Reference for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 1 July 2010 — Danske Svineproducenter v Justitsministeriet

(Case C-316/10)

(2010/C 234/45)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Danske Svineproducenter

Defendant: Justitsministeriet

Question referred

Is the second paragraph of Article 249 EC [now the second paragraph of Article 267 TFEU] and Article 37 of Council Regulation No 1/2005 ([1]) on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97, and also Article 3(f) and (g), together with point 1.1(f) and point 1.2 of Chapter II, together with Part D of Chapter VII of Annex I to that regulation to be interpreted as meaning that Member States are precluded from adopting national rules which lay down detailed requirements for internal transport height, inspection height and loading density?

([1]) Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ 2005 L 3, p. 1)

Action brought on 7 July 2010 — European Commission v Republic of Finland

(Case C-342/10)

(2010/C 234/46)

Language of the case: Finnish

Parties

Applicant: European Commission (represented by I. Koskinen and R. Lyal)

Defendant: Republic of Finland

Form of order sought

— declare that, by introducing and maintaining in force a scheme under which dividends paid to foreign pension funds are taxed in a discriminatory manner, the Republic of Finland has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the EEA Agreement;

— order the Republic of Finland to pay the costs.

Pleas in law and main arguments

Finland taxes foreign pension funds on the dividends received by them more heavily than Finnish pension funds. Finnish pension funds are taxed under a special tax scheme (Elinkeinoverolaki) and their tax rate is determined differently from that of other corporations. Under Paragraph 6a of the Elinkeinoverolaki, only 75 % of their dividend income is taxable income, and since the corporation tax rate is 26 % their real tax rate is 19,5 %. Finnish pension institutions can also deduct, under Paragraph 7 and point 10 of the first subparagraph of Paragraph 8 of the Elinkeinoverolaki, expenses and losses deriving from the acquisition or preservation of income, and also pension liabilities. Dividends received by comparable foreign pension funds are charged withholding tax at a tax rate of as much as 28 %. As regards pension funds established in the Member States and most pension funds from EFTA countries belonging to the EEA, the dividends are taxed in accordance with a tax rate of 19,5 %, but foreign pension funds are not entitled to make the corresponding deductions.

The tax rate applicable to dividends paid to recipients abroad under the Finnish tax scheme, together with the broader basis of assessment applicable to them, acts to the disadvantage of foreign pension funds offering their services to Finnish customers by placing them in an unfavourable competitive situation. The discriminatory treatment of foreign pension funds makes it less profitable and attractive for those funds to invest in Finnish companies and affects the opportunities of Finnish companies to acquire capital finance from foreign pension funds. There is therefore a prohibited restriction for the purposes of Article 63 TFEU and Article 40 of the EEA Agreement. The discriminatory treatment of foreign pension funds cannot be justified on any of the grounds put forward by the Republic of Finland.