

## **Decision on how the European Commission handled an infringement complaint concerning Danish rules on temporary use of cars from other Member States (case 1245/2020/PB)**

Decision

**Case 1245/2020/PB - Opened on 19/11/2020 - Decision on 21/02/2023 - Institution concerned** European Commission ( Solution achieved ) |

The complainant in this case contended that the European Commission had not fully examined an infringement complaint concerning Danish rules on temporary use of cars from other EU Member States. The complainant suspected that the Danish rules in this area are to some extent intended to minimise the temporary use of cars registered in other Member States, with a view to increasing revenues from the registration of imported cars.

The Ombudsman found that the issue raised by the complainant warranted further attention, and that certain specific points had not been fully addressed by the Commission. She therefore proposed as a solution that the Commission register and examine the infringement complaint anew. The Commission accepted her proposal and the Ombudsman therefore closed the inquiry.

## **Background**

1. The EU has limited powers in the field of taxation. [1] To date, the EU's influence on taxation matters has been mostly indirect through the basic principles of the internal market.

2. EU Member States may introduce their own tax rules for the importation and use of cars registered in other Member States. Denmark, for instance, has comparatively high car import tax rates that result in significant public revenues.

3. Such tax rules - sometimes referred to as registration fees - have to respect basic EU law principles, which are ultimately interpreted by the European Court of Justice. The Court has established certain limits, for instance in relation to the temporary use of cars that are registered in another Member State.

4. The complainant is a German company providing cars for temporary use to the Danish



market. In 2018, the complainant made an infringement complaint [2] to the European Commission arguing that the Danish rules in this area are essentially intended to minimise the temporary use of cars registered in other Member States, with a view to increasing revenues from the registration of imported cars. In the infringement complaint, the complainant contended that, as the Danish courts often do not refer cases to the European Court of Justice, it would not be possible to challenge the practice effectively through the Danish courts.

5. The Commission replied giving reasons why it did not consider there had been an infringement of EU law.

6. The complainant considered that the reply did not fully address the issues it raised in its complaint and therefore turned to the European Ombudsman.

## The inquiry

7. The Ombudsman opened an inquiry into how the Commission handled the complainant's infringement complaint, in particular whether it took all the complainant's concerns into account.

8. The Commission submitted its reply, which the Ombudsman forwarded to the complainant with an invitation to submit comments.

9. The Ombudsman subsequently proposed a solution that the Commission take a position on whether the rules in question are consistent with EU law, and inform the complainant accordingly. [3]

10. The Commission's reply led the Ombudsman to undertake further inquiry steps [4] . On the basis of the information obtained, the Ombudsman decided to make a further solution proposal [5] , which the Commission accepted [6] . The complainant welcomed the Commission's reply.

## The issue

11. The complainant found that not all issues had been addressed regarding the question of whether the Danish rules in the list below are in line with EU law [7] .

*The list of the rules that are understood not to have been fully addressed by the Commission :*

1. that the lessor must engage in **commercial** motor vehicle leasing activities, which means that non-professionals are barred from applying the rules on proportionate registration tax;
2. that **temporary lending** of a vehicle does not justify the application of the rules on proportionate registration tax;
3. that the lessor must be the **owner** of the leasing vehicle, which among other things implies



that in the case of subletting one is barred from applying the rules on proportionate registration tax;

4. that the application for permission to pay a proportionate registration fee must be submitted to the Danish Motor Agency **prior** to the beginning of the leasing period;

5. (...)

6. that proportionate registration tax also triggers payment of **interest** on the remaining part of (a hypothetical) full registration tax;

7. that no agreement must have been reached on the lessee's **subsequent purchase** of the vehicle;

8. that the lessee must not have **previously owned** the vehicle;

9. that the **lessee may not fully finance** the purchase;

10. that no agreements can be made for **less than 30 days** , which means that ordinary cross-border car rental is excluded; and

11. (...)

## The Ombudsman's further solution proposal

12. The infringement complaint to the Commission was about the conformity with EU law of a series of specific rules or conditions related to the temporary use of foreign registered cars.

13. In response to an infringement complaint of this nature [8] , it is good administration for the Commission to give a concrete and specific reply to the citizen. This is not only a question of citizen friendly communication, but also a question of maintaining public confidence in the infringement complaints procedure, a procedure that the Commission has recognised as an important means of detecting infringements of EU law [9] .

14. The Ombudsman therefore welcomed the Commission's commitment to endeavour " *to provide complainants with comprehensive and reasoned explanations of its decisions on complaints about potential breaches of EU law* " [10] .

15. In its response in this inquiry, the Commission pointed out that the Danish authorities have a certain freedom to request information from individuals who are involved in making cars available for temporary use, and that they have " *a certain latitude* " " *to verify whether the conditions for applying a proportionate registration tax, as set out in EU case law, are met* ." [11]

16. Such issues of information gathering and the leeway for deciding individual administrative



cases are most certainly of relevance in the Commission's overall assessment of whether there is an infringement of EU law. However, the concern that the complainant had brought to the Commission's attention in this case was more concrete, as it was about specific legal rules.

**17.** Examining such rules is a complex task. The contested rules do not seem to be contained in one single clear legislative instrument but also in various administrative instructions that have to be carefully examined for the Commission to reach a conclusion on the legal situation.

**18.** The Ombudsman recognised that the Commission cannot always be expected to reach a firm and final conclusion on every single rule drawn to its attention in infringement complaints. As the Ombudsman noted in her initial solution proposal, if the Commission has doubts as to what the conclusion might be, it is of course free to expressly state that. Good administration does not require the Commission to express legal views with certainty if it does not hold such certainty. It is something different, however, to avoid addressing a legitimate concern. Good administration in a case of this nature does require that the Commission shows that it concretely and specifically examined the national rule that was brought to its attention and which it agreed to examine. This implies, for instance, that the Commission should demonstrate its awareness of the contested rule, including basic aspects such as the legal instrument that contains the rule, the nature thereof and how it is applied in practice. In case of doubt regarding its EU-law conformity, it is appropriate to state the reasons for such doubt.

**19.** The material that the Ombudsman received in the course of this inquiry did not allow her to conclude that the complainant had received concrete and specific replies to its concern about the possible non-conformity of the above-listed Danish rules that it drew to the Commission's attention.

**20.** The contested rules did not appear to be trivial. Even if some of the rules were to be considered of limited importance individually, the complainant's concern that they, taken together, constitute a serious concern was something that warranted attention.

**21.** At the meeting held in the course of this inquiry, the Commission representatives noted that the infringement file was by then relatively old (dating back to 2018). They did not exclude that developments could lead to new or additional findings, or make it relevant to renew communication with the national authorities and the complainant. In that case, the documentation on the file would normally require some revisiting. The Commission representatives noted that, in general, it is an option in such cases to set up a meeting with the complainant for the purpose of exchanging information and clarifying issues.

**22.** The Ombudsman welcomed the Commission representatives' constructive view on the current status of this infringement complaint. She shared the view that a renewed examination of the matter could benefit from the documentation on the file being updated. In concrete terms, to enable the Commission to address the complainant's concerns, the primary source material (the Danish rules) should be directly accessible to all Commission staff involved in the assessment, through translation of that material. The Ombudsman also welcomed the Commission representatives' mentioning that meetings can be held with complainants. Holding



a meeting in this case would seem particularly useful. Finally, the Ombudsman noted that good administration does not necessarily require that additional measures be taken within the framework of an existing file. Depending on the circumstances, the Commission could consider it more appropriate administratively to create a new file-registration in order to provide for better procedural clarity, to the benefit of the Commission as well as the complainant.

**23.** Based on the above findings, the Ombudsman proposed that the European Commission:

- 1. Administratively create a new file-registration for examination [12] .**
- 2. Invite the complainant to a meeting within a few weeks.**
- 3. In collaboration with the complainant, identify the specific sources of the contested Danish rules, and have those sources - legislation, administrative instructions or similar - translated to facilitate their full examination by Commission staff.**
- 4. Specifically clarify with the complainant the notion of 'leasing', to ensure that the Commission and the complainant have the same understanding of this notion.**
- 5. Examine the contested Danish rules, and communicate to the complainant its view as to whether the rules are, individually and/or taken together, in line with EU law, if such a clear view can be reached. If such a clear view cannot be reached, the Commission should set out what are, in its view, the elements that may speak in favour or against considering that the rules are, or are not, in line with EU law.**

**24.** In its reply, the Commission accepted the Ombudsman's proposal to register and examine the infringement case anew. It expressed its intention to invite the complainant to a meeting.

## Conclusion

Based on the inquiry, the Ombudsman closes this case with the conclusion that the European Commission has accepted her proposal to register and examine the infringement case anew.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 21/02/2023



[1] <https://www.europarl.europa.eu/factsheets/en/sheet/92/general-tax-policy> [Link]

[2] More information on infringement complaints:

[https://ec.europa.eu/info/law/law-making-process/applying-eu-law\\_en](https://ec.europa.eu/info/law/law-making-process/applying-eu-law_en) [Link]

[3] Proposal for solution of 24 August 2021.

[4] The Ombudsman's inquiry team met with Commission representatives in June 2022. The report on this meeting was sent to the complainant, who submitted its comments and detailed information on the contested Danish legal rules.

[5] Solution proposal of 31 October 2022.

[6] Reply of 25 January 2023.

[7] This is the list that the Ombudsman referred to in her initial solution proposal of August 2021. The points with empty brackets are marked as such because the complainant has informed the Ombudsman that they are now redundant due to a revision of the relevant Danish legislation. The list still contains the word 'lessor', but the complainant has expressed doubts as to whether this term is understood in a fully coherent sense by the Commission and the Danish authorities. Part of the Ombudsman's solution proposal was therefore that this be fully clarified.

[8] In her initial solution proposal, the Ombudsman distinguished this case from situations where the Commission may refrain from carrying out a full examination of an infringement complaint, such as where the purpose of the infringement complaint is to seek individual redress or where the complainant seeks to engage the Commission in a discussion about his/her personal arguments and views.

[9] *"... the Commission will continue to value the essential role played by individual complainants in identifying wider problems with the enforcement of EU law affecting the interests of citizens and businesses"* (Example from the Commission's 2017 annual report on the monitoring of EU law, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1600101058476&uri=CELEX%3A52017DC0370> [Link]). See also more recently the Commission's Communication "Enforcing EU law for a Europe that delivers", e.g. p. 20, top, [https://commission.europa.eu/system/files/2022-10/com\\_2022\\_518\\_1\\_en.pdf](https://commission.europa.eu/system/files/2022-10/com_2022_518_1_en.pdf) [Link]

[10] The Commission's reply of 15 December 2021 to the Ombudsman's initial proposal for solution.

[11] *" it is for the Danish tax authorities to verify whether the conditions for applying a proportionate registration tax, as set out in EU case law, are met. They have a certain latitude in that regard "* (The Commission's letter of 19 December 2019 to the complainant, as quoted in its reply in the present inquiry.)



[12] Under the Commission's standard rules:

[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C\\_.2017.018.01.0010.01.ENG&toc=OJ%3AC%](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2017.018.01.0010.01.ENG&toc=OJ%3AC%3A)

[Link]