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Press and Information

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Judgment of the Court of Justice in Case C-313/05

*Maciej Brzeziński v Dyrektor Izby Celnej w Warszawie*

**COMMUNITY LAW PRECLUDES A POLISH EXCISE DUTY IN SO FAR AS IT AFFECTS SECOND-HAND VEHICLES OVER TWO YEARS OLD IMPORTED FROM ANOTHER MEMBER STATE MORE ONEROUSLY THAN THOSE ALREADY REGISTERED IN POLAND**

Under Polish legislation introduced in 2004,<sup>1</sup> excise duty applies to the acquisition of second-hand vehicles originating from other Member States but not to the acquisition of second-hand vehicles already registered in Poland, these vehicles already having been subject to the duty upon their initial registration. For cars which are new or less than two years old the percentage of excise duty is 3.1% or 13.6% depending on engine capacity. For vehicles over two years old, that percentage varies according to the age of the vehicle, attaining a maximum of 65% of the tax base.

Mr Brzeziński purchased a Golf, manufactured in 1989, in Germany which he then imported into Poland. After submitting a simplified declaration relating to the acquisition of that vehicle in the Community, he paid PLN 855 by way of excise duty. Taking the view that that such a duty is contrary to the provisions of the EC Treaty, he requested reimbursement of the excise duty he had paid.

After having been unsuccessful before the customs authorities, Mr Brzeziński brought an action before the Wojewódzki Sąd Administracyjny w Warszawie. That court referred questions concerning the compatibility of the Polish excise duty with Community law to the Court of Justice of the European Communities for a preliminary ruling.

The Court notes that Article 90 EC seeks to ensure the complete neutrality of internal taxation as regards competition between products already on the domestic market and imported products.

In considering the compatibility of the excise duty in the light of Article 90 EC, the Court states that **it is necessary to compare the effects of the excise duty imposed on vehicles imported from another Member State with the effects of the residual excise duty imposed on second-hand vehicles already on the Polish market**, which have already been subject to that same duty at the time of their initial registration.

<sup>1</sup> Law of 23 January 2004 on Excise Duty (Dz. U No 29, heading 257), in the version applicable to the main proceedings.

The Court notes that the excise duty at issue in the main proceedings is charged only once, on new and second-hand vehicles, in respect of all vehicles intended for registration in Poland, whether they were manufactured in Poland or imported from other Member States. However, the excise duty imposed on second-hand vehicles sold more than two years after their date of manufacture increases with the age of the vehicle.

The Court holds that it is for the national court to examine whether such an increase in the rate is imposed only on second-hand vehicles originating from a Member State other than the Republic of Poland and whether, by contrast, for second-hand vehicles which were registered when they were new in Poland the percentage of residual excise duty incorporated into the price of such a vehicle remains constant.

The Court adds that a system of taxation may be considered compatible with Article 90 EC only if it is so arranged as to exclude any possibility of imported products being taxed more heavily than similar domestic products, so that it cannot in any event have discriminatory effect.

The Court accordingly holds that **Community law precludes an excise duty, in so far as the amount of the duty imposed on second-hand vehicles over two years old acquired in a Member State other than Poland exceeds the residual amount of the same duty incorporated into the purchase price of similar vehicles already registered in Poland.**

The Court further holds that **there is no need to limit the temporal effect of this judgment.**

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: CS DE EN FR HU IT PL SK SL*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-313/05>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

*For further information, please contact Christopher Fretwell*

*Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*

*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",  
a service provided by the European Commission, Directorate-General Press and  
Communications,*

*L-2920 Luxembourg, Tel: (00352) 4301 35177 Fax: (00352) 4301 35249*

*or B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956*