



30.8.2019

## NOTICE TO MEMBERS

**Subject: Petition No 1137/2018 by W. G. (Poland), on behalf of the Polish Automotive Association (PZM) in Katowice, bearing 12 signatures, on fees for the compulsory periodic technical inspections of vehicles**

### 1. Summary of petition

The petitioner complains that the fees for compulsory periodic technical inspections of vehicles in Poland are too low and that they do not allow the companies performing these controls to cover their own inspection-generated costs or make a fair profit. In addition, these fees include VAT when in fact it should be added to them. The petitioner recounts that, in 2016, the Polish authorities did try to increase these fees by an insignificant amount, but even that initiative was eventually blocked. According to the petitioner, this situation constitutes a breach of the Treaty on the Functioning of the EU, the Charter of Fundamental Rights (Article 16) and Directive 2006/112/EC on the common system of value added tax. Moreover, the petitioner argues that the wording in the preamble of Directive 2014/45/EU, regarding the costs of technical inspections of vehicles, which should be inexpensive, is imprecise.

### 2. Admissibility

Declared admissible on 5 March 2019. Information requested from Commission under Rule 227(6).

### 3. Commission reply, received on 30 August 2019

Article 49 of the Treaty on the Functioning of the European Union (TFEU) guarantees to the natural and legal persons the freedom of establishment within the EU. Any national measure that is liable to hinder or render less attractive the exercise of that freedom constitutes a restriction within the meaning of Article 49 TFEU<sup>1</sup>. Such restriction, if not discriminatory,

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<sup>1</sup> Joined cases C570/07 and C-571/07 Blanco Perez.

may be justified by overriding reasons relating to the general interest, provided that it is appropriate for securing attainment of the objective pursued and does not go beyond what is necessary for attaining that objective<sup>2</sup>.

It should also be noted that freedom of establishment guaranteed by Article 49 TFEU applies in principle only if a situation is not exclusively confined within a single Member State<sup>3</sup>. It does not result from the present petition that, in the context of the described situation, a certain cross-border interest, that would justify the application of Article 49 TFEU, is likely to exist.

Even if further elements (provided by the petitioner) would attest of the existence of a cross-border interest, the Commission would like to stress that the compulsory fees for periodic technical inspections of vehicles may constitute a restriction on service providers. However, it should be noted that in the case at hand those fees apply without distinction to all operators and are therefore non-discriminatory: according to the Court of Justice of the European Union (CJEU) case law, both consumer protection and road safety constitute overriding reasons of public interest which are in principle capable of justifying restrictions on freedom of establishment<sup>4</sup>. It remains to be analysed whether the restriction at issue is proportionate.

The Commission also notes that it results from EU secondary legislation, in particular Directive 2014/45/EU<sup>5</sup>, that Member States enjoy a certain margin of discretion in the way they organize roadworthiness testing which should be, according to that Directive, “inexpensive”<sup>6</sup>.

The Commission is not in a position to specifically assess whether the current level of fees in Poland is appropriate for ensuring the achievement of those objectives and do not go beyond what is necessary in order to attain those objectives. It is up to the Polish courts, which have the competence to assess the facts and interpret national legislation, to determine whether the level of the fees satisfies those conditions.

Moreover, the Commission also notes that the inclusion of Value Added Tax (VAT) in the amount of the fees for compulsory periodic technical inspections of vehicles constitutes the application of the general rule of VAT taxation on the provision of services, and does not contravene the neutrality of this tax for the service provider. VAT is ultimately borne by the final consumer.

## Conclusion

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<sup>2</sup> C-55/94 Gebhard.

<sup>3</sup> Joined cases C-54/88 Eleonora Nino & others; C-139/12, Caixa d'Estalvis i Pensions de Barcelona; C-464/15, Admiral Casinos & Entertainment; Case C-268/15, Ullens.

<sup>4</sup> C-168/14, Grupo Itevelesa SL et al.

<sup>5</sup> Directive 2014/45/EU of the European Parliament and of the Council of 3 April 2014 on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC, OJ L 127, 29.4.2014, p. 51.

<sup>6</sup> Recital 21.

The petitioners have not provided elements attesting that the situation at hand is not a purely national situation. The Commission is not in a position to determine the conformity of the current level of compulsory fees for periodic technical inspections of vehicles with Article 49 TFEU. The petition does not show grounds to indicate that an infringement of the VAT Directive has taken place.