxembourg at the Belgian Embassy, Résidence Champagne, 4 rue des Girondins,

defendant,

APPLICATION for a declaration that by retaining in practice, under its Law of 31 July 1984 amending the Code on Taxes equivalent to Stamp Duties, the catalogue price as the basis for the taxation of new saloon cars and estate cars, the Kingdom of Belgium has failed to take the measures necessary to comply with the judgment delivered by the Court of Justice on 10 April 1984 ([1984] ECR 1861), in which the Court declared that practice to be contrary to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal L 145, p. 1),

* Language of the Case: French.

THE COURT

composed of: G. Bosco, President of Chamber, acting as President, O. Due (President of Chamber), T. Koopmans, K. Bahlmann, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: J. Mischo
Registrar: D. Louterman, Administrator

having regard to the Report for the Hearing and further to the hearing on 30 September 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 22 October 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 29 November 1985, the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that by retaining in practice, under its Law of 31 July 1984, the list price as the basis for the taxation of new saloon cars and estate cars, the Kingdom of Belgium had failed to take the measures necessary to comply with the judgment delivered by the Court on 10 April 1984 in Case 324/82 (*Commission* v *Kingdom of Belgium* [1984] ECR 1861).

2 In that judgment, the Court declared that:

'by retaining the catalogue price as the basis for charging VAT on cars, as a special measure derogating from Article 11 of the Sixth Directive, when the requirements laid down in Article 27 (5) of the directive are not fulfilled, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty.'

3 In that judgment the Court censured Belgian rules contained in a Royal Decree of 1970 laying down for VAT purposes a minimum taxable amount for new cars supplied within the country or imported, which was equal to the list price of the vehicle in question. In so doing, the Court rejected the argument put forward by the Kingdom of Belgium to the effect that the reference to the list price was justified as a measure designed to prevent tax evasion or avoidance.

4 Following the judgment of 10 April 1984, the Kingdom of Belgium, by Royal Decree No 17 of 20 December 1984 (*Moniteur belge* of 3 January 1985, p. 9), repealed, with retroactive effect from 10 April 1984, the abovementioned decree of 1970 in so far as it laid down the list price as the minimum taxable amount. Since that date, VAT on new motor vehicles is no longer calculated on the basis of the list price but, under Article 26 of the Value-Added Tax Code, on the basis of the price actually agreed.

5 On the same date, the Law of 31 July 1984 amending the Code on Taxes equivalent to Stamp Duties and the Royal Decree of 20 December 1984 adopted to implement that law (*Moniteur belge* of 3 January 1985, pp. 2 and 4 respectively) were published. The preamble to the implementing decree states that the purpose of the law of 31 July 1984 is to 'compensate', from the date on which the abovementioned judgment of the Court was delivered, for the abolition of the minimum taxable amount for VAT purposes by levying a registration tax and that the said law, the implementing decree and Royal Decree No 17 of 20 December 1984 'form an inseparable whole'.

6 Those rules, supplementary to the abolition of the minimum taxable amount for VAT purposes, should be considered in the following legislative context. In December 1977, the Kingdom of Belgium introduced a registration tax, levied at the same rate as VAT, on the registration of both new and second-hand saloon cars and estate cars, the taxable amount being the normal value of the vehicle. However, motor vehicles upon which VAT was paid at the time of purchase were exempt from the registration tax. For new saloon cars and estate cars (hereinafter referred to as 'new cars') there was in fact a full exemption since, under the Belgian VAT rules applying at that time, the list price constituted the minimum taxable amount for VAT purposes and that price also corresponded to the normal value laid down by the rules concerning the registration tax.

7 Under the new 1984 rules, the registration tax was to be levied on the list price in force on the date on which the vehicle was registered. However, since the taxable amount for VAT purposes had been reduced to the actual price and was therefore no longer identical to the taxable amount for the purposes of the registration tax, the Kingdom of Belgium decided to amend the provision concerning the exemption from registration tax so that in future the exemption was to be applicable only up to the amount constituting the taxable amount for VAT purposes upon the supply or importation of the vehicle.

8 Finally, the new rules comprised a transitional provision for registrations between the date on which the abovementioned judgment was delivered (10 April 1984) and the date of publication of the new rules (3 January 1985), under which the VAT unduly paid during that period was automatically set off against the amounts payable by way of registration tax.

9 As soon as it became aware of the *travaux préparatoires* for the Belgian Law of 31 July 1984, the Commission informed the Kingdom of Belgium that such legislation was no more than a formal recasting of the old VAT rules and did not therefore bring to an end the infringement found to exist by the Court. Subsequently, in a formal notice of 27 November 1984, the Commission declared that the Kingdom of Belgium had not adopted the measures necessary to comply with the judgment of the Court of 10 April 1984 as Article 171 of the Treaty required it to do and that consequently it had failed to fulfil its obligations under that provision. Furthermore, the Commission pointed out in the notice that, in so far as the registration tax on new cars was to be considered independently, it was not in conformity with Article 33 of the Sixth Directive which, after the introduction of the common system of value-added tax, prohibits the introduction of any other tax which could be characterized as a turnover tax.

10 Since the Belgian Government disagreed with the Commission's argument, the Commission delivered a reasoned opinion on 20 June 1985 in which it stated that the Kingdom of Belgium had not adopted the measures necessary to comply with the judgment of the Court of 10 April 1984 by maintaining in its Law of 31 July 1984 with regard to new cars a provision contrary to that judgment and to the Sixth Directive. Since the Commission was not satisfied with the observations made by the Kingdom of Belgium in response to the reasoned opinion, it brought this action.

11 Reference is made to the Report for the Hearing for the legal background to the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility

12 The Kingdom of Belgium contends that the action is inadmissible because it does not in fact relate to the failure to comply with the judgment of 10 April 1984 and therefore to an infringement of Article 171 of the EEC Treaty but to a breach of obligations quite different from that which was the subject of the said judgment, namely the infringement of Article 33 of the Sixth Directive. Furthermore, the Commission did not refer to Article 171 either in its reasoned opinion or in its application. With regard to the alleged infringement of Article 33 of the Sixth Directive, the Commission cannot allege a breach of obligations of that kind in the context of the present proceedings.

13 That argument must be rejected. As can be seen from the formal notice, which expressly refers to Article 171, as well as from the reasoned opinion and the application, which repeat in part the wording of Article 171, the Commission has from the outset contended that the Kingdom of Belgium has not adopted all the measures necessary to comply with the judgment of 10 April 1984 so that the Kingdom of Belgium could not have been in any doubt as to the real scope of the dispute. However, in so far as the Commission alleges, in the alternative, that the Kingdom of Belgium has infringed Article 33 of the Sixth Directive, it must be accepted that this complaint can be considered if necessary only within the framework of Article 171 of the Treaty.

Substance of the case

14 The Commission maintains that the measures adopted by the Kingdom of Belgium following the judgment of 10 April 1984 cannot be regarded as constituting proper compliance with that judgment. The practice of calculating VAT on the basis of the list price, which the Court held to be contrary to Article 11 of the Sixth Directive, has not been discontinued. The Kingdom of Belgium has in fact main-

tained the list price as the taxable amount whilst the registration tax on new cars, as provided for in the Belgian Law of 31 July 1984, constitutes in reality a turnover tax, although it has a different name.

15 The Kingdom of Belgium states in reply that in the judgment in question the Court confined itself to deciding the question whether the Belgian legislation concerning VAT on new cars was compatible with Articles 11 and 27 (5) of the Sixth Directive. That legislation is now entirely in conformity with those provisions. Article 171 of the EEC Treaty merely requires proper compliance with the precise terms of the operative part of the judgment and the Member State concerned cannot be censured for an infringement of Article 171 on the basis of an alleged new breach of obligations which was not considered in the first judgment. The only charge made against the Kingdom of Belgium in this case is that its registration tax on new cars is contrary to Article 33 of the Sixth Directive, which is not even mentioned in the judgment of 10 April 1984.

16 In regard to those arguments it should first be pointed out that Article 171 of the EEC Treaty requires Member States which the Court has found to be in breach of an obligation under that Treaty 'to take the necessary measures to comply with the judgment of the Court of Justice'.

17 Although the Kingdom of Belgium has repealed the rules laying down the taxable amount for VAT purposes which the Court declared unlawful in its judgment of 10 April 1984, it has at the same time introduced new rules regarding registration tax on new cars with the aim of adjusting the tax system in such a way that in fact the situation could remain unaltered.

18 It should be pointed out that the amendments made on 3 January 1985 regarding the Belgian registration tax specifically concern the same goods, namely new cars, which were subject to the taxation of turnover which the Court declared unlawful in its judgment of 10 April 1984, and, secondly, that the registration tax is levied at the same rate as the turnover tax borne in the Kingdom of Belgium by new cars when supplied or imported. Furthermore, the taxable amount is not the price

actually agreed but the list price; precisely this point was at the core of the abovementioned judgment of the Court.

19 Article 3 of the Belgian Law of 31 July 1984 establishes a direct link between that registration tax and turnover tax inasmuch as it provides that if VAT was paid at the time of supply or importation, the exemption from registration tax applies, upon the subsequent registration, only up to the amount which formed the taxable amount for VAT purposes when the vehicle was supplied or imported.

20 The effect of that offsetting mechanism, as is expressly indicated in the preamble to the implementing decree of 20 December 1984, is that the adjustment of the registration tax on new cars 'compensates for' the abolition of the minimum taxable amount for VAT purposes required by the abovementioned judgment of the Court and that the two taxes thus 'form an inseparable whole'.

21 Consequently, the Belgian registration tax, as far as its amount or even its very existence is concerned, does not constitute an independent tax but depends on the VAT paid on the supply or importation of a new car.

22 The Kingdom of Belgium disagrees with that description of the tax. It contends, principally, that the two taxes in question are clearly distinct from one another in the definition of the person liable and the chargeable event. As far as domestic transactions are concerned, the person liable for VAT at the retail stage is the trader who supplies the new car to the final consumer and not the latter. On the other hand, the registration tax is payable by the person in whose name the new vehicle is allowed to be driven on the public highway. The chargeable event for VAT purposes is the supply of the new car by the retailer to his customer whereas the registration tax is linked to a different event, namely the issue of the registration certificate constituting authorization for the car to be driven on the public highway.

23 As regards the argument based on the fact that VAT and the registration tax are payable by different persons, it should first be pointed out that the Court has already stated in its judgments of 10 July 1985 in Case 16/84 *Commission* v *Netherlands* [1985] ECR 2355 and in Case 17/84 *Commission* v *Ireland* [1985] ECR 2375 that the principle of the common system of value-added tax consists in the application to goods and services up to and including the retail stage of a general tax on consumption which is exactly proportional to the price of the goods and services, irrespective of the number of transactions which take place in the production and distribution process before the stage at which tax is charged. However, VAT is chargeable on each transaction only after deduction of the amount of VAT borne directly by the cost of the various price components. After reaching the final consumer who is not a taxable person, the goods remain burdened with an amount of VAT proportional to the price paid by that consumer to his supplier.

24 Thus, although it is true that the final consumer is not the taxable person for the purposes of VAT, it is none the less he alone who, at the end of the distribution process, bears the burden of paying the amount of VAT proportional to the price of the goods purchased. It therefore appears that under the system of taxation applying in Belgium to the purchase of new cars it is the final consumer who has acquired such a car, and he alone, who must ultimately bear the burden of both VAT and registration tax so that the difference alleged to exist by the Kingdom of Belgium is to be seen as a matter of a pure fiscal technique which may therefore be disregarded. Furthermore, the Kingdom of Belgium plainly had the same idea in mind when providing, in the transitional provision contained in the new rules, that the two taxes may be set off against one another despite that formal difference.

25 With regard to the other argument put forward by the Kingdom of Belgium to the effect that only VAT is charged on the supply of new cars whereas registration tax is linked to the mere placing of the vehicle on the road, it should be observed that that argument could be accepted only if the two taxes were genuinely independent of each other. However, it has already been established that, owing to the aforementioned offsetting mechanism and the fact that the registration tax is consequently supplementary to VAT, the registration tax cannot be regarded as an independent tax. On the contrary, the direct link which that mechanism creates between the supply to the final consumer and the subsequent registration of a new car eliminates the notional difference between the events upon which the two taxes become chargeable.

26 Consequently, neither the fact that in Belgian law the two taxes are payable by different persons nor the fact that only VAT is formally linked to the supply of new cars can alter the nature of the inseparable and complementary relationship existing in Belgian law between VAT and registration tax.

27 The Kingdom of Belgium also contends that its registration tax is justified by the desire to eliminate the risk of tax evasion through practices whereby the supplier declares a price lower than the actual selling price and the purchaser accepts that declaration, thereby reducing the tax which he must bear.

28 However, that argument once again demonstrates that in reality the registration tax, like the VAT which it supplements, is geared to the commercial transaction consisting in the purchase of a new car and not, as the Kingdom of Belgium contends, to registration as a separate legal event. Furthermore, in its judgment of 10 April 1984 the Court has already rejected reference to the list price as a measure designed to avoid tax evasion or avoidance in the sphere of turnover tax on the ground that it is disproportionate to the aim in view because it systematically departs from the rules laid down in Article 11 of the Sixth Directive.

29 It follows from the foregoing that it must be declared that by retaining in practice, under its Law of 31 July 1984, the list price as the basis for the taxation of new saloon cars and estate cars, the Kingdom of Belgium has failed to take the measures necessary to comply with the judgment of the Court of 10 April 1984 and has failed to fulfil its obligations under the Treaty.

Costs

30 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Belgium has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by retaining in practice, under its Law of 31 July 1984, the list price as the basis for the taxation of new saloon cars and estate cars, the Kingdom of Belgium has failed to take the measures necessary to comply with the judgment of the Court of 10 April 1984 and has failed to fulfil its obligations under the Treaty;

(2) Orders the Kingdom of Belgium to pay the costs.

Bosco Due Koopmans

Bahlmann Joliet O'Higgins Schockweiler

Delivered in open court in Luxembourg on 4 February 1988.

P. Heim
Registrar

A. J. Mackenzie Stuart
President