Order of the Court (Fifth Chamber) of 7 December 2010 (reference for a preliminary ruling from the Curtea de Apel Bacău — Romania) — SC SEMTEX SRL v Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău

(Case C-440/10) ([1])

(Reference for a preliminary ruling — Failure to provide a factual description — Inadmissibility)

(2011/C 63/33)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Applicant: SC SEMTEX SRL

Defendant: Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău

Re:

Reference for a preliminary ruling — Curtea de Apel Secția Bacău Secția Comercială, Contencios Administrativ și Fiscal — Registration of second-hand vehicles previously registered in another Member State — Environmental tax on vehicles on their first registration in a Member State — Compatibility of the national rules with Article 110 TFEU — Discrimination in relation to second-hand vehicles already registered in the territory of that Member State and not subject to that tax on a subsequent sale or new registration

Operative part of the order

The reference for a preliminary ruling made by the Curtea de Apel Bacău by decision of 1 September 2010 is manifestly inadmissible.

([1]) OJ C 328, 4.12.2010.

Order of the Court (Fifth Chamber) of 7 December 2010 (reference for a preliminary ruling from the Curtea de Apel Bacău — Romania) — Ioan Anghel v Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău

(Case C-441/10) ([1])

(Reference for a preliminary ruling — Failure to provide a factual description — Inadmissibility)

(2011/C 63/34)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Applicant: Ioan Anghel

Defendant: Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău

Re:

Reference for a preliminary ruling — Curtea de Apel Secția Bacău Secția Comercială, Contencios Administrativ și Fiscal — Registration of second-hand vehicles previously registered in another Member State — Environmental tax on vehicles on their first registration in a Member State — Compatibility of the national rules with Article 110 TFEU — Discrimination in relation to second-hand vehicles already registered in the territory of that Member State and not subject to that tax on a subsequent sale or new registration

Operative part of the order

The reference for a preliminary ruling made by the Curtea de Apel Bacău by decision of 1 September 2010 is manifestly inadmissible.

([1]) OJ C 328, 4.12.2010.

Application for interpretation of judgment of 17 May 1990, Barber (C-262/88), lodged on 26 May 2010 by Manuel Enrique Peinado Guitart

(Case C-262/88 INT)

(2011/C 63/35)

Language of the case: Spanish

Parties

Applicant: Manuel Enrique Peinado Guitart

By order of 17 December 2010, the Court of Justice (Seventh Chamber) declared the application for interpretation inadmissible.

Appeal brought on 22 November 2010 by Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB, Tomra Butikksystemer AS against the judgment of the General Court (Fifth Chamber) delivered on 9 September 2010 in Case T-155/06: Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB, Tomra Butikksystemer AS v European Commission

(Case C-549/10 P)

(2011/C 63/36)

Language of the case: English

Parties

Appellants: Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB, Tomra Butikksystemer AS (represented by: O. W. Brouwer, advocaat, A.J. Ryan, Solicitor)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— Set aside the judgment of the General Court, as requested in this appeal;

— Give final judgment and annul the decision or in any event reduce the fine, or, in the alternative, in case the Court of Justice does not itself decide the case, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice; and

— If the costs are not reserved, order the European Commission to pay the costs of the proceedings before the General Court and the Court of Justice.

Pleas in law and main arguments

The appeal is directed against the judgment of the General Court of 9 September 2010 in Case T-155/06 Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB, Tomra Butikksystemer AS v. European Commission (the Judgment), dismissing the application brought by the Appellants against the decision of the European Commission declaring that the Appellants' conduct was capable of foreclosing the reverse vending machine market.

The Appellants submit that the Court of Justice of the European Union should set aside the Judgment, as the General Court committed errors of law and procedure in finding that the Appellants' conduct was capable of foreclosing the reverse vending machine market. In this regard, the Appellants have forwarded the following pleas:

(i) error of law in the review applied by the General Court when assessing the European Commission's finding of an anti-competitive intent to foreclose the market: by merely requiring that the European Commission should not conceal documents, the General Court implicitly denied that it needs to carry out a comprehensive review of the Decision of the European Commission applying Article 82 EC Treaty (now Article 102 TFEU) and did also not fulfil the requirements of a marginal review to establish that the evidence relied on by the European Commission is accurate, reliable, consistent, complete and capable of substantiating the conclusions drawn from it;

(ii) error of law and failure to provide sufficient and adequate reasoning with regard to the portion of total demand the agreements had to cover to be abusive: the Judgment merely uses undefined and unsubstantiated terms to describe the share of demand foreclosed, whereas it should have required a clear demonstration that foreclosure of a certain level of demand was abusive and provided sufficient and adequate reasoning in that regard:

(iii) procedural error and error of law in the examination of retroactive rebates: the General Court misread and consequently failed to correctly take into consideration the Appellants' arguments on retroactive rebates. The General Court furthermore erred in law by not requiring the European Commission to establish that the retroactive rebates used by the Appellants led to pricing below cost;

(iv) error of law and failure to provide adequate reasoning when determining whether agreements in which the Appellants are named as preferred, main or primary supplier can be qualified as exclusive, by failing to consider and establish whether all the agreements at issue contained incentives to source exclusively from the Appellants, after having rejected the Appellants' argument that it should take into account in its assessment whether the agreements were binding exclusivity agreements under national law; and

(v) error of law in the review of the fine relating to the interpretation and application of the principle of equal treatment: the General Court failed to properly apply the principle of equal treatment when not considering whether the general level of fines had increased in deciding that the Appellants' fine was not discriminatory.

Action brought on 30 November 2010 — European Commission v Federal Republic of Germany

(Case C-562/10)

(2011/C 63/37)

Language of the case: German

Parties

Applicant: European Commission (represented by: F.W. Bulst and I. Rogalski)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should declare that:

— The Federal Republic of Germany has failed to fulfil its obligations under Article 56 TFEU by

1. limiting entitlement to care allowance, pursuant to the wording of Paragraph 34(1)(1) of SGB XI (Social Security Code), to a maximum of six weeks where a person reliant on care temporarily stays in another Member State;

2. not providing for, or by excluding through Paragraph 34(1)(1) SGB XI, reimbursement of care-related benefits in kind at the same rate as granted in Germany in respect of care services used by a person reliant on care staying temporarily in another Member State and supplied by a service provider established in another Member State;