



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

6 September 2012*

(Failure of a Member State to fulfil obligations — Directive 1999/37/EC — Registration documents for vehicles — Vehicles previously registered in another Member State — Change of ownership — Requirement of a roadworthiness test — Requirement of production of a certificate of conformity — Roadworthiness test carried out in another Member State — Non-recognition — Lack of justification)

In Case C-150/11,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 28 March 2011,

European Commission, represented by O. Beynet and A. Marghelis, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Kingdom of Belgium, represented by T. Materne and J.-C. Halleux, acting as Agents, and by F. Libert and S. Rodrigues, avocats,

defendant,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, U. Löhmus (Rapporteur), A. Ó Caoimh, A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure and further to the hearing on 29 March 2012,

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

gives the following

* * Language of the case: French.

Judgment

- 1 By its application, the European Commission asks the Court to declare that, by requiring, in addition to the production of a certificate of registration, the production of a certificate of conformity of a vehicle for the purpose of a roadworthiness test prior to the registration of a vehicle which was previously registered in another Member State, and by making such vehicles subject to a roadworthiness test prior to their registration, without taking into account the results of the roadworthiness test carried out in another Member State, the Kingdom of Belgium has failed to fulfil its obligations under Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles (OJ 1999 L 138, p. 57), as amended by Council Directive 2006/103/EC of 20 November 2006 (OJ 2006 L 363, p. 344) ('Directive 1999/37'), and under Article 34 TFEU.

Legal context

European Union legislation

Directive 1999/37

- 2 Recitals 1, 3, 5, 6 and 9 in the preamble to Directive 1999/37 state:

'(1) ... the Community has adopted a certain number of measures that are intended to create an internal market consisting of an area without frontiers within which the free movement of goods, persons, services and capital is guaranteed in accordance with the provisions of the Treaty;

...

(3) ... harmonisation of the form and content of the registration certificate will facilitate its comprehension and thus help towards the free movement, on the roads in the territory of the other Member States, of vehicles registered in a Member State;

...

(5) ... as a prerequisite for registering a vehicle that has previously been registered in another Member State, all of the Member States require a document certifying that registration and the technical characteristics of the vehicle;

(6) ... harmonisation of the registration certificate will facilitate the re-entry into service of vehicles that have previously been registered in another Member State, and will contribute to the proper functioning of the internal market;

...

(9) ... in order to facilitate those checks specifically intended to combat fraud and the illegal trade in stolen vehicles, it is appropriate to establish close cooperation between Member States, based on an effective exchange of information.'

- 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 Article 4 of the directive provides:

‘For the purposes of this Directive, the registration certificate issued by a Member State shall be recognised by the other Member States for the identification of the vehicle in international traffic or for its re-registration in another Member State.’

Directive 2009/40/EC

5 Directive 2009/40/EC of the European Parliament and of the Council of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers (OJ 2009 L 141, p. 12), which entered into force on 26 June 2009, replaced Council Directive 96/96/EC of 20 December 1996 on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers (OJ 1997 L 46, p. 1), to which the Commission referred during the pre-litigation procedure. Having regard to the date on which the period fixed in the reasoned opinion expired, namely 9 December 2009, it is Directive 2009/40 which applies to the present action. In that regard, as stated in recital 1 in the preamble to Directive 2009/40, that directive recast Directive 96/96, in the interests of clarity, although the provisions relevant to the present case were not amended.

6 Recitals 2, 5, 10 to 12 and 26 in the preamble to Directive 2009/40 state:

‘(2) Within the framework of the common transport policy, certain road traffic within the Community should operate under the most favourable circumstances as regards both safety and competitive conditions applying to carriers in the Member States.

...

(5) The minimum Community standards and methods to be used for testing the items listed in this Directive should therefore be defined in separate Directives.

...

(10) With regard to braking systems the scope of this Directive should relate in the main to vehicles which have been granted component type-approval in accordance with Council Directive 71/320/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to the braking devices of certain categories of motor vehicles and their trailers [(OJ, English Special Edition 1971 (III), p. 746)], although it is recognised that certain types of vehicle have been granted such approval in accordance with national standards which may differ from the requirements of that Directive.

(11) Member States may extend the scope of the braking test to include vehicles or test items outside the scope of this Directive.

(12) Member States may make the braking test more stringent or increase the frequency of testing.

...

(26) Since the objectives of the proposed action, namely to harmonise the rules on roadworthiness tests, to prevent distortion of competition as between road hauliers and to guarantee that vehicles are properly checked and maintained, cannot be achieved by the Member States acting

alone and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty ...'

7 Under Article 3 of Directive 2009/40:

'1. Member States shall take such measures as they deem necessary to make it possible to prove that a vehicle has passed a roadworthiness test complying with at least the provisions of this Directive.

These measures shall be notified to the other Member States and to the Commission.

2. Each Member State shall, on the same basis as if it had itself issued the proof, recognise the proof issued in another Member State showing that a motor vehicle registered on the territory of that other State, together with its trailer or semi-trailer, has passed a roadworthiness test complying with at least the provisions of this Directive.

3. Member States shall apply suitable procedures to establish, as far as practicable, that the brake performance of the vehicles registered in their territory meets the requirements specified in this Directive.'

8 Article 5 of Directive 2009/40 states:

'Notwithstanding the provisions of Annexes I and II, Member States may:

(a) bring forward the date for the first compulsory roadworthiness test and, where appropriate, require the vehicle to be submitted for testing prior to registration;

...

(d) increase the number of items to be tested;

...

(f) prescribe special additional tests;

(g) require for vehicles registered on their territory higher minimum standards for braking efficiency than those specified in Annex II ...'

9 Annex II to that directive describes the items to be compulsorily tested, in particular as regards braking systems.

Belgian legislation

10 The first subparagraph of Article 23(1), Article 23(2) and Article 23(7) of the Royal Decree of 15 March 1968 on technical standards which motor vehicles, their trailers, their components and safety equipment must satisfy (*Moniteur belge* of 28 March 1968, errata, *Moniteur belge* of 23 April 1968), in the version amended by the Royal Decree of 20 May 2009 (*Moniteur belge* of 5 June 2009, p. 40090) ('the Royal Decree'), provides:

'1. Vehicles put into circulation shall be subject to inspections in order to ensure their conformity with the regulatory provisions applicable to them.

...

2. Inspections to be carried out:

- A. The inspections shall include the tests listed in Annex 15 and the additional tests provided for by specific regulatory provisions.

...

7. When those inspections are carried out and insofar as the vehicle must be covered by those documents, the person submitting the vehicle for inspection shall present the most recent inspection certificate and the inspection sticker to the approved body and provide the following documents:

- (1) the registration certificate;
- (2) the certificate of conformity or the European certificate of conformity;
- (3) the identification report or the technical file.'

¹¹ Article 23a of the Royal Decree provides:

'1. The inspections laid down in Article 23 shall be subdivided into:

- (1) full inspections;
- (2) partial inspections.

Full inspections shall involve checking:

- (a) the identification of the vehicle, including checking the chassis number, the registration certificate and the certificate of conformity, or European certificate of conformity, of the vehicle;
- (b) the technical condition of the vehicle in order to determine whether it meets the standards in force as regards safety and environmental requirements.

Partial inspections shall be subdivided into:

- (a) administrative checks intended solely to verify the registration certificate and the certificate of conformity, or European certificate of conformity, for the purpose of validating an application for registration of a used vehicle;
- (b) supplementary administrative checks intended solely to verify the chassis number, the identification plate and the documents, or, without the vehicle being retested, to have the documents submitted;
- (c) additional technical checks, namely all other partial inspections.

2. Depending on how frequently they are carried out, the full inspections shall be subdivided into:

- (1) periodic inspections referred to in Article 23b;
- (2) non-periodic inspections carried out in particular circumstances as determined in Article 23e.

...'

12 Under Article 23e(1) and (4) of the Royal Decree:

‘1. Irrespective of the rules concerning periodic inspections, non-periodic inspections shall be compulsory:

...

(3) prior to registration of motor vehicles [designed and built for the transport of passengers and having at least four wheels and having, in addition to the driver’s seat, at most eight seats], including camping vehicles ... and ... including hearses on behalf of another holder.

...

4. At the time of the non-periodic inspection referred to in point 3 of paragraph 1 of this article, the vehicle must be presented with its most recently issued registration certificate and with either the corresponding registration marking or a commercial plate and the corresponding registration certificate.

As part of this inspection, a supplementary inspection pursuant to Annex 22 shall be carried out, in addition to a full inspection of the vehicle.

However, if a report from an approved diagnostic centre dating from less than two months before the vehicle is presented for this non-periodic inspection, and covering at least the points referred to in Annex 22, is submitted, that inspection shall consist only of a full inspection of the vehicle.

The result of this inspection shall be set out in detail in a used-vehicle report which shall be issued at the same time as the inspection certificate.

The application for registration shall be validated on condition that the inspection certificate issued complies with Article 23i(1) and that the supplementary inspection has taken place, if required, in accordance with Annex 22.’

13 Annex 15 to the Royal Decree sets out the points to be inspected and the causes of faults listed in Annex II to Directive 2009/40.

14 Annex 22 to the Royal Decree provides for several points covered by the ‘supplementary inspection’ to be tested for the non-periodic inspection referred to in Article 23e(1)(3) of that decree. According to the text of that annex, the supplementary inspection covers, at least, the general condition of the vehicle (for example, corrosion which does not affect safety, the condition of the interior), the on-board diagnostics (inter alia, active and passive safety features), mechanical components (inter alia, the clutch, engine and gears), trim components (for example, the bumpers, bonnet and wings), lights and equipment (inter alia, the air conditioning system and electric windows).

The pre-litigation procedure

15 Taking the view that certain provisions of the Belgian legislation concerning the procedure for registration of vehicles did not comply with European Union law, the Commission, by letter of 1 December 2008, put the Kingdom of Belgium on notice to submit its observations.

16 In its reply of 30 January 2009, the Kingdom of Belgium disputed all of the alleged infringements. Not being satisfied with that response, the Commission issued, on 8 October 2009, a reasoned opinion calling upon the Kingdom of Belgium to take the measures necessary to secure compliance within a

period of two months from the date of receipt. The Kingdom of Belgium replied by letter of 15 December 2009, stating its intention to comply with the reasoned opinion. Nevertheless, in a letter of 11 February 2010, it defended the existing Belgian legislation.

- 17 On 7 June 2010, a detailed opinion was sent to that Member State giving it four weeks in which to propose a solution which would avoid the bringing of proceedings before the Court. By letter of 30 June 2010, the Kingdom of Belgium undertook to amend the disputed legislation, while expressing its wish to retain the roadworthiness test prior to registration of a vehicle in the name of a new owner but restricting it to an inspection solely of the points referred to in the new Annex 42 (essentially a visual inspection), if certain conditions are met. By that envisaged amendment, submission of the certificate of conformity would, it argued, no longer be necessary in specified situations. A draft Royal Decree to that effect was sent to the Commission with an undertaking that it would be adopted towards the end of 2010.
- 18 The Commission, however, took the view that the measures proposed were not capable of bringing the infringement to an end. Following an exchange of letters, a new draft Royal Decree was sent on 11 January 2011, which was discussed on 26 January 2011 by the Commission's services and the Belgian authorities.
- 19 Taking the view that the Kingdom of Belgium had not complied with the reasoned opinion, the Commission decided to bring the present action.

The action

- 20 In support of its action, the Commission puts forward two heads of complaint. By the first, the Commission argues that, by making vehicles previously registered in another Member State subject to a roadworthiness test prior to their registration, without taking into account the results of the roadworthiness test carried out in another Member State, the Kingdom of Belgium has failed to fulfil its obligations under Article 34 TFEU. By the second head of complaint, the Commission submits that, by requiring, in addition to the production of a certificate of registration, production of a certificate of conformity of a vehicle for the purpose of a roadworthiness test prior to the registration of a vehicle which was previously registered in another Member State, the Kingdom of Belgium has failed to fulfil its obligations under Directive 1999/37.

The admissibility of the second head of complaint

Arguments of the parties

- 21 The Kingdom of Belgium submits that the second head of complaint in the Commission's action, inasmuch as it seeks a finding that that Member State failed to fulfil any of its obligations under Directive 1999/37, is inadmissible on the ground that, in the letter of formal notice, the reasoned opinion and the statement of the legal context and the grounds for its action, the Commission limited its observations to a failure to fulfil obligations under Article 4 of that directive.
- 22 In the view of that Member State, that head of complaint cannot be inadmissible only in part since the relevant form of order sought in the application does not refer to any article of Directive 1999/37, unlike the position in the case which gave rise to the judgment in Case C-165/08 *Commission v Poland* [2009] ECR I-6843, paragraphs 45 to 48. Moreover, the fact that the Kingdom of Belgium understood the complaint as relating only to Article 4 of Directive 1999/37 and focussed its defence on that article cannot, it argues, release the Commission from its obligation to formulate precisely the form of order which it seeks and is not capable of rendering it admissible *a posteriori*.

23 The Commission is of the opinion that the second head of complaint is admissible. It would, it argues, have been evident to that Member State that that complaint related to Article 4 of the directive, with the result that the rights of defence of that Member State were not infringed. Nevertheless, in its reply, the Commission reformulated the complaint, restricting to that article the alleged failure to fulfil obligations.

Findings of the Court

24 It should be noted at the outset that, in the context of an action for failure to fulfil obligations, the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under European Union law and, on the other, to avail itself of its right to defend itself properly against the objections formulated by the Commission (Case C-340/02 *Commission v France* [2004] ECR I-9845, paragraph 25, and Case C-508/10 *Commission v Netherlands* [2012] ECR, paragraph 33).

25 The subject-matter of proceedings under Article 258 TFEU is therefore delimited by the pre-litigation procedure prescribed by that provision. The proper conduct of that procedure constitutes an essential guarantee required by the FEU Treaty not only in order to protect the rights of the Member State concerned, but also in order to ensure that any contentious procedure will have a clearly defined dispute as its subject-matter (see Case C-1/00 *Commission v France* [2001] ECR I-9989, paragraph 53; Case C-160/08 *Commission v Germany* [2010] ECR I-3713, paragraph 42; and Case C-508/10 *Commission v Netherlands*, paragraph 34).

26 By virtue of the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union and Article 38(1)(c) of the Court's Rules of Procedure, the Commission must, in any application made under Article 258 TFEU, indicate the specific complaints on which the Court is asked to rule and, at the very least in summary form, the legal and factual particulars on which those complaints are based (see, inter alia, Case C-347/88 *Commission v Greece* [1990] ECR I-4747, paragraph 28; Case C-456/03 *Commission v Italy* [2005] ECR I-5335, paragraph 23; and Case C-508/10 *Commission v Netherlands*, paragraph 35).

27 It follows that the Commission's action must contain a coherent and detailed statement of the reasons which have led it to conclude that the Member State in question has failed to fulfil one of its obligations under the Treaties (Case C-508/10 *Commission v Netherlands*, paragraph 36).

28 In the present context, it must be held that the action contains a clear statement of the legal and factual particulars on which it is based. It is true common ground that, in the form of order sought in its application, the Commission does not specify any particular article of Directive 1999/37. However, it is apparent both from the pre-litigation procedure, in particular from the reasoned opinion sent by the Commission to the Kingdom of Belgium, and from the statement of the legal context and the grounds for its action that the Commission alleges a failure to fulfil obligations under Article 4 of that directive.

29 It must also be noted that, in the present case, the Kingdom of Belgium has been able to present an effective defence against the Commission's heads of complaint.

30 It follows from the foregoing that the second head of complaint alleging failure to fulfil obligations raised by the Commission must be declared admissible.

Substance

The first head of complaint, relating to the compulsory roadworthiness test prior to registration of the vehicle

– Arguments of the parties

- 31 In the submission of the Commission, Articles 23(1) and (7), 23a(1) and 23e(1) and (4) of the Royal Decree generally and systematically require a test to be conducted prior to registration of second-hand vehicles previously registered in other Member States, without taking account of the tests already carried out in those latter States. It argues that it follows from the judgments in Case C-297/05 *Commission v Netherlands* [2007] ECR I-7467, paragraphs 67 to 71, and of 5 June 2008 in Case C-170/07 *Commission v Poland*, paragraphs 36 to 41, that, since Directive 96/96 did not bring about full harmonisation, legislation which does not include the principle of recognition of documents issued by other Member States, as laid down in Article 3(2) of that directive, cannot be validated on the basis thereof, but must be assessed in the light of Article 34 TFEU.
- 32 The Commission points out that it follows from the case-law of the Court that the disputed national legislation constitutes a measure having equivalent effect to a quantitative restriction on imports in that it deters certain individuals from importing such vehicles into Belgium (Case C-217/99 *Commission v Belgium* [2000] ECR I-10251, paragraph 18, and Case C-254/05 *Commission v Belgium* [2007] ECR I-4269, paragraph 30). Although it might be justified on grounds of road safety and environmental and consumer protection, that legislation is not, the Commission argues, proportionate. The same result could, it submits, be achieved by less restrictive measures, such as recognising the documents proving that a vehicle has undergone a roadworthiness test in another Member State, together with cooperation of the customs administration or the possibility for the Belgian authorities to issue a reservation, at the time of registration in Belgium of a vehicle previously registered in another Member State, informing the consumer that his vehicle has been registered on the basis of the roadworthiness test certificate from another Member State and may possibly have to undergo additional tests at a later date.
- 33 The Kingdom of Belgium primarily takes the view that the disputed legislation does not constitute a restriction on the free movement of goods and is not discriminatory.
- 34 To that end, it submits that a roadworthiness test prior to registration is permitted under Article 5(a) of Directive 2009/40, which gives national authorities discretionary powers in determining the requirements to be met for roadworthiness tests and the manner in which they are conducted. Furthermore, this non-periodic inspection is required only where ownership of a vehicle changes and applies without discrimination to all vehicles, whether previously registered in Belgium or in another Member State and irrespective of the date of validity of the inspection certificate issued following the periodic inspection.
- 35 Next, that Member State submits that a draft Royal Decree, to which it had referred during the pre-litigation procedure and the entry into force of which was scheduled for August 2011, provides for account to be taken of the results of periodic roadworthiness tests less than two months old, carried out in Belgium or in another Member State, so that the non-periodic inspection prior to registration is limited to a braking test and to a visual inspection of the technical condition of the vehicle and covers the items for testing set out in Annex II to Directive 2009/40 and Annex 22 to the Royal Decree. Any redundancy of tests carried out in Belgium or in another Member State is, it argues, thus avoided.

- 36 In the alternative, the Kingdom of Belgium submits that the national measure is justified by the objectives of road safety, consumer protection, limiting odometer fraud and promoting protection of the environment by contributing to a reduction in the environmental impact of a vehicle authorised to use the roads. It also claims that the measure is proportionate.
- 37 Particularly as regards road safety, a braking action test is, in particular, the only effective method of assessing the wear and tear of the parts and to ensure that the braking performance meets the standards in force. Retaining that inspection with the appropriate equipment in the new Royal Decree, adopted on 1 June 2011, is justified, in the view of the Kingdom of Belgium, since it is possible for a defect in that system to arise shortly after the most recent inspection. Furthermore, even if other measures, such as those proposed by the Commission, made it possible for the objective of road safety to be achieved in the same circumstances, a Member State should be able, as part of its discretionary power, to realise that objective by means of a national measure which it considers to be appropriate.
- 38 The Kingdom of Belgium also points out that, in the absence of full harmonisation in respect of roadworthiness tests, it is for the Member States to decide upon the level at which they wish to ensure road safety, whilst taking account of the requirements of the free movement of goods (Case 50/83 *Commission v Italy* [1984] ECR 1633, paragraph 12, and, by analogy, Case C-131/93 *Commission v Germany* [1994] ECR I-3303, paragraph 16).
- 39 In its reply, the Commission argues that the Kingdom of Belgium, by insisting that it is necessary to retain the braking action test in the new Royal Decree, accepts by implication that duplication of the entire roadworthiness test is neither necessary nor proportionate.
- 40 With regard to the amendments to the disputed legislation proposed by the defendant Member State, which consist, essentially, in retaining a reduced inspection and which in any event are insufficient to bring an end to the alleged infringement, the Commission refers to the settled case-law of the Court, according to which account cannot be taken of measures adopted by the Member State concerned in order to comply with its obligations after an action has been brought for failure to fulfil those obligations (Case C-71/97 *Commission v Spain* [1998] ECR I-5991, paragraph 18, and Case C-276/98 *Commission v Portugal* [2001] ECR I-1699, paragraph 20).
- 41 Furthermore, in the view of the Commission, the arguments concerning the need for and proportionality of duplication of the braking action test also cannot be accepted. Firstly, if a vehicle came from another Member State, the braking action test would have been carried out in accordance with Annex II to Directive 2009/40 and the validity of that test would have to be recognised in the other Member States. If, however, the Kingdom of Belgium still had doubts as to whether braking action tests carried out in another Member State corresponded to the safety standard existing in Belgium, an assessment on a case-by-case basis of any differences in braking performance and effectiveness tests between the Kingdom of Belgium and the Member State concerned would be adequate, instead of a systematic and general inspection.
- 42 Secondly, that test does not prove to be necessary to avoid any recent defects in the braking system as such defects can also appear in imported vehicles whose ownership has not changed, for which such a test is not required. The same is true of vehicles registered in Belgium whose ownership has not changed, which represent the majority of vehicles being driven on Belgian roads.

– Findings of the Court

- 43 As a preliminary point, it must be observed that, according to consistent case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation obtaining in that Member State at the end of the period laid down in the reasoned opinion (see, inter alia, Case C-297/05 *Commission v Netherlands*, paragraph 64 and the case-law cited). The

Court cannot take account of any subsequent changes (see, inter alia, the judgments of 18 November 2004 in Case C-482/03 *Commission v Ireland*, paragraph 11, and of 4 February 2010 in Case C-185/09 *Commission v Sweden*, paragraph 9).

- 44 The Commission's reasoned opinion, which was dated 8 October 2009, was received by the Kingdom of Belgium on 9 October 2009 and the time-limit imposed on that Member State was set at two months from receipt of that opinion. Consequently, the appropriate date for determining whether the Kingdom of Belgium has, as alleged, failed to fulfil its obligations is 9 December 2009. The Royal Decree, which was adopted after that date, cannot for that reason be taken into account in the present case.
- 45 Furthermore, it must be borne in mind that, notwithstanding the lack of express reference during the written procedure, the Commission, in its reply to the written question put by the Court and during the hearing, limited the first head of complaint in its action solely to vehicles registered in another Member State whose ownership changes at the time of their re-registration in Belgium.
- 46 In the present case, the Commission alleges that, by requiring a vehicle previously registered in another Member State to undergo a roadworthiness test prior to its registration in Belgium, while not taking account of the results of the roadworthiness test carried out in that other Member State, the Kingdom of Belgium has failed to fulfil its obligations under Article 34 TFEU.
- 47 The conformity with European Union law of that roadworthiness test must first be examined in the light of the obligations on Member States resulting from Directive 2009/40, before being examined in the light of Article 34 TFEU.
- 48 The objectives of Directive 2009/40, as set out in recital 26 in the preamble thereto, are to harmonise the rules on roadworthiness tests, to prevent distortion of competition as between road hauliers and to guarantee that vehicles are properly checked and maintained.
- 49 Notwithstanding the discretion which Member States have pursuant to Article 5 of that directive, legislation which does not incorporate the principle of recognition of documents issued by other Member States which certify that a vehicle has passed a roadworthiness test, as laid down in Article 3(2) of that directive, cannot be validated on the basis of that directive and must for that reason be assessed in the light of Article 34 TFEU (see, to that effect, Case C-297/05 *Commission v Netherlands*, paragraphs 67 to 71, and Case C-170/07 *Commission v Poland*, paragraphs 36 to 42).
- 50 In that regard, it must be borne in mind that, in accordance with settled case-law, the prohibition of measures having equivalent effect to quantitative restrictions on imports laid down in Article 34 TFEU covers any measure of the Member States that is capable of hindering, directly or indirectly, actually or potentially, intracommunity trade (see, inter alia, Case C-217/99 *Commission v Belgium*, 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; judgment of 24 April 2008 in Case C-286/07 *Commission v Luxembourg*, paragraph 27; and Case C-443/10 *Bonnarde* [2011] ECR I-9327, paragraph 26).
- 51 In the present case, by requiring vehicles to undergo a mandatory roadworthiness test prior to registration by a different owner, the Belgian authorities make all vehicles which change ownership and have previously been registered in other Member States undergo such testing in a general and systematic way, without taking any account whatsoever of tests that may already have been carried out by those Member States. Therefore, that non-periodic test, inasmuch as it is carried out in addition to roadworthiness tests recently effected in other Member States, the results of which are not recognised, may deter certain interested individuals from purchasing such vehicles coming from other Member States (see, by analogy, Case C-297/05 *Commission v Netherlands*, paragraph 73, and Case C-170/07 *Commission v Poland*, paragraph 44).

- 52 It follows that the requirement of such a non-periodic test of a vehicle prior to its registration in the name of a different owner in Belgium constitutes a measure having an effect equivalent to quantitative restrictions on imports which is prohibited under Article 34 TFEU unless it can be justified objectively.
- 53 In that regard, it follows 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 must not go beyond what is necessary in order to attain it (see, *inter alia*, Case C-297/05 *Commission v Netherlands*, paragraph 75, Case C-170/07 *Commission v Poland*, paragraph 46; and Case C-110/05 *Commission v Italy* [2009] ECR I-519, paragraph 59).
- 54 In accordance with equally settled case-law, it is for the competent national authorities to show that their legislation complies with the criteria referred to in the preceding paragraph (see, to that effect, Case C-265/06 *Commission v Portugal* [2008] ECR I-2245, paragraph 39; Case C-297/05 *Commission v Netherlands*, paragraph 76; and Case C-286/07 *Commission v Luxembourg*, paragraph 37). Such justification can be specifically demonstrated only by reference to the circumstances of the case (Case C-14/02 *ATRAL* [2003] ECR I-4431, paragraph 67).
- 55 In that regard, the justifications put forward by the Kingdom of Belgium relate to the need to safeguard the objectives of consumer protection, protection of the environment and road safety, which, according to the case-law, constitute overriding reasons in the public interest capable of justifying a hindrance to the free movement of goods (see, to that effect, Case C-297/05 *Commission v Netherlands*, paragraph 77; Case C-265/06 *Commission v Portugal*, paragraph 38; Case C-170/07 *Commission v Poland*, paragraph 49; and Case C-110/05 *Commission v Italy*, paragraph 60).
- 56 With regard to consumer protection and the protection of the environment, the Kingdom of Belgium submits that certain tests included in the roadworthiness test make it possible to limit the risks of odometer fraud and the environmental impact of a vehicle authorised to use the roads. However, it does not state which tests are involved nor to what extent these assist in attaining those objectives.
- 57 It is therefore clear that the Kingdom of Belgium has failed to demonstrate in a concrete manner how the roadworthiness test is appropriate or how it is necessary in order to safeguard consumer protection and the protection of the environment. An abstract reference to such objectives is not in itself sufficient to justify a measure such as the disputed roadworthiness test.
- 58 With regard to the appropriateness of the objective of ensuring road safety, it must be noted that the Kingdom of Belgium refers, in its statement in defence, to that objective in connection with the retention of the braking action test provided for in the new Royal Decree adopted on 1 June 2011, which, as has been pointed out in paragraph 44 of this judgment, cannot be taken into account for the purposes of the present action. In its rejoinder, the Kingdom of Belgium refers to road safety in connection with the roadworthiness test, that is to say, all items to be tested other than the braking action, even though, in particular, it refers only to the inspection of the general condition of the vehicle and the checking of mechanical components. The Kingdom of Belgium argues that the presence on the road of a vehicle with defective technical characteristics represents a danger to road safety.
- 59 It is true that, in accordance with well-established case-law, in the absence of fully harmonising provisions at European Union level, it is for the Member States to decide upon the level at which they wish to ensure road safety in their territory, whilst taking account of the requirements of the free movement of goods within the European Union (see, to that effect, Case 50/83 *Commission v Italy*, paragraph 12, and, by analogy, Case C-131/93 *Commission v Germany*, paragraph 16, and Case C-110/05 *Commission v Italy*, paragraph 61).

- 60 Nevertheless, as has been pointed out in paragraph 54 of the present judgment, it is for the competent national authorities to show that their legislation is appropriate for securing the attainment of the objective pursued and does not go beyond what is necessary in order to attain it.
- 61 In the present case, although the suitability for attaining the objective of road safety has not been challenged, it is clear that the Kingdom of Belgium does not specifically show the need, in relation to the objective pursued, for the roadworthiness test for vehicles coming from other Member States at the time of their re-registration in Belgium. In particular, it must be noted that the danger to road safety that the presence on the road of a vehicle with defective technical characteristics is assumed to represent can also arise in the case of imported vehicles whose ownership does not change, for which such a test is not required. The same is true of vehicles registered in Belgium whose ownership has not changed, which represent the majority of vehicles being driven on Belgian roads.
- 62 Having regard to these factors, it must be held that, by making vehicles which were previously registered in another Member State subject to a roadworthiness test prior to their registration in the name of a different owner, without taking into account the results of the roadworthiness test carried out in another Member State, the Kingdom of Belgium has failed to fulfil its obligation under Article 34 TFEU.

The second head of complaint, relating to the obligation to produce a certificate of conformity for the purpose of a roadworthiness test prior to registration of a vehicle previously registered in another Member State

– Arguments of the parties

- 63 In the Commission's submission, the Belgian legislation, which requires, in addition to the production of a certificate of registration, the production of a certificate of conformity for the purpose of a roadworthiness test prior to the registration of a vehicle which was previously registered in another Member State in accordance with the European Union rules, is contrary to Article 4 of Directive 1999/37 and renders meaningless the principle of recognition of harmonised registration certificates issued by other Member States.
- 64 The national legislation, it argues, has a restrictive effect on the importation of second-hand vehicles into Belgium since, in most Member States, the certificate of conformity does not follow the vehicle. The Commission submits that this measure cannot be justified on grounds such as the need to know the technical characteristics of a vehicle in order to carry through a road safety policy or on grounds of consumer protection, particularly against vehicle fraud or theft. In any event, that measure is disproportionate in relation to such objectives, regard being had to the numerous instruments put in place at European level in pursuit of the same objectives.
- 65 In that regard, the Commission pointed out, in its reply and at the hearing before the Court, that the approval authority of each Member State is required to send to the approval authorities of the other Member States a copy of the vehicle type-approval certificate indicating the technical characteristics of each vehicle, by virtue of Article 5(1) of Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers (OJ, English Special Edition 1970 (I), p. 96), the content of which was reproduced in Article 8(5) of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1).

- 66 Furthermore, inasmuch as the solution proposed by the Kingdom of Belgium, namely the creation of a computer database containing all the technical data relating to vehicles, which would make the production of the certificate of conformity superfluous, cannot be implemented before the end of 2012, that Member State has, in the Commission's view, failed to adopt its legislation within the time-limit set and may not plead internal circumstances as justification for its failure to comply with the obligations and time-limits resulting from European Union law.
- 67 The Kingdom of Belgium argues that, if this head of complaint is admissible, the national legislation in question complies with Article 4 of Directive 1999/37 and is justified and proportionate. In its view, the problem of the production of the certificate of conformity goes beyond mere registration of vehicles inasmuch as not all of the technical characteristics set out on the certificate of conformity are referred to in the existing registration documents.
- 68 As justification, the Kingdom of Belgium puts forward the same three objectives invoked in reply to the first head of complaint, namely protection of the environment, consumer protection and road safety.
- 69 It disputes the contention that the measures to which the Commission refers in its application are less restrictive and better suited to the objectives pursued by the production of the certificate of conformity than the disputed legislation. Referring to the doubts as to the efficacy of the current system for the exchange of information which the Commission itself expressed during a public consultation in March 2011 on the registration of vehicles, which system was proposed by the Commission as a viable alternative to the disputed measures, and in the absence of a functional database accessible to all competent services, the Kingdom of Belgium is of the opinion that the production of the certificate of conformity is the sole, most pragmatic and least onerous solution for a successful pursuit of the environmental and road safety policies.
- 70 In its reply, the Commission expresses the view that the Kingdom of Belgium acknowledged, in its letter of 26 January 2010 and by broadening its defence in order to rely also on Article 36 TFEU, that the requirement of a certificate of conformity may create difficulties for certain consumers and constitutes an obstacle to the free movement of goods, contrary to Article 34 TFEU. However, and contrary to the submission of the defendant Member State which derives a possibility of derogation from Article 1 of Directive 1999/37 and, thus, incomplete harmonisation, that national measure must, in the view of the Commission, be assessed solely in the light of Article 4 of that directive, which has been the subject of full harmonisation. The Commission also does not accept a derogation on the ground of protection of the environment, but rather regards the arguments put forward by the Belgian authorities in this regard as irrelevant.
- 71 In the alternative, the Commission takes the view that the defendant Member State's argument that the restriction is justified is not convincing. The fact that a vehicle has already been registered in another Member State suggests that the competent authorities of that Member State formed the view that the vehicle satisfied the technical requirements applicable under European Union law. As the Kingdom of Belgium must be aware of the technical characteristics of each vehicle by virtue of the exchange of information between the competent authorities, a general measure requiring a certificate of conformity is neither necessary nor proportionate. Furthermore, the Kingdom of Belgium's argument derived from doubts as to the efficacy of the current system for the exchange of information is irrelevant since this does not exempt the Member States from compliance with the provisions in force.
- 72 In its rejoinder, the Kingdom of Belgium points out that Directive 1999/37 provides for a possibility of derogation, observing that it is apparent from Article 1 thereof that that directive applies to the documents issued by the Member States at the time of registration of vehicles and that it does not in any way prejudice the right of Member States to use, for the temporary registration of vehicles, documents which may not meet the requirements of that directive in every respect.

– Findings of the Court

- 73 It follows from the very wording of Article 4 of Directive 1999/37, which provides that a registration certificate issued by a Member State in accordance with the model set out in the annex to that directive 'shall be recognised' by the other Member States for the re-registration of the vehicle in another Member State, that that provision does not leave any discretion to the Member States as regards compliance with the principle of recognition of vehicle registration certificates.
- 74 As is apparent from recitals 3, 5 and 6 in the preamble to Directive 1999/37, the latter seeks to help towards the free movement, on the roads in the territory of the other Member States, of vehicles registered in a Member State by laying down, as a prerequisite for registering a vehicle that has previously been registered in another Member State, the presentation of a document certifying that registration and the technical characteristics of the vehicle, in order to facilitate the re-entry into service of such vehicles in another Member State and to contribute to the proper functioning of the internal market.
- 75 The Court has already held that the technical characteristics of second-hand vehicles previously registered in other Member States can be ascertained on the basis of the existing registration documents (Case C-170/07 *Commission v Poland*, paragraph 38).
- 76 Accordingly, the Kingdom of Belgium cannot justify the systematic requirement of production of a certificate of conformity on the basis of the need to check the technical characteristics of vehicles which have a registration certificate.
- 77 As the Commission has rightly argued, such a requirement has the effect of rendering meaningless the principle of recognition of registration certificates issued by other Member States as laid down in Article 4 of Directive 1999/37.
- 78 As is apparent from the second paragraph of Article 1 of Directive 1999/37, it is only in the case of a temporary registration that the Member States are entitled to use documents which may not correspond to the registration certificate provided for by that directive.
- 79 In the present case, the Kingdom of Belgium cannot rely on one of the grounds of general interest defined in Article 36 TFEU or one of the overriding requirements laid down in the case-law of the Court, since it is apparent from the foregoing that, except in the case of temporary registration, Directive 1999/37 does not allow the Member States to require a document other than the registration certificate for the registration of a vehicle that has previously been registered in another Member State. In cases where a matter has been regulated in a harmonised manner at European Union level, any national measure relating thereto must be assessed in the light of the provisions of that harmonising measure and not in the light of primary law (see, to that effect, Case C-37/92 *Vanacker and Lesage* [1993] ECR I-4947, paragraph 9; Case C-324/99 *DaimlerChrysler* [2001] ECR I-9897, paragraph 32; and Case C-132/08 *Lidl Magyarország* [2009] ECR I-3841, paragraph 42).
- 80 In the light of the foregoing, it must be held that, by requiring systematically, in addition to production of the harmonised registration certificate, production of a vehicle's certificate of conformity, for the purpose of an obligatory roadworthiness test of a vehicle previously registered in another Member State prior to its registration in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under Article 4 of Directive 1999/37.
- 81 In those circumstances, the action brought by the Commission must be considered to be well founded.

Costs

⁸² Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of Belgium has been unsuccessful, the Kingdom of Belgium must be ordered to pay the costs.

On those grounds, the Court (Second Chamber) hereby:

- 1. Declares that, by requiring systematically, in addition to production of a certificate of registration, production of a vehicle's certificate of conformity, for the purpose of a roadworthiness test prior to the registration of a vehicle previously registered in another Member State, and by making such vehicles, when there is a change of ownership, subject to a roadworthiness test prior to their registration, without taking into account the results of the roadworthiness test carried out in another Member State, the Kingdom of Belgium has failed to fulfil its obligations under Article 4 of Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles, as amended by Council Directive 2006/103/EC of 20 November 2006, and under Article 34 TFEU;**
- 2. Orders the Kingdom of Belgium to pay the costs.**

[Signatures]