

JUDGMENT OF THE COURT (Fifth Chamber)

6 October 2011 *

In Case C-443/10,

REFERENCE for a preliminary ruling under Article 267 TFEU, from the tribunal administratif de Limoges (France), made by decision of 9 September 2010, received at the Court on 14 September 2010, in the proceedings

Philippe Bonnarde

v

Agence de Services et de Paiement,

THE COURT (Fifth Chamber),

composed of J.-J. Kasel, President of the Chamber, A. Borg Barthet (Rapporteur) and M. Ilešič, Judges,

Advocate General: N. Jääskinen,
Registrar: A. Impellizzeri, Administrator,

* Language of the case: French.

having regard to the written procedure and further to the hearing on 19 May 2011,

after considering the observations submitted on behalf of:

- the French Government, by G. de Bergues and S. Menez, acting as Agents,
- the European Commission, by G. Wilms and A. Marghelis as well as by A. Kostova Bourgeix, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- ¹ This reference for a preliminary ruling concerns the interpretation of Articles 34 and 36 TFEU as well as Article 1 of Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles (OJ 1999 L 138, p. 57), as amended by Commission Directive 2003/127/EC of 23 December 2003 (OJ 2004 L 10, p. 29, 'Directive 1999/37').

- 2 The reference has been made in proceedings between Mr Bonnarde, the applicant in the main proceedings, and Director-General of the Centre national pour l'aménagement des structures des exploitations agricoles (National Centre for the adaptation of structures on agricultural holdings ; 'CNASEA') concerning the latter's rejection of the applicant's application for the 'bonus écologique – Grenelle de l'environnement' (subsidy for low CO2 emission vehicles – Grenelle Environment Round Table; 'ecological subsidy') for the purchase of a demonstration motor vehicle coming from another Member State.

Legal context

European Union legislation

- 3 Article 1 of Directive 1999/37 provides:

‘This Directive shall apply to the documents issued by the Member States at the time of registration of vehicles.

It shall not prejudice the right of Member States to use, for the temporary registration of vehicles, documents which may not meet the requirements of this Directive in every respect.’

4 The first subparagraph of Article 3(1) of that directive states:

‘Member States shall issue a registration certificate for vehicles which are subject to registration under their national legislation. The certificate shall consist of either a single part in accordance with Annex I or two parts in accordance with Annexes I and II.’

5 Point II.7 in Annex I to Directive 1999/37 provides that Member States may include additional information in Part I of the registration certificate.

National legislation

6 Article 63(5) of the 2007 amending Law on Finance No 2007-1824 of 25 December 2007 (Journal Officiel de la République Française of 28 December 2007, p. 21482) provides:

‘A subsidy fund in respect of the purchase of clean vehicles shall be established with a view to ... granting subsidies for the purchase of clean vehicles which may be supplemented, if necessary, by a subsidy for the withdrawal from circulation of polluting vehicles.

The managing body of the fund and the conditions for its management shall be determined by decree.’

- 7 Article 1 of Decree No 2007-1873 of 26 December 2007 instituting a subsidy fund in respect of the purchase of clean vehicles (Journal Officiel de la République Française of 30 December 2007, p. 21846, 'Decree No 2007-1873 in its original version'), as amended by Decree No 2009-66 of 19 January 2009 (Journal Officiel de la République Française of 20 January 2009, p. 1098, 'Decree No 2007-1873 as amended') states:

'A subsidy shall be granted by the subsidy fund in respect of the purchase of clean vehicles created by Article 63 of the 2007 amending Law on Finance No 2007-1824 of 25 December 2007 to any person showing that he has a residence or establishment in France, with the exception of state administrations, who purchases or who rents in the context of a rental agreement with an option to purchase or a contract of at least two years a land motor vehicle which, at the date of its purchase, satisfies the following conditions:

- (1) It falls within the category of private cars or vans in accordance with Article R. 311-1 of the Road Traffic Code and within any category of vehicles subject to the measurement of carbon dioxide emissions in accordance with the provisions of Directive 80/1268/EEC of 16 December 1980 or Regulation (EC) No 715/2007 of 20 June 2007.
- (2) It must not previously have undergone first registration in France or abroad;
- (3) It is registered in France in a definitive series;
- (4) It is not intended to be sold by the purchaser as a new vehicle;

...

- 8 The second paragraph of Article 2 of Decree No 2007-1873 in its original version provides:

‘Dealers and vehicle manufacturers’ agents may not benefit from the aid provided for in Article 1 in respect of new private cars which they use for demonstration purposes. Nevertheless, in applying the subsidy scheme laid down in Article 1, such private cars used for demonstration purposes shall be deemed new if their transfer or rental takes place within 12 months from the date of their first registration.’

- 9 The second paragraph of Article 2 of Decree No 2007-1873 as amended provides:

‘Dealers and vehicle manufacturers’ agents may not benefit from the aid provided for in Article 1 in respect of new vehicles that fall within one of the categories in point 1 of that article and which they use for demonstration purposes. Nevertheless, in applying the subsidy scheme laid down in Article 1, such vehicles used for demonstration purposes in France shall be deemed new if their transfer or rental takes place within 12 months from the date of their first registration.’

- 10 Article 29 of the Order of 5 November 1984, replaced by the Order of 9 February 2009 on the registration of vehicles, which reproduces that Article without altering it, provides:

‘Demonstration vehicle shall mean a new vehicle of less than 3.5 tonnes GVWR (gross vehicle weight rating) used for a minimum of three months and a maximum of one year for demonstration purposes, that is to say, used by dealers and manufacturers’ agents (including manufacturers and importers) in the context of presentations, tests and sales for their customers.

Any vehicle subject to a registration requirement which meets the abovementioned conditions may be used for demonstration purposes, whatever its type and bodywork (private car, motorcycle, van, trailer, etc.).

The time-limits defined above shall run from the date of first registration indicated on the vehicle registration document.

By application of Article 1635a H (II) of the General Taxation Code, vehicle registration documents shall be issued free of charge for those vehicles. Those vehicle registration documents shall be marked "demonstration vehicle".

The dispute in the main proceedings and the questions referred for a preliminary ruling

- ¹¹ In January 2009, Mr Bonnarde purchased, from a car dealer in Belgium, a motor vehicle owned by PSA-Belgique. The vehicle had been previously registered in Belgium before being imported into France by Mr Bonnarde where it was registered on 4 February 2009.
- ¹² Mr Bonnarde applied for the award of the ecological subsidy for the purchase of that low-emission vehicle as a demonstration vehicle, the date of first registration of which preceded the purchase by only eight months, and which had around 6 000 km on the meter.

- 13 By decision of 23 February 2009, the Director-General of CNASEA rejected that application on the ground that the vehicle had previously been registered abroad, namely in Belgium, on 20 May 2008, and that, despite the request made to him, Mr Bonnarde had not produced a vehicle registration document stating that it was a 'demonstration vehicle.'
- 14 On 28 February 2009, the applicant in the main proceedings brought an action before the tribunal administratif de Limoges (Administrative Court, Limoges) for annulment of that decision.
- 15 Before the tribunal administratif de Limoges, Mr Bonnarde submitted that Belgian legislation does not provide for a document stating that it was a 'demonstration vehicle' to be issued. Indeed, whilst the Belgian authorities issue a registration document for all demonstration vehicles, no provision is made for the document to state specifically that it was a demonstration vehicle. Mr Bonnarde submitted that as his car did not emit more pollution than a French demonstration vehicle, the requirement for such a certificate was discriminatory in nature.
- 16 It is not disputed that, on account of the CO₂ emission rates of the applicant's car, it would qualify for the ecological subsidy. Nor are the applicant's assertions concerning the age and condition of that car and the fact that it was impossible to produce a vehicle registration document stating that it was a 'demonstration vehicle' issued by the competent authorities of the Kingdom of Belgium disputed.
- 17 Taking the view that resolution of the dispute before it turns on the interpretation of the applicable European Union law, the tribunal administratif de Limoges decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Are the provisions of European Union law, in particular those of the Treaty on the Functioning of the European Union intended to ensure freedom of movement,

and those of the abovementioned directives concerning vehicle registration documents, to be interpreted as precluding a Member State's legislation from introducing, for the registration of vehicles, a specific document, such as a vehicle registration document on which must be stated "demonstration vehicle", which could be regarded as not intended to constitute temporary registration within the meaning of Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles, amended by Directive 2003/127/EC, and consequently as precluding the grant of an advantage from being linked to production of such a document?

- (2) If the answer to the first question is in the negative, do those provisions imply that, where a vehicle is purchased in another Member State, national legislation making the grant of a subsidy for the purchase of clean vehicles which have already been registered subject to the condition that the registration certificate bear, by virtue of the legislation of the Member State, the statement "demonstration vehicle" must be disappplied, where the seller of the vehicle has not himself been able to benefit from that subsidy and where:
- either the purchaser produces a vehicle registration document issued in the other Member State and specific to vehicles intended for use for the purposes of demonstration,
 - or the vehicle has the characteristics, relating in particular to the date of its first entry into service, required by national legislation for it to be classified as a demonstration vehicle?

Consideration of the questions referred

- ¹⁸ By its questions, which it is appropriate to examine together, the referring court seeks essentially to ascertain whether Directive 1999/37 or, as the case may be, Articles 34 TFEU and 36 TFEU, must be interpreted as precluding national legislation, such as

that at issue in the main proceedings, which provides that the grant of an advantage may only be awarded for demonstration motor vehicles the registration document of which states that it was a ‘demonstration vehicle’.

Preliminary observations

¹⁹ First of all, as the French Government and the European Commission have observed, it should be pointed out that the second paragraph of Article 2 of Decree No 2007-1873 in its original version provides that ‘such private cars used for demonstration purposes shall be deemed new if their transfer or rental takes place within 12 months from the date of their first registration’, whereas the same provision of Decree No 2007-1873 as amended provides that ‘such vehicles used for demonstration purposes in France shall be deemed new if their transfer or rental takes place within 12 months from the date of their first registration’.

²⁰ It should be noted that the referring court seeks the view of the Court on the wording of the second paragraph of Article 2 of Decree No 2007-1873 in its original version. However, the answer to the question whether Directive 1999/37 or Articles 34 TFEU and 36 TFEU preclude a Member State from requiring that the registration document for demonstration vehicles must state that it was a ‘demonstration vehicle’ in order to be granted the ecological subsidy receives the same treatment whether Decree No 2007-1873 in its original version or Decree No 2007-1873 as amended applies. Consequently, it is for the referring court to determine which national law is applicable *ratione temporis*.

The interpretation of Directive 1999/37

- ²¹ The compatibility with European Union law of a national provision which provides that the registration document for demonstration vehicles must state that it was a 'demonstration vehicle', and which, when applied in conjunction with other national provisions, means that only those vehicles the registration document of which states that it was a demonstration vehicle may be granted a ecological subsidy, must be examined first of all in the light of the obligations of Member States under Directive 1999/37.
- ²² Indeed, in accordance with settled case-law, a national measure in an area which has been the subject of exhaustive harmonisation at European Union level must be assessed in the light of the provisions of that harmonising measure and not in the light of those of the Treaty (Case C-322/01 *Deutscher Apothekerverband* [2003] ECR I-14887, paragraph 64, and Case C-205/07 *Gysbrechts and Santurel Inter* [2008] ECR I-9947, paragraph 33).
- ²³ However, in the present case, it is common ground that the harmonisation effected by Directive 1999/37 was not exhaustive. In that regard, as is expressly provided by Point II.7 in Annex I to that directive, Member States may include, in Part I of the registration document, information in addition to that which it is compulsory to include pursuant to Annex I.
- ²⁴ Therefore, in accordance with Point II.7, Directive 1999/37 does not preclude national provisions which include, in Part I of the registration document, information in addition to that which it is compulsory to include, provided that they do not infringe the provisions of the TFEU.

- 25 Consequently, it must be examined whether Articles 34 TFEU and 36 TFEU preclude national regulations such as those at issue in the main proceedings.

The interpretation of Articles 34 TFEU and 36 TFEU

- 26 It must be borne in mind that, in accordance with settled case-law, the prohibition of measures having equivalent effect to quantitative restrictions which is set out in Article 34 TFEU covers all legislation of the Member States that is capable of hindering, directly or indirectly, actually or potentially, intra-Community trade (see, *inter alia*, Case C-217/99 *Commission v Belgium* [2000] ECR I-10251, paragraph 16; Case C-65/05 *Commission v Greece* [2006] ECR I-10341, paragraph 27; Case C-54/05 *Commission v Finland* [2007] ECR I-2473, paragraph 30; and Case C-286/07 *Commission v Luxembourg* [2008] ECR I-63, paragraph 27). Thus, the mere fact that an importer is deterred from introducing or marketing the products in question in the Member State concerned amounts to a hindrance to the free movement of goods (*Commission v Luxembourg*, paragraph 27).
- 27 Furthermore, measures taken by a Member State, the aim or effect of which is to treat goods coming from other Member States less favourably and, in the absence of harmonisation of national legislation, obstacles to the free movement of goods which are the consequence of applying, to goods coming from other Member States where they are lawfully manufactured and/or marketed, rules that lay down requirements to be met by such goods, even if those rules apply to all products alike, must be regarded as ‘measures having equivalent effect to quantitative restrictions on imports’ for the purposes of Article 34 TFEU (see, to that effect, *Deutscher Apothekerverband*, paragraph 67).

- 28 In the case in the main proceedings, it is common ground that not all of the Member States require the registration document for demonstration motor vehicles to state expressly that it was a 'demonstration vehicle'. Since, even where demonstration motor vehicles imported from Member States satisfy the conditions set out by French national legislation in order to be granted the ecological subsidy, that is those relating to the age and condition of the vehicle and its CO₂ emission rates, they may not be granted the subsidy in the absence of an express statement to that effect in the registration document, it must be held that such a requirement constitutes a condition governing the grant of the ecological subsidy that is likely to dissuade some interested parties resident in France from importing into France demonstration vehicles previously registered in other Member States (see, by analogy, Case C-297/05 *Commission v Netherlands* [2007] ECR I-7467, paragraph 73 and Case C-170/07 *Commission v Poland* [2008] ECR I-87, paragraph 44).
- 29 In that regard, it must be noted that, even if the national legislation in question in the main proceedings requires the registration document for all demonstration motor vehicles, irrespective of their origin, to state that it was a 'demonstration vehicle' in order for those vehicles to be granted the ecological subsidy, that requirement would affect such vehicles differently according to whether or not they come from a Member State that provides for such a requirement in respect of registration documents (see, to that effect, *Commission v Luxembourg*, paragraph 28).
- 30 Indeed, even if the national legislation in question in the main proceedings does not have the aim of treating products from other Member States less favourably, this being for the referring court to ascertain, the requirement that the registration document for demonstration vehicles must state that it was a 'demonstration vehicle' in order to be granted the ecological subsidy may influence the behaviour of consumers and, consequently, affect the access of those vehicles to the market of that Member State (see, to that effect, Case C-110/05 *Commission v Italy* [2009] ECR I-519, paragraph 56).

- 31 For demonstration vehicles imported with a view to the grant of the ecological subsidy, the requirement that the registration document must state that it was a 'demonstration vehicle' therefore constitutes a restriction on the free movement of goods, prohibited by Article 34 TFEU.
- 32 However, it is clear from settled case-law that national legislation which constitutes a measure having equivalent effect to quantitative restrictions can be justified on one of the grounds of public interest laid down in Article 36 TFEU or by imperative requirements. In either case, the national provision must be appropriate for securing the attainment of the objective pursued and not go beyond what is necessary in order to attain it (see, in particular, *Commission v Netherlands*, paragraph 75; *Commission v Poland*, paragraph 46; and Case C-421/09 *Humanplasma* [2010] ECR I-12869, paragraph 34).
- 33 The French government maintains that the national provision at issue in the main proceedings is justified by the objective of protection of the environment and combating fraud. By that provision, the French Republic would like, inter alia, to promote the procurement of low-emission motor vehicles and, since demonstration motor vehicles are assumed to have never or barely been used, the ecological subsidy may also be granted for such vehicles. However, unlike new vehicles, demonstration vehicles have been previously registered. Therefore, the purchaser of such a vehicle must provide a registration document that states that it was a 'demonstration vehicle' in order to prove that it was not a second-hand vehicle but a vehicle used for demonstration purposes.
- 34 According to settled case-law, national measures capable of hindering intra-Community trade may be justified by the objective of protection of the environment and combating fraud provided that the measures in question are proportionate to the aim

pursued (see, in particular, Case C-265/06 *Commission v Portugal* [2008] ECR I-2245, paragraph 38; *Commission v Luxembourg*, paragraph 38; and Case C-142/05 *Mickelson and Roos* [2009] ECR I-4273, paragraph 32).

- 35 Whilst the requirement that the registration document for such imported vehicles must state that it was a 'demonstration vehicle' does indeed appear to be likely to facilitate the identification of demonstration vehicles eligible for the award of the ecological subsidy and, therefore, appropriate for the attainment of the objectives of protecting the environment and combating fraud, it must however be verified that it is necessary to attain those objectives and that there are no other less restrictive means of doing so.
- 36 In the case in the main proceedings, the claim that the contested measure is necessary was undermined as the French Republic admitted, in its submissions and at the hearing, that the ecological subsidy could be awarded to a demonstration motor vehicle acquired in another Member State upon presentation of a specific certificate for that category of vehicle or by any other means of proof establishing that the vehicle satisfies the same conditions as those laid down for national demonstration vehicles.
- 37 Thus, the requirement that the registration document for demonstration vehicles must state that it was a 'demonstration vehicle' is only one of many means available to the competent authorities to combat fraud and to protect the environment.
- 38 It follows that that measure must be regarded as being excessive and, therefore, disproportionate compared with the objectives pursued.

- 39 In view of the foregoing, the answer to the questions referred is that Articles 34 TFEU and 36 TFEU preclude legislation of a Member State from requiring, for the award of the ecological subsidy to imported demonstration motor vehicles at the time of registration in that Member State, that the first registration document of those vehicles bear the words ‘demonstration vehicle’.

Costs

- 40 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Articles 34 TFEU and 36 TFEU preclude legislation of a Member State from requiring, for the award of the subsidy known as the ‘bonus écologique – Grenelle de l’environnement’ to imported demonstration motor vehicles at the time of registration in that Member State, that the first registration document of those vehicles bear the words ‘demonstration vehicle’.

[Signatures]