

## Decision of the European Ombudsman closing his inquiry into complaint 1827/2009/(ANA)CK against the European Commission

Decision

**Case 1827/2009/(ANA)CK - Opened on 31/08/2009 - Decision on 14/02/2012**

*Summary of the decision on complaint 1827/2009/(ANA)CK (confidential) against the European Commission*

A Greek citizen submitted an infringement complaint to the Commission alleging, *inter alia*, that Greece infringed Council Directive 83/183/EEC on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals.

In July 2009, the complainant complained to the Ombudsman alleging that the Commission had not appropriately dealt with his infringement complaint. In particular, he alleged that the Commission, by concluding that the Greek legislation in question fell outside the scope of the Directive, failed to take into account the pertinent Greek legislation and the case-law of the Greek Supreme Administrative Court, developed in light of the relevant case-law of the Court of Justice.

In February 2011, the Ombudsman made a friendly solution proposal inviting the Commission to re-examine the complainant's infringement complaint against Greece. In its reply to the proposal, the Commission reiterated that it acted diligently in relation to the complaint submitted to it.

The Ombudsman regretted the abrupt manner in which the Commission dismissed the arguments made by the complainant. Nevertheless, he noted that, in a later communication, the complainant informed him about recent developments in the case-law of the Greek Supreme Administrative Court. The Ombudsman took the view that, under the case-law of the Greek Supreme Administrative Court, there would be no practical purpose for the Commission to proceed with an infringement complaint against Greece relating to the imposition of the tax in question. In this context, the disagreement between the Commission and the complainant as regards the correct interpretation of the Greek tax rules became mute. While the Ombudsman was not convinced that the Commission acted diligently in response to the infringement complaint submitted to it by the complainant, he closed the case with a finding that no further inquiries were justified.



## The background to the complaint

1. This case concerns taxation on vehicles in Greece. The complainant, a Greek national, is a member of the Greek judiciary. He worked in France from 2005 to 2008.
2. In January 2008, the complainant bought a car in France. Upon his return to Greece in August 2008, the complainant sought to register the car. However, he was asked by the Greek authorities to pay the Greek special registration tax for the first registration of his vehicle in Greece [1] .
3. On 3 November 2008, the complainant submitted an infringement complaint to the Commission. In his complaint, he alleged that Greece infringed Council Directive 83/183/EEC on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals [2] (hereafter, 'the Directive') and, in the alternative, Articles 45 and 18 of the Treaty on the Functioning of the European Union (TFEU) [3] (ex Articles 39 and 12 of the EC Treaty) [4] . In support of his complaint, the complainant submitted to the Commission the decision of the Greek authorities imposing the special registration tax on his vehicle and excerpts of the relevant Greek legislation.
4. By letter dated 25 March 2009, the Commission replied to the complainant explaining that it agreed with the Greek authorities that, according to the settled case-law of the Court of Justice [5] , the Greek legislation in question fell outside the scope of the Directive. Furthermore, the Commission argued that the Greek legislation constitutes an internal tax and not a customs duty or charge having an equivalent effect. In addition, it argued that it is compatible with Article 110 TFEU (ex Article 90 of the EC Treaty).
5. In his reply of 6 April 2009, the complainant argued that the Commission's reply ignored or misinterpreted substantive aspects of his complaint with regard to whether the Greek legislation fell within the scope of the Directive. To support his argument, the complainant referred to Judgment 1025/2009 of 4 March 2009, in which the Greek Supreme Administrative Court dealt with circumstances that were similar to the complainant's, applied the Court of Justice's ruling in Case C-392/05 *Alevizos* [6] , which dealt specifically with the Greek special registration tax, and ruled that the Greek legislation fell within the scope of the Directive.
6. The complainant further complained that his alternative argument, namely, the infringement of Articles 45 and 18 TFEU, was not examined at all by the Commission. He argued that since nationals of other Member States moving to Greece are exempt from the special registration tax, the complainant argued that he suffered " *reverse discrimination* ", which should be examined under Articles 45 and 18 TFEU and not, as the Commission insisted, under Article 110 TFEU [7] .
7. Finally, the complainant argued that the full examination of the complex Greek legislation and case-law involved in the present case requires an excellent knowledge of the Greek



language and Greek legal terminology. To this end, he requested that a Greek lawyer from DG Taxation and Customs Union (TAXUD) or the Commission's Legal Service also examine his complaint.

8. In its reply of 5 June 2009, the Commission maintained that the special registration tax forms part of Greece's system of internal taxation and is not a customs duty or charge having an equivalent effect. In fact, the Greek special registration tax was examined by the Court of Justice in the past and was classified as an internal tax [8] . According to the settled case-law of the Court of Justice, the Greek legislation at issue falls outside the scope of the Directive [9] . Consequently, the Greek Supreme Administrative Court committed an error when it decided that the special registration tax fell within the scope of the Directive. The Commission argued that, instead, the special registration tax should be examined under Article 110 TFEU.

9. Regarding the application of Articles 45 and 18 TFEU, the Commission replied that these were not relevant in the present case since there is no evidence that the complainant suffered " *any discrimination on grounds of nationality or residence.* "

10. Finally, concerning the issue of translation, the Commission replied that complaints are translated from the language in which they are written into a language which is understood by the official handling the case. All correspondence sent to the complainant is also, in a manner compatible with the Commission's obligations under the Treaty, translated into the language of the complaint. The high standard maintained by the Commission's translation services ensured that no omission or misunderstanding occurred in relation to the complaint here concerned. On the basis of the above, the Commission concluded that there was no infringement of Union law with respect to the present case and recommended, after approval from the Commission's Legal Service, that the case be closed.

11. On 13 July 2009, the complainant submitted the complaint here concerned to the Ombudsman.

## **The subject matter of the inquiry**

12. The Ombudsman opened an inquiry into the following allegation against the Commission, which was submitted by the complainant.

### **Allegation:**

The complainant alleged that the Commission failed properly to examine his infringement complaint.

13. In his letter opening an inquiry into the complaint, the Ombudsman summarised the complainant's arguments as follows:



(1) The Commission, by concluding that the special registration tax falls outside the scope of the Directive, failed properly to evaluate the Greek legislation and the case-law of the Greek Supreme Administrative Court in light of the relevant Union law and case-law of the Court of Justice;

(2) In the alternative, if the Greek special registration tax falls outside the scope of the Directive, the Commission failed properly to evaluate the complainant's arguments in light of Articles 45 and 18 TFEU and to address the issue of " *reverse discrimination* ".

(3) Finally, the complex nature of the Greek legislation and the case-law submitted by the complainant warranted the involvement in the complaint of an official, either from DG TAXUD or the Commission's Legal Service, with excellent knowledge of the Greek language and Greek legal terminology. The Commission failed to evaluate the evidence submitted to it because no official, who is fluent in Greek and masters Greek legal terminology, was involved in the handling of his complaint.

**14.** The complainant claimed that the Commission should initiate infringement proceedings against Greece because the Greek tax authorities systematically infringe Union law with regard to the special registration tax.

## **The inquiry**

**15.** On 31 August 2009, the Ombudsman sent a request for an opinion to the Commission.

**16.** On 21 December 2009, the Commission sent its opinion. The Ombudsman did not receive any observations from the complainant.

## **The Ombudsman's analysis and conclusions**

### **Preliminary remarks**

**17.** The Ombudsman recalls that complaints from citizens constitute one of the most important sources of information on possible infringements of EU law by Member States. Such complaints enable the Commission better to fulfil its role as Guardian of the Treaties. Therefore, it is good administrative practice for the Commission to deal with infringement complaints as diligently as possible. If citizens are unhappy with the way in which the Commission has dealt with their complaints, they have a right to complain to the Ombudsman, either about how the Commission has acted, or how it has failed to act [10] .

**18.** The scope of the Ombudsman's mandate in such complaints is limited to examining whether the Commission acted with diligence in its examination of the infringement complaint submitted to it. In this respect, the Ombudsman focuses on two issues when assessing whether



the Commission handled the complainant's complaint with diligence. The first is diligence itself. This is assessed with reference to the level of care which the Commission is expected to exercise in responding to infringement complaints submitted to it in its role as Guardian of the Treaties. Second, from a procedural perspective, diligence also is assessed with reference to compliance with the rules and procedures established in the 2002 Communication on relations with the complainant in respect of infringements of Community law ('the 2002 Communication') [11] .

**19.** The Ombudsman's investigation does not imply a review of the question as to whether national legislation, decisions or practices may be contrary to EU law and it is not intended to provide a final interpretation of the substantive legal issues at stake [12] . The Ombudsman further recalls that the Commission enjoys a discretionary power as to whether it will institute proceedings before the Court of Justice in relation to the alleged failure by a Member State to fulfil its obligations under EU law [13] .

**20.** The Ombudsman notes that in the present case, the complainant submitted an infringement complaint to the Commission alleging that Greece infringed the Directive and/or Articles 45 and 18 TFEU. In their exchange of communications, both the complainant and the Commission put forward several arguments regarding the interpretation and the application of the above rules. The Ombudsman will not seek to define whether the Greek special registration tax falls within the scope of the Directive or whether its imposition violates Articles 45 and 18 TFEU. He will only examine whether the level of care which the Commission exercised when responding to the infringement complaint was appropriate.

## A. The Commission's alleged failure properly to examine the complainant's infringement complaint

### Arguments presented to the Ombudsman

**21.** In his infringement complaint, the complainant pointed out that in *Alevizos* , the Court of Justice examined specifically the Greek special registration tax in circumstances similar to those of the present complaint and ruled that " *it will be for the national court to undertake the necessary investigations, in the light of the case-law referred to in the previous paragraph, on the basis of the relevant national provisions [to determine whether the Greek special registration tax falls within the scope of the Directive.] ... Where the national provisions governing the tax concerned identify the operative event giving rise to the tax as something other than importation, such as a first registration or the use of a vehicle on national territory, the tax does not come within the scope of Article 1(1) of Directive 83/183* ". [14] In fact, the Greek Supreme Administrative Court applied the Court of Justice's ruling in *Alevizos* in Judgment 1025/2009 and ruled that the Greek special registration tax falls within the scope of the Directive. The complainant reiterated these arguments in his complaint to the Ombudsman.

**22.** By letters dated 25 March and 5 June 2009, the Commission replied that, in ruling that the



Greek legislation falls within the scope of Directive 83/183, the Greek Supreme Administrative Court infringed Union law. In its opinion, the Commission maintained that its legal position, outlined in its letters dated 25 March 2009 and 5 June 2009, followed the interpretation of the relevant provisions of the Directive given by the Court of Justice.

**23.** The complainant further argued that if the Directive does not apply, the national legislation at issue must be examined in light of the relevant Treaty provisions, in particular, Articles 45 and 18 TFEU [15]. In its reply, the Commission argued that Articles 45 and 18 TFEU deal with discrimination and, in the present case, on the basis of the documents submitted to it, there seemed to be no clearly established discrimination based on nationality or residence.

**24.** In his complaint to the Ombudsman, the complainant shared the Commission's view that the Greek special registration tax was compatible with Article 110 TFEU. However, he maintained that he moved to France to take up employment and, therefore, exercised rights which fall within the scope of Article 45 TFEU. The complainant pointed out that the Greek authorities interpret and apply the relevant national legislation in such a way as to grant an exemption from the special registration tax to any person who has exercised free movement rights within the European Union within the meaning of Article 45 TFEU, except certain Greek nationals, namely, officials, public servants, and military personnel. In his case, the Greek authorities did not acknowledge that he moved his ordinary residence abroad. Therefore, the complainant was discriminated against ("*reverse discrimination*").

**25.** In its opinion, the Commission disagreed with the view that the decision of the Greek authorities not to grant the complainant an exemption from the Greek special registration tax amounted to discrimination under Articles 45 and 18 of the Treaty. The Commission stated, in support of its position, that Article 18 TFEU prohibits any discrimination on grounds of nationality, while Article 45 TFEU provides for an abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. In this respect, the Commission considered that it thoroughly addressed Articles 45 and 18 TFEU in the letter dated 5 June 2009.

**26.** In his infringement complaint, the complainant also argued that the complex nature of the Greek legislation and the relevant case-law warranted the involvement of an official, either from DG TAXUD or the Legal Service, with an excellent knowledge of the Greek language and Greek legal terminology. In his letter dated 4 April 2009, he further argued that the Commission failed to evaluate the evidence submitted to it because no official, who is fluent in Greek and masters Greek legal terminology, was involved in the handling of his complaint. The complainant reiterated this argument in his complaint to the Ombudsman.

**27.** In its reply, the Commission stated that complaints are translated from the language of the complaint into a language which is understood by the official handling the case, and that the high standard maintained by the Commission's translation services ensured that no omission or misunderstanding occurred in relation to the complaint here concerned. Moreover, in its opinion on the Ombudsman's inquiry into the present complaint, the Commission stated that while all European citizens may submit a complaint relating to an alleged infringement of Community law



in their native language, the Commission cannot guarantee that the official in charge of processing the complaint will, in all cases, be fluent in the language of the complaint. That said, in the case here concerned, the Commission's reply was translated into Greek and then revised by a Greek native speaker having experience in the subject matter. In addition, the native language of the official in charge of the file in the Commission's Legal Service was Greek.

## **The Ombudsman's preliminary assessment leading to a friendly solution proposal**

28. The Ombudsman recalled that, in support of his argument that the Greek special registration tax fell within the scope of the Directive, the complainant argued that the Court in *Alevizos*, which specifically dealt with the Greek special registration tax, ruled that the question will be determined on the basis of whether the operative event giving rise to such tax is linked with the importation of the vehicle. [16] The Ombudsman understood the Court's ruling to mean that if the tax is linked with importation, it falls within the scope of the Directive. If not, then it falls outside of its scope. The Court of Justice left it to the national courts to determine the issue in that case. In fact, the Greek Supreme Administrative Court, in its Judgment 1029/2005, held that, in circumstances which the complainant considers to be similar to his own, the Greek special registration tax falls within the scope of the Directive on the basis that the operative event giving rise to the tax is in fact linked with the importation of the vehicle.

29. In its opinion, the Commission held that, in accordance with the settled case-law of the Court of Justice, a registration tax on vehicles such as the one at issue here, does not fall within the scope of the Directive. The Commission consequently took the view that the Greek Supreme Administrative Court made an error when it found that the Greek special registration tax falls within the scope of the Directive. The Ombudsman noted that this general statement may of course apply to cases in which the information provided was of a general nature. The Ombudsman noted, however, that in this case, the complainant invoked arguments which related specifically to the Court of Justice's ruling on the Greek special registration tax and the manner in which it has been applied by the Greek Supreme Administrative Court, a court against whose decision there is no judicial remedy. In this respect, the Commission, when concluding that the Greek authorities acted lawfully, apparently relied on the Court's older case-law [17] relating to car registration taxes in other Member States. Instead, the Ombudsman took the view that a diligent examination of the complaint would require the Commission to analyse the Greek Supreme Administrative Court's judgment, which directly applied the *Alevizos* judgment, and then to address the complainant's specific arguments. The Commission did not demonstrate that it carried out such an analysis.

30. Moreover, the complainant stated that he had exercised free movement rights under the Treaty. Consequently, the Greek special registration tax, which exempts nationals of other Member States from payment when moving to Greece, infringed Articles 45 and 18 TFEU and discriminated against him. The Commission dismissed the applicability of Article 45 TFEU in a short paragraph.





**31.** The Ombudsman recalled that the Court of Justice, in accordance with settled case-law, which is summarised in *Commission v. Denmark (Danish Company Cars)* [18] , has held:

"34. The provisions of the Treaty on freedom of movement for persons are intended to facilitate the pursuit by Community citizens of occupational activities of all kinds throughout the Community, and preclude measures which might place Community citizens at a disadvantage when they wish to pursue an economic activity in the territory of another Member State.

35. Provisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement therefore constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned...

45. It is settled case-law that Article [45 TFEU] prohibits not only all discrimination, direct or indirect, based on nationality, but also national rules which are applicable irrespective of the nationality of the workers concerned but impede their freedom of movement...

73. The Court has ruled ... that a tax such as the Danish tax on the registration of new motor vehicles is not contrary to Articles [34 and 110 TFEU]. However, that does not mean that the temporary registration tax does not restrict freedom of movement for workers contrary to Article [45 TFEU]."

**32.** Moreover, as the Court held in *Bosman* [19] :

" 104. Consequently, the transfer rules constitute an obstacle to freedom of movement for workers prohibited in principle by Article [45 TFEU] . It could only be otherwise if those rules pursued a legitimate aim compatible with the Treaty and were justified by pressing reasons of public interest. But even if that were so, application of those rules would still have to be such as to ensure achievement of the aim in question and not go beyond what is necessary for that purpose. "

**33.** In view of the above, the Ombudsman took the view that, in essentially assuming that Article 45 TFEU does not apply to the complaint here concerned, the Commission did not sufficiently address the complainant's arguments thereunder. The Ombudsman noted that, for the Commission properly to examine the complainant's arguments, it ought to analyse them and assess their legal significance in light of the Court's settled case-law in the field of free movement of workers. Should an infringement of Article 45 TFEU be *prima facie* established, the Commission ought to assess whether the Greek legislation in question met the proportionality requirements established by the Court's case-law on the matter. The Commission did not carry out such an analysis.

**34.** Finally, the Ombudsman noted that in his third argument, the complainant seemed to attribute the alleged lack of diligence in the Commission's handling of the complainant to the fact that no official, who is fluent in Greek and masters Greek legal terminology, was involved in the handling of the complaint. In response, the Commission described the procedure of the handling of complaints in different languages and praised the quality of its translation services.





Moreover, in its opinion, it explained that, in the case here concerned, the Commission's reply was translated into Greek and then revised by a Greek native speaker having experience in the subject matter. In addition, the native language of the official in charge of the file in the Commission's Legal Service was Greek.

**35.** In view of the above, the Ombudsman did not, at that stage, consider it necessary to assess whether the Commission took sufficient steps to address the complainant's argument that the alleged misunderstanding of the Greek legislation and case-law of the Greek Supreme Court was caused by the non-involvement of an official who is fluent in Greek and masters Greek legal terminology.

**36.** In light of the above considerations, the Ombudsman made the preliminary finding that the Commission failed to examine and address the complainant's infringement complaint and arguments with the level of diligence required. Article 3(5) of the Statute of the Ombudsman directs the Ombudsman to seek, as far as possible, a solution with the institution concerned to eliminate the instance of maladministration and satisfy the complainant. He therefore made the following proposal for a friendly solution to the Commission:

*Taking into account the Ombudsman's findings, the Commission could re-examine the complainant's infringement complaint against Greece.*

*As regards the question whether the Greek special registration tax falls within the scope of the Directive, the Ombudsman takes the view that the Commission could analyse the Greek Supreme Administrative Court's judgment and address the complainant's specific arguments.*

*As regards the alleged infringement of Article 45 TFEU, the Commission could examine the complainant's arguments, analyse them and assess their legal significance in light of the Court's case-law in the field of free movement of workers. If it establishes an infringement, the Commission could assess whether the Greek legislation in question meets the proportionality requirements established by the Court's case-law on the matter.*

## **The arguments presented to the Ombudsman after his friendly solution proposal**

**37.** In its reply, the Commission reiterated that it acted with diligence in examining the complaint submitted to it and came to the correct conclusions regarding the merits of the case.

**38.** In particular, the Commission disagreed with the Ombudsman's assumption that it relied on the Court's "older case-law" in the field of car registration taxes and did not take into consideration the *Alevizos* judgment or the ruling of the Greek Administrative Supreme Court. It noted, in that respect, that in its letter of 5 June 2009, it did mention the *Alevizos* judgment which actually confirmed older case-law already referred to in its letter dated 25 March 2009. It added that its letter of 5 June 2009 also mentioned the judgment in Case C-74/06 *Commission v Hellenic Republic* [20], which was delivered subsequent to the *Alevizos* judgment.



39. Regarding the alleged infringement of Article 45 TFEU, the Commission reiterated that Member States are not precluded from determining the modalities of non-harmonised taxes such as the Greek registration tax. As residents and non-residents are not in a similar situation, Member States may subject them to different rules as regards the car registration tax. The Commission added that the Ombudsman erroneously invited the Commission to analyse the complainant's argument in light of the *Danish Company Cars* case [21]. In the present case, however, the vehicle was not a company vehicle and was intended to be used on a permanent basis, in the country of the owner's residence. As such, the facts of the present case are not comparable to the cited case. The judgment in *Danish Company Cars* was not relevant and was not, therefore, analysed in the replies provided by the Commission.

40. Finally, regarding the linguistic aspect of the handling of the case, the Commission observed that the usual internal procedures for verification by mother tongue officials were followed.

41. The Commission concluded that its earlier explanations had already fully covered the matters raised by the Ombudsman and that there did not, therefore, appear to be any need for further input. Thus, it did not agree with the Ombudsman's proposal for a friendly solution.

42. The complainant did not comment on the Commission's reply. In a later communication to the Ombudsman, he informed the Ombudsman about a recent judgment of the Greek Supreme Administrative Court confirming the conclusion reached earlier by its Judgment 1025/2009, namely, that the Greek legislation fell within the scope of the Directive.

## **The Ombudsman's assessment after his friendly solution proposal**

43. The Ombudsman notes that, in reply to his proposal for a friendly solution, the Commission has argued that it acted diligently in relation to the complaint submitted to it. The Ombudsman regrets, however, that the Commission, once again, dismissed in an abrupt manner the arguments made by the complainant.

44. The Ombudsman notes, however, that the complainant did not comment on the Commission's reply. However, in a subsequent communication, he informed the Ombudsman about a recent judgment of the Greek Supreme Administrative Court confirming the conclusion reached earlier in its Judgment 1025/2009. The Ombudsman understands the complainant's last communication to mean that the Greek Supreme Administrative Court now consistently takes the view that the tax in question falls under the scope of the Directive. If this is in fact the case, there would be no practical purpose for the Commission to proceed with an infringement complaint against Greece relating to the imposition of the tax in question. In this context, the disagreement between the Commission and the complainant as regards the correct interpretation of the Greek tax rules becomes mute, both as regards the argument that the tax infringes the Directive and the argument that the tax infringes Articles 45 and 18 TFEU. In sum,



if the Commission's arguments were correct, no infringement proceedings would be justified; the same would also be true, if the complainant's arguments were correct.

**45.** In light of the above and while not convinced that the Commission acted diligently in response to the infringement complaint which the complainant submitted to it, the Ombudsman closes the present case with a finding that no further inquiries are justified.

## B. Conclusion

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:

### **No further inquiries are justified**

The complainant and the Commission will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 14 February 2012

[1] The Greek legislation at issue consists of a mesh of laws and ministerial decrees governing the imposition of a " *special registration tax* " on passenger cars before first registration in Greece. It applies to all cars, new and used, domestically produced or imported. Any person who moves his permanent residence to Greece is exempt from this tax.

[2] Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals, OJ 1983 L105, p. 64 (the Directive in question has been replaced by Council Directive 2009/55/EC of 25 May 2009 on tax exemptions applicable to the permanent introduction from a Member State of the personal property of individuals, OJ 2009 L145, p. 36). In sum, Directive 83/183 exempts personal property imported permanently from another Member State by private individuals from turnover tax, excise duty and other consumption taxes which normally apply to such property. However, specific and/or periodical duties and taxes connected with the use of such property within the country, such as, for instance, motor vehicle registration fees, road taxes and television licences, are not covered by the Directive.

[3] Article 45 reads as follows:

" 1. *Freedom of movement for workers shall be secured within the Union.*

2. *Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and*



*other conditions of work and employment.*

*3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:*

*(a) to accept offers of employment actually made;*

*(b) to move freely within the territory of Member States for this purpose;*

*(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;*

*(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.*

*4. The provisions of this Article shall not apply to employment in the public service. "*

Article 18 provides as follows:

*" Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.*

*The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination. "*

[4] Hereafter, the new numbering will be used.

[5] See also Case C-387/01 *Weigel* [2004] ECR I-4981 in relation to the Austrian *NoVA* base tax; Case C-365/02 *Lindfors* [2004] ECR I-7183 in relation to the Finnish *autovero* tax and Case C-138/04 *Commission v Denmark*, judgment of 16 June 2005, unpublished, in relation to the Danish registration tax.

[6] Case C-392/05 *Alevizos* [2007] ECR I-3505 in relation to the Greek special registration tax.

[7] Article 110 of the TFEU states that:

*" No Member State shall impose, directly or indirectly, on the products of other member states any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. Furthermore, no Member State shall impose on the products of other member states any internal taxation of such a nature as to afford indirect protection to other products "*.

[8] Case C-375/95 *Commission v Greece* [1997] ECR I-5981; Case C-74/06 *Commission v Greece* [2007] ECR I-7585.



[9] Case C-387/01 *Weigel* [2004] ECR I-4981 in relation to the Austrian *NoVA* base tax; Case C-365/02 *Lindfors* [2004] ECR I-7183 in relation to the Finnish *autovero* tax and Case C-138/04 *Commission v Denmark*, judgment of 16 June 2005, unpublished, in relation to the Danish registration tax.

[10] Decision of the European Ombudsman closing his inquiry into complaint 1561/2010/(MB)FOR against the European Commission.

[11] Decision of the European Ombudsman closing his inquiry into complaint 1446/2010/FOR against the European Commission.

[12] Decision of the European Ombudsman closing his inquiry into complaint 2410/2009/(CH)KM against the European Commission; Decision of the European Ombudsman closing his inquiry into complaint 2711/2009/PB against the European Commission.

[13] Case C-48/10 *Commission v. Spain* [2010]. ECR I-0000paragraph 32.

[14] Case C-392/05 *Alevizos* [2007] ECR I-3505, paragraphs 49-50.

[15] *Alevizos*, cited above, paragraphs 72-74; Opinion of Advocate General Léger in Case C-152/03 *Ritter-Coulais* [2006] ECR I-1711, paragraphs 44-47.

[16] *Alevizos*, cited above, paragraphs 72-74.

[17] *Weigel*, *Lindfors*, *Commission v Denmark*, cited above.

[18] Case C-464/02 *Commission v Denmark* [2005] ECR I-7929.

[19] Case C-415/93 *Union royale belge des sociétés de football association and others v Bosman and others* [1995] ECR I-4921.

[20] Case C-74/06 *Commission v Hellenic Republic* [2007] ECR I-07585.

[21] *Commission v Denmark*, cited above.