In Case 9/70

Reference to the Court under [Article 267 TFEU] by the Finanzgericht München for a preliminary ruling in the action pending before that court between

FRANZ GRAD, Linz-Urfahr (Austria),

and

FINANZAMT TRAUNSTEIN

on the interpretation of Article 4 of Council Decision No 65/271/EEC of 13 May 1965 and of Article 1 of Council Directive No 67/227/EEC of 11 April 1967, and, in the alternative, of [the second and third paragraphs of Article 4(3) TEU], [Article 90 TFEU], [Article 96 TFEU], [Article 107 TFEU] and [Article 108 TFEU],

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner (Rapporteur), A. Trabucchi, W. Strauß and J. Mertens de Wilmars, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Boutte

gives the following

JUDGMENT

Grounds of judgment

1 By an order dated 23 February 1970, received at the Court on 16 March 1970,

the Finanzgericht München has referred to the Court, pursuant to [Article 267 TFEU], several questions on the interpretation of Article 4 of the Council Decision of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway (OJ Special Edition 1965, p; 67) and of Article 1 of the First Council Directive of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes (OJ Special Edition 1967, p. 14). Alternatively, in case. the Court should give a negative answer to these questions, the Finanzgericht has submitted further questions on the interpretation in particular of [Articles 106 and 108 TFEU].

The first question

2 In its first question the Finanzgericht asks the Court for a ruling on whether the second paragraph of Article 4 of the Decision in conjunction with Article 1 of the Directive produces direct effects in the legal relationships between the Member States and those subject to their jurisdiction in such a way that these provisions create rights for individuals which the national courts must protect.

3 The question concerns the combined effect of provisions contained in a decision .and a directive. According to [Article 288 TFEU] a decison is binding in its entirety upon those to whom it is addressed. Furthermore, according to this article a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods.

4 The German Government in its observations defends the view that by distinguishing between the effects of regulations on the one hand and of decisions and directives on the other, [Article 288 TFEU] precludes the possibility of decisions and directives producing the effects mentioned in the question, which are reserved to regulations.

5 However, although it is true that by virtue of [Article 288 TFEU], regulations are directly applicable and therefore by virtue of their nature capable of producing direct effects, it does not follow from this that other categories of legal measures mentioned in that article can never produce similar effects. In particular, the provision according to which decisions are binding in their entirety on those to whom they are addressed enables the question to be put whether the obligation created by the decision can only be invoked by the

[Union] institutions against the addressee or whether such a right may possibly be exercised by all those who have an interest in the fulfilment of this obligation. It would be incompatible with the binding effect attributed to decisions by [Article 288 TFEU] to exclude in principle the possibility that persons affected may invoke the obligation imposed by a decision. Particularly in cases where, for example, the [Union] authorities by means of a decision have imposed an obligation on a Member State or all the Member States to act in a certain way, the effectiveness ('l'effet utile') of such a measure would be weakened if the nationals of that State could not invoke it in the courts and the national courts could not take it into consideration as part of [Union] law. Although the effects of a decision may not be identical with those of a provision contained in a regulation, this difference does not exclude the possibility that the end result, namely the right of the individual to invoke the measure before the courts, may be the same as that of a directly applicable provision of a regulation.

6 [Article 267 TFEU], whereby the national courts are empowered to refer to the Court all questions regarding the validity and interpretation of all acts of the institutions without distinction, also implies that individuals may invoke such acts before the national courts. Therefore, in each particular case, it must be ascertained whether the nature, background and wording of the provision in question are capable of producing direct effects in the legal relationships between the addressee of the act and third parties.

7 The Council Decision of 13 May 1965 addressed to all the Member States is based in particular on [Article 91 TFEU] which empowers the Council to lay down 'common rules', 'the conditions under which non-resident carriers may operate' and 'any other appropriate provision' to implement a common transport policy. The Council therefore has extensive freedom in the choice of the measures to adopt. The decison in question, taken as a whole, lays down the objectives to be achieved within the context of a policy of harmonizing national provisions and the timetable for their realization. In view of these objectives the first paragraph of Article 4 of the decision provides that once a common system of turnover tax has been adopted by the Council and brought into force in the Member States, the latter shall apply that system, in a manner to be determined, to the carriage of goods by rail, road and inland waterway. The second paragraph of that article provides that this common system of turnover tax shall, in so far as the carriage of goods by road, by rail and by inland waterway is subject to specific taxes instead of to the turnover tax, replace such specific taxes.

8 Thus this provision imposes two obligations on the Member States: first, to

apply the common system of turnover tax to the carriage of goods by rail, road and inland waterway by a given date, and secondly to replace the specific taxes referred to by the second paragraph by this system no later than the date when it has been brought into force. This second obligation obviously implies a prohibition on introducing or reintroducing such taxes so as to prevent the common system of turnover tax from applying concurrently in the field of transport with additional tax systems of the like nature.

9 It is apparent from the file submitted by the Finanzgericht that the question relates in particular to the second obligation. The second obligation is by its nature mandatory and general, although the provision leaves open the determination of the date on which it becomes effective. It thus expressly prohibits the Member States from applying the common system of turnover tax concurrently with specific taxes levied instead of turnover taxes. This obligation is unconditional and sufficiently clear and precise to be capable of producing direct effects in the legal relationships between the Member States and those subject to their jurisdiction.

10 The date on which this obligation becomes effective was laid down by the Council Directives on the harmonization of the legislation concerning turnover taxes which fixed the latest date by which the Member States must introduce into their legislation the common system of value-added tax. The fact that this date was fixed by a directive does not deprive this provision of any of its binding force. Thus the obligation created by the second paragraph of Article 4 of the Decision of 13 May 1965 was perfected by the First Directive. Therefore this provision imposes on the Member States obligations-in particular the obligation not to apply as from a certain date the common system of value-added tax concurrently with the specific taxes mentioned-which are capable of producing direct effects in the legal relationships between the Member States and those subject to their jurisdiction and of creating the right for the latter to invoke these obligations before the courts.

The second question

11 The second question of the Finanzgericht asks the Court to rule whether Article 4 of the Decision in conjunction with Article 1 of the Directive prohibits a Member State, which has already brought the common system of value-added tax into force and abolished specific taxes on the carriage of goods, before 1 January 1970 from reintroducing specific taxes which are levied on the carriage of goods instead of turnover tax. This question is

obviously aimed at Article 1 of the First Directive as amended by the Third Council Directive of 9 December 1969 on the same subject (OJ Special Edition 1969, p. 551) which substituted the date of 1 January 1972 for that of 1 January 1970.

12 It is true that a literal interpretation of the second paragraph of Article 4 of the Decision might lead to the view that this provision refers to the date on which the Member State concerned has brought the common system into force in its own territory.

13 However, such an interpretation would not correspond to the aim of the directives in question. The aim of the directives is to ensure that the system of value-added tax is applied throughout the Common Market from a certain date onwards. As long as this date has not yet been reached the Member States retain their freedom of action in this respect.

14 Moreover, the objective of the Decision of 13 May 1965 can only be achieved at the [Union] level and therefore cannot be brought about solely by the introduction of harmonization measures on the part of Member States individually at different dates and according to different timetables.

15 The answer to the question put must therefore be that the prohibition contained in the second paragraph of Article 4 of the Decision can only come into effect as from 1 January 1972.

The third question

16 In its third question the Finanzgericht asks the Court to rule whether the federal tax on the carriage of goods by road (Straβengüter verkehrsteuer) must be considered as a specific tax levied on the carriage of goods instead of turnover tax and whether it therefore comes under the prohibition in the second paragraph of Article 4 of the Decision of 13 May 1965.

17 It is not for the Court in these proceedings to assess from the point of view of [Union] law the features of a tax introduced by one of the Member States. On the other hand, it is within its jurisdiction to interpret the relevant provision of [Union] law in order to enable the national court to apply it correctly to the tax at issue.

18 Article 4 provides for the abolition of 'specific taxes' in order to ensure a

common and consistent system of taxation of turnover. By favouring in this way the transparency of the market in the field of transport this provision contributes to the approximation of the conditions of competition and must be regarded as an essential measure for the harmonization of the tax of the Member States in the field of transport. This objective does not prohibit the imposition on transport services of other taxes which are of a different nature and have aims different from those pursued by the common system of turnover tax.

19 A tax with the features described by the Finanzgericht which is not imposed on commercial transactions but on a specific activity, without distinguishing, moreover, between activities on one's own account and those on the account of others, and the basis of assessment of which is not the consideration for a service but the physical load expressed in metric tonnes/kilometres to which the roads are subjected through the activity taxed does not correspond to the usual form of turnover tax. Furthermore the fact that it is intended to effect a redistribution of traffic is capable of distinguishing it from the 'specific taxes' referred to in the second paragraph of Article 4. The question put must therefore be answered to this effect.

Questions 4 to 11

20 The Finanzgericht has merely put these questions as alternatives in case the first three questions should be answered in the negative. Since this is not the case particularly with regard to the first question, there is no reason to answer Questions 4 to 11.

Costs

21 The costs incurred by the Government of the Federal Republic of Germany and the Commission of the European [Union], which have submitted observations to the Court, are not recoverable. As these proceedings are, in .so far as the parties to the main action are concerned, a step in the action pending before the Finanzgericht München, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the plaintiff in the main action, the Government of the Federal Republic of Germany and the Commission of the European [Union];
Upon hearing the opinion of the Advocate-General;
Having regard to the [TFEU], especially [Articles 91, 267 and 288];
Having regard to the Council Decision of 13 May 1965, especially Article 4;
Having regard to the Council Directives on 11 April 1967 and 9 December 1969 on the harmonization of legislation of the Member States concerning turnover taxes;
Having regard to the Protocol on the Statute of the Court of Justice of the European [Union], especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European [Union],

THE COURT

in answer to the questions referred to it by the Finanzgericht München, by order of 23 February 1970, hereby rules:

1. The second paragraph of Article 4 of the Council Decision of 13 May 1965, which prohibits the Member States from applying the common system of turnover tax concurrently with specific taxes levied instead of turnover tax, is capable, in conjunction with the provisions of the Council Directives of 11 April 1967 and 9 December 1969, of producing direct effects in the legal relationships between the Member States to which the decision is addressed and those subject to their jurisdiction and of creating for the latter the right to invoke these provisions before the courts;

2. The prohibition on applying the common system of turnover tax concurrently with specific taxes becomes effective on the date laid down in the Third Council Directive of 9 December 1969, namely on 1 January 1972;

3. A tax with the features described by the Finanzgericht which is not imposed upon commercial transactions but merely because goods are carried by road and the basis of assessment of which is not

consideration for a service but the physical load expressed in metric tonnes/kilometres to which the roads are subjected through the activity taxed, does not correspond to the usual form of turnover tax within the meaning of the second paragraph of Article 4 of the Decision of 13 May 1965.

Lecourt Monaco Pescatore

Donner Trabucchi Strauβ Mertens de Wilmars

Delivered in open court in Luxembourg on 6 October 1970.

A. Van Routte
Registrar

R. Lecourt
President