



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 157/21
Luxembourg, 16 September 2021

Judgment in Case C-341/20
Commission v Italy

Italy has infringed EU law by exempting from excise duty fuels used for private pleasure craft, chartered and used by end users for non-commercial activities

The fact that the chartering of a vessel constitutes a commercial activity for the person making that vessel available to another does not justify the tax exemption in question

A vessel charter agreement is a contract by which the owner of a vessel makes that vessel available, for a price (the freight), to a user (the charterer) who will use it for his or her needs. In Italy, chartering constitutes a commercial activity for the owner. By contrast, the charterer can use the vessel for commercial purposes (for example, for the paid transport of persons) or for private pleasure.

In 2018, the Commission alleged that Italy was in breach of Directive 2003/96 on the taxation of energy products and electricity¹ in so far as that Member State exempts from excise duty fuels used by private pleasure craft which are the subject of a charter agreement, regardless of the manner in which those vessels are used by the charterers. According to the Commission, such an exemption must be excluded where the end user uses the vessel for private pleasure.

In 2020, the Commission, finding the explanations provided by Italy to be unsatisfactory, brought the present action for failure to fulfil obligations.

By today's judgment, the Court of Justice declares that, **in granting the benefit of exemption from excise duty to fuels used by private pleasure craft only in cases where those vessels are the subject of a charter agreement, regardless of the manner in which the vessels are in fact used, Italy has failed to fulfil its obligations arising from Directive 2003/96.**

The Court observes that Directive 2003/96 seeks to promote the proper functioning of the internal market by harmonising the levels of energy taxation applied by the Member States. Consequently, its provisions concerning tax exemptions must be given an autonomous interpretation, based on their wording and on the objectives pursued by the directive itself.

The Court points out that that directive seeks to tax energy products in accordance with their actual use. In that regard, **the tax exemption is linked to the fact that the energy products are used as fuel for navigation within European Union waters for commercial purposes, that is to say, where a vessel is used directly for the supply of services (for example, transportation) for consideration.**

The Court concludes from this that **the grant or refusal to grant the exemption depends on the manner in which the vessel is used by the end user (thus, in the case of chartering, by the charterer), that is to say, whether the vessel is used for commercial purposes (grant) or for other, non-commercial purposes (refusal to grant). The fact that the chartering of a vessel is a commercial activity for the owner is irrelevant in respect of the tax exemption in question.**

The Court sets out the same considerations for other types of contracts, such as leasing or occasional chartering: **only the nature (commercial or private pleasure) of the activity of the**

¹ Specifically, Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51).

end user of the vessel determines whether the exemption is granted or refused. The Italian legislation, proceeding from the perspective of the owner, without taking due account of the manner in which the vessel is used by the charterer, is thus inconsistent with the directive.²

The Court observes that the fact that the chartering may include, in addition to the provision of the vessel itself, the provision of crew, and that the owner may, in doing so, retain control over the technical and nautical conduct of the vessel, cannot call into question the fact that **the charterer remains contractually in control of the use of the chartered vessel**, with the result that it is the nature of that latter use which determines whether the benefit of an exemption from excise duty may potentially be granted.

The Court notes that there are **contractual relationships that are formally classified as charter agreements**, including the provision of a range of services other than navigation services, comparable to those which are offered to cruise ship passengers, and from which **the ‘charterer’ does not actually benefit other than as a person being transported, without having any control over the use of the vessel. In that case, the vessel could be regarded, for the purposes of the grant of the exemption in question, as being used for commercial purposes.**

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court’s judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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² In the case of occasional chartering, which, according to Italian law, does not constitute a commercial activity for the owner, and in the case of leasing, Italy refuses the benefit of an exemption, regardless of the fact that the charterer, or the lessee, can use the chartered or leased vessel in order to provide services for consideration, for example the marketing of cruises. That approach is also contrary to Directive 2003/96.