ORDER OF THE COURT
21 April 1999 *

In Joined Cases C-28/98 and C-29/98,

REFERENCES to the Court under Article 177 of the EC Treaty by the Tribunal de Grande Instance de Thionville, France, for a preliminary ruling in the proceedings pending before that court between

Marc Charreire (C-28/98),

Jean Hirtsmann (C-29/98)

and

Directeur des Services Fiscaux de la Moselle,

on the interpretation of Article 95 of the EC Treaty,

* Language of the case: French.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, P. J. G. Kapteyn, J.-P. Puissochet, G. Hirsch and P. Jann (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, C. Gulmann, J. L. Murray, D. A. O. Edward, H. Ragnemalm, L. Sevón and M. Wathelet (Rapporteur), Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By two judgments of 21 March 1997, received at the Court on 3 February 1998, the Tribunal de Grande Instance (Regional Court), Thionville, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Article 95 of that Treaty.

2 Those questions were raised in proceedings brought by Mr Charreire and Mr Hirtsmann against the Directeur des Services Fiscaux de la Moselle (Chief Tax Inspector for the *Département* of Moselle) concerning, in the former case, a notice to pay the sum of FRF 39 881, issued in 1996 by the Directeur des Services Fiscaux for failure

to pay the differential tax on motor vehicles (hereinafter 'the tax') and, in the latter case, a demand for recovery of the sum of FRF 23 372, being the amount paid by way of differential tax in 1995 and 1996 and which the plaintiff claimed had been unduly paid.

3 Mr Charreire is the owner of a Chevrolet vehicle to which the tax authorities attributed a 33 CV fiscal power rating. Mr Hirtsmann owns a Jeep Cherokee vehicle which was first put on the road on 6 May 1991 and to which the tax authorities attributed a 23 CV fiscal power rating.

4 Mr Charreire brought proceedings against the Directeur des Services Fiscaux de la Moselle before the Tribunal de Grande Instance, Thionville, seeking cancellation of the notice to pay issued against him in 1996. Mr Hirtsmann brought proceedings against the Directeur before the same court for recovery of the tax which he had paid in 1995 and 1996.

5 Both Mr Charreire and Mr Hirtsmann produced before the national court diagrams illustrating the progression of the tax at issue. They maintain that the percentage increase of the tax from band to band shows abnormally large differentials from 17 CV upwards, that is to say, in the tax bands which affect imported vehicles only, not those of French manufacture, with the result that French vehicle production is protected.

6 In those circumstances, the Tribunal de Grande Instance, Thionville, considered it necessary to stay proceedings and to refer the following questions to the Court for a preliminary ruling. In Case C-28/98, the Court is asked:

'... having regard to the date of approval of the plaintiff's Chevrolet vehicle of 33 CV fiscal power rating, registration number 6707 ZK 57, and having regard

to the tax diagrams and figures submitted by the plaintiff and the observations submitted by the authorities, [does] the system of taxation applied [correspond] to objective criteria free from any discriminatory effect and not falling within the scope of Article 95 of the Treaty?'

In Case C-29/98, the national court asked:

'... having regard to the date of approval of the plaintiff's Jeep vehicle of 23 CV fiscal power rating, registration number 1438 XX 57, and having regard to the tax diagrams and figures submitted by the plaintiff and the observations submitted by the authorities, [does] the system of taxation applied [correspond] to objective criteria free from any discriminatory effect and not falling within the scope of Article 95 of the Treaty?'

7 By order of 8 October 1998, the President of the Court directed that the two cases be joined for the purposes of the written and oral procedure and of the judgment.

8 It should be noted at the outset that in order to reach an interpretation of Community law which will be of use to the national court, it is essential that the national court define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (see, *inter alia*, Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 6; orders of 19 March 1993 in Case C-157/92 *Banchero* [1993] ECR I-1085, paragraph 4; of 9 August 1994 in Case C-378/93 *La Pyramide* [1994] ECR I-3999, paragraph 14; of 23 March 1995 in Case C-458/93 *Saddik* [1995] ECR I-511, paragraph 12; of 19 July 1996 in Case C-196/96 *Lahlou* [1996] ECR I-3945, paragraph 4; and of 8 July 1998 in Case C-9/98 *Agostini* [1998] ECR I-4261, paragraph 4).

9 Moreover, the information provided and the questions raised in orders for reference must not only be such as to enable the Court usefully to reply but must also make it possible for the governments of the Member States and other interested parties to submit observations pursuant to Article 20 of the Statute of the Court of Justice (see, *inter alia*, Joined Cases 141/81 to 143/81 *Holdijk and Others* [1982] ECR 1299, paragraph 6; the orders, cited above, in *Saddik*, paragraph 13, and *Lahlou*, paragraph 5). It is for the Court to ensure that this possibility is safeguarded, given that, pursuant to the aforementioned provision, only the orders for reference are notified to the interested parties (see, *inter alia*, *Holdijk and Others*, cited above, paragraph 6, and the orders in *Saddik*, paragraph 13, and *Lahlou*, paragraph 5).

10 It is abundantly clear that, as the Commission has pointed out in its written observations, the orders for reference in the present case do not contain any information which satisfies the above requirements with respect to the factual and legal context of the dispute before the national court or the reasons for which that court considers it necessary to refer questions to the Court of Justice.

11 The national court does not set out the factual background to the disputes before it but merely rehearses faithfully the pleadings submitted. If the factual context is to be established, an analysis must be made of the pleadings since these are not communicated to the governments of the Member States and other interested parties wishing to submit written observations. More specifically, the vehicles owned by the plaintiffs in the main proceedings are both of American make and, according to the case-law (see Case 148/77 *Hansen* [1978] ECR 1787, paragraph 23; Joined Cases C-228/90 to C-234/90, C-339/90 and C-353/90 *Simba and Others* [1992] ECR I-3713, paragraph 14; Case C-130/92 *OTO* [1994] ECR I-3281, paragraph 18; and Case C-284/96 *Tabouillot* [1997] ECR I-7471, paragraph 23), Article 95 of the Treaty does not apply to products imported directly into a Member State from a non-member country. The orders for reference fail to indicate, however, whether the vehicles at issue were imported into France directly from the United States of America, or whether they were released for free circulation in another Member State before re-export to France, in which latter case the situation would be covered by Community law. Lastly, whereas in both questions the national court refers to

the type approval date of the vehicles concerned, that information is not mentioned in the body of its orders for reference.

12 Secondly, the information given in the orders for reference is contradictory, which makes it impossible to glean a sufficient understanding of the legal situation.

13 In Case C-28/98 the circular pursuant to which the fiscal power rating of the plaintiff's vehicle was determined is not identified with any precision. In fact, the order for reference gives a contradictory account of the circular applied by the tax authorities in order to attribute to Mr Charriere's vehicle a power rating of 33 CV. It is stated that, according to Mr Charriere, the power rating was calculated on the basis of the 1977 Circular, under which the K factor was subject to a ceiling, whereas the tax authorities maintain that the measure applied was the Circular of 12 January 1988, which abolished the K factor ceiling set by the 1977 Circular.

14 In Case C-29/98, too, the information given in the order for reference is contradictory as regards the circular pursuant to which the power rating was determined. The national court states in the grounds for its judgment that, according to the pleadings submitted by the tax authorities, the vehicle in question was subject to the Circular of 28 December 1956; earlier, however, it had stated that, according to the defence lodged by the tax authorities on 20 November 1996, the vehicle had been put on the road on 6 May 1991 and its power rating had been calculated in accordance with the provisions of the Circular of 12 January 1988, which abolished the K factor ceiling set by the 1977 Circular. Furthermore, in the light of the observations made by the plaintiff in the application initiating proceedings, which are summarised in the order for reference, it appears that Mr Hirtsmann — like Mr Charreire — did not accept that the measure applied had been the Circular of 12 January 1988, abolishing the K factor ceiling, and accordingly believed that the power rating for his vehicle had been calculated on the basis of the 1977 Circular.

15 Thirdly, it should be noted that the reasons for which the national court considered it necessary to refer questions to the Court for a preliminary ruling are not specified.

16 In both decisions, which are framed in identical terms, the national court asks the Court of Justice whether a tax such as that applied in the cases before it is compatible with Article 95 of the Treaty. By way of grounds for making a preliminary reference, it merely refers — without further detail or explanation — to the 'analysis of the situation', based on the diagrams illustrating the tax's progression, produced by Mr Charreire and Mr Hirtsmann in the course of the main proceedings on 16 December 1996, from which it appeared that 'the taxation of vehicles of high cylinder capacity has features which raise questions as to the discriminatory nature of the taxation'.

17 Given that the questions referred to the Court essentially concern the progression of the tax, it should be noted that the Court has already ruled (see Case C-113/94 *Casarin* [1995] ECR I-4203) that Article 95 of the Treaty does not preclude the application of national rules on motor vehicle taxation which provide for an increase in the progression coefficient of the kind featuring in the French system, in so far as that increase does not have the effect of favouring the sale of vehicles of domestic manufacture over the sale of vehicles imported from other Member States. In the cases at issue, however, even though one of the parties to the main proceedings drew the attention of the national court to *Casarin*, that court failed to set out the reasons for which it nevertheless considered it necessary to refer questions to the Court of Justice.

18 Consequently, the Court finds, pursuant to Articles 92 and 103(1) of the Rules of Procedure, that the questions referred for a preliminary ruling are manifestly inadmissible.

Costs

19 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

hereby orders:

The references for a preliminary ruling made by the Tribunal de Grande Instance de Thionville, by judgments of 21 March 1997, are inadmissible.

Luxembourg, 21 April 1999.

R. Grass — Registrar

G. C. Rodríguez Iglesias — President