



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

20 March 2014*

(Failure of a Member State to fulfil obligations — Registration of motor vehicles — Articles 34 TFEU and 36 TFEU — Directive 70/311/EEC — Directive 2007/46/EC — Driving on the right in a Member State — Obligation, for the purpose of registration, to reposition to the left-hand side the steering equipment of passenger vehicles positioned on the right-hand side)

In Case C-61/12,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 6 February 2012,

European Commission, represented by A. Steiblytė, G. Wilms and G. Zavvos, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Republic of Lithuania, represented by D. Kriauciūnas and R. Krasuckaitė, acting as Agents,

defendant,

supported by

Republic of Estonia, represented by M. Linntam, acting as Agent,

Republic of Latvia, represented by I. Kalniņš and A. Nikolajeva, acting as Agents,

Republic of Poland, represented by B. Majczyna and M. Szpunar, acting as Agents,

interveners,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász (Rapporteur), A. Rosas, D. Šváby, and C. Vajda, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Lithuanian.

after hearing the Opinion of the Advocate General at the sitting on 7 November 2013,
gives the following

Judgment

- 1 By its application, the European Commission asks the Court to declare that, by prohibiting the registration of passenger vehicles which have their steering-wheel on the right-hand side, and/or by requiring, for the purpose of registering passenger vehicles with the steering equipment on the right-hand side, whether they are new or previously registered in other Member States, that the steering-wheel be moved to the left-hand side, the Republic of Lithuania has failed to fulfil its obligations under Article 2a of Council Directive 70/311/EEC of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers (OJ English Special Edition 1970(II), p. 375), Article 4(3) 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), and under Article 34 TFEU.

Legal context

European Union law

- 2 Recitals 2, 3 and 14 in the preamble to Directive 2007/46 state:
 - (2) For the purposes of the establishment and operation of the internal market of the Community, it is appropriate to replace the Member States' approval systems with a Community approval procedure based on the principle of total harmonisation.
 - (3) The technical requirements applicable to systems, components, separate technical units and vehicles should be harmonised and specified in regulatory acts. Those regulatory acts should primarily seek to ensure a high level of road safety, health protection, environmental protection, energy efficiency and protection against unauthorised use.
 - ...
 - (14) The main objective of the legislation on the approval of vehicles is to ensure that new vehicles, components and separate technical units put on the market provide a high level of safety and environmental protection. This aim should not be impaired by the fitting of certain parts or equipment after vehicles have been placed on the market or have entered service. Thus, appropriate measures should be taken in order to make sure that parts or equipment which can be fitted to vehicles and which are capable of significantly impairing the functioning of systems that are essential in terms of safety or environmental protection, are subject to a prior control by an approval authority before they are offered for sale. These measures should consist of technical provisions concerning the requirements that those parts or equipment have to comply with.'
- 3 Article 1 of Directive 2007/46, entitled 'Subject matter', provides:

'This Directive establishes a harmonised framework containing the administrative provisions and general technical requirements for approval of all new vehicles within its scope and of the systems, components and separate technical units intended for those vehicles, with a view to facilitating their registration, sale and entry into service within the Community.'

This Directive also establishes the provisions for the sale and entry into service of parts and equipment intended for vehicles approved in accordance with this Directive.

Specific technical requirements concerning the construction and functioning of vehicles shall be laid down in application of this Directive in regulatory acts, the exhaustive list of which is set out in Annex IV.'

- 4 Article 4 of that directive, entitled 'Obligations of Member States', provides in paragraph 3 thereof:

'Member States shall register or permit the sale or entry into service only of such vehicles, components and separate technical units as satisfy the requirements of this Directive.

They shall not prohibit, restrict or impede the registration, sale, entry into service or circulation on the road of vehicles, components or separate technical units, on grounds related to aspects of their construction and functioning covered by this Directive, if they satisfy the requirements of the latter.'

- 5 Article 9 of that directive, entitled 'Specific provisions concerning vehicles', provides in paragraph 1(a) thereof:

'Member States shall grant an EC approval in respect of:

- (a) a type of vehicle which conforms to the particulars in the information folder and which meets the technical requirements specified by the relevant regulatory acts listed in Annex IV'.

- 6 Annex IV, part I, to that directive contains the list of directives, called 'separate directives', establishing the technical requirements specifically applicable for the purpose of EC type-approval.

- 7 Article 18(1) of Directive 2007/46, entitled 'Certificate of conformity', provides in the first subparagraph of paragraph 1 thereof:

'The manufacturer, in his capacity as the holder of an EC type-approval of a vehicle, shall deliver a certificate of conformity to accompany each vehicle, whether complete, incomplete or completed, that is manufactured in conformity with the approved vehicle type.'

- 8 Article 26 of that directive, entitled 'Registration, sale and entry into service of vehicles', provides in the first subparagraph of paragraph 1 thereof:

'Without prejudice to the provisions of Articles 29 and 30, Member States shall register, and permit the sale or entry into service of, vehicles only if they are accompanied by a valid certificate of conformity issued in accordance with Article 18.'

Annex I to that directive is entitled 'Complete list of information for the purpose of EC type-approval of vehicles'.

- 9 Point 1 of that annex, entitled 'General construction characteristics of the vehicle', provides:

'...

1.8. Hand of drive: left/right (1).

1.8.1:

Vehicle is equipped to be driven in right/left (1) hand traffic.

...'

- 10 Annex III to that directive is entitled ‘Information document for the purpose of EC type-approval of vehicles’. Point 1 of that annex, entitled ‘General construction characteristics of the vehicle’, provides:

‘ ...

1.8. Hand of drive: left/right (1),

1.8.1:

Vehicle is equipped to be driven in right/left (1) hand traffic.

...’

The wording of the explanatory notes concerning the numbered reference (1) of Point 1 of Annex III is the same as that of the notes relating to Point 1 of Annex I, as it is set out in paragraph 9 above.

- 11 Annex IX to Directive 2007/46, as replaced by Commission Regulation (EC) No 385/2009 of 7 May 2009 (OJ 2009 L 118, p. 13), for the purposes of its adaptation to scientific and technological progress, is entitled ‘EC Certificate of conformity’. Point 0 of that annex, entitled ‘Objectives’, is worded as follows:

‘The certificate of conformity is a statement delivered by the vehicle manufacturer to the buyer in order to assure him that the vehicle he has acquired complies with the legislation in force in the European Union at the time it was produced.

The certificate of conformity also serves the purpose to enable the competent authorities of the Member States to register vehicles without having to require the applicant to supply additional technical documentation.

...’

- 12 Page 1 of that certificate contains the following statement:

‘The undersigned ... hereby certifies that the vehicle:

...

conforms in every respect to the type described in the approval ... and

may be permanently registered in the Member States in which the hand of drive is left/right ...’

- 13 The explanatory notes relating to Annex IX to Directive 2007/46 provide in (b) and (d):

‘(b) Indicate whether the vehicle is suitable for use in either right or left-hand traffic or both right and left-hand traffic.

...

(d) This statement shall not restrict the right of the Member States to require technical adaptations in order to allow the registration of a vehicle in a Member State other than the one for which it was intended when the direction of the traffic is on the opposite side of the road.’

14 Directive 70/311 is one of the separate directives referred to in Annex IV to Directive 2007/46. Article 2a of Directive 70/311, added to the latter by the Documents concerning the accession to the European Communities of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain Northern Ireland, Act concerning the conditions of accession and the adjustments to the Treaties (OJ 1972 L 73, p. 14), provides:

‘No Member State may refuse registration or prohibit the sale, registration, entry into service or use of a vehicle on grounds relating to their steering equipment if these satisfy the requirements set out in the Annex to this Directive.’

15 Annex I to that directive is entitled ‘Scope, definitions, application for EC type-approval, grant of EC type-approval, construction provisions, test requirements, modification of the type and amendments to approvals, conformity of production’.

16 Point 1.3 of that annex is worded as follows:

‘[For the purposes of this Directive:]

...

steering equipment means all the equipment the purpose of which is to determine the direction of movement of the vehicle.

The steering equipment consists of:

- the steering control,
- the steering transmission,
- the steering-wheels,
- the energy supply, if any.’

17 Point 4.1.1 of that annex provides:

‘The steering equipment shall ensure easy and safe handling of the vehicle up to its maximum design speed ...’

18 Appendix 1 of Annex I to Directive 70/311 is entitled ‘Information Document ... pursuant to Annex I to Council Directive 70/156/EEC relating to EC type-approval of a vehicle with respect to the steering equipment ...’.

Point 1 of that appendix, entitled ‘General construction characteristics of the vehicle’, is worded as follows:

‘ ...

1.8. Hand of drive: left/right ...

...’

Lithuanian law

19 The Law on Road Safety (Žin, 2000, No 92-2883), a new version of which entered into force on 1 July 2008, establishes the legislative framework for road safety in Lithuania.

20 Article 25(4) of that law provides:

‘It is prohibited to use on public roads motorised vehicles designed to be driven on the left-hand side, except where they were registered in the Republic of Lithuania before 1 May 1993 or where they are intended, as a result of their design and equipment, for specific functions. That prohibition shall not apply on a temporary basis (up to 90 days per year) to foreigners arriving in the Republic of Lithuania in a vehicle registered abroad and who do not hold a residence permit allowing them to reside provisionally or permanently in the Republic of Lithuania, to Lithuanian citizens residing permanently abroad, or to vehicles belonging to the category of vintage vehicles in accordance with the legislation.’

21 Under Article 27(1) and (2) of that law:

‘(1) Duly registered motorised vehicles and their trailers which are duly registered shall be authorised to circulate on public roads in Lithuania. The obligation to register motorised vehicles in the Republic of Lithuania shall not apply on a temporary basis (up to 90 days per year) to foreigners arriving in the Republic of Lithuania in a vehicle registered abroad and who do not hold a residence permit allowing them to reside provisionally or permanently in the Republic of Lithuania or who hold a EU residence permit, or to Lithuanian citizens who reside permanently abroad.

(2) ... the motorised vehicles designed to be driven on the left-hand side of the road and/or which are equipped with a steering-wheel on the right, with the exception of vintage vehicles and vehicles designed for specific purposes, shall not be registered in the Republic of Lithuania.’

22 Decree No 2B-290 of 29 July 2008 of the Director of the National Road Transport Inspectorate within the Ministry of Communications provides in Chapter IV, concerning the conditions for the general installation of the steering system:

‘The steering system of a vehicle may not be installed on the right-hand side of the passenger/driver’s compartment, except in motor vehicles that were registered in Lithuania before 1 May 1993, or in motor vehicles subject to a specific registration scheme.’

23 Decree No 2B-515 of 23 December 2008 of the Director of the National Road Transport Inspectorate within the Ministry of Communications relating to the manufacture and adaptation of motorised vehicles and trailers and to the approval of requirements and procedures applicable to the repair and technical examination of motorised vehicles and trailers prohibited to circulate on public roads, establishes, in paragraph 28, requirements relating to the repositioning of the steering-wheel from the right hand-side to the left-hand side as follows:

‘The repositioning of the steering equipment of vehicles from the right hand-side to the left-hand side shall be authorised in the following situations:

the adaptation of the vehicle is carried out in a workshop approved by the manufacturer;

...’

24 It follows from that legislation that, for the purpose of registration of a motor vehicle in Lithuania, the steering system must be placed on the left-hand side of the vehicle or be repositioned to that side if it was previously located on the right-hand side.

The pre-litigation procedure

- 25 Over the course of recent years, the Commission has received numerous complaints from people who had bought in the United Kingdom or Ireland passenger vehicles designed to be driven on the left-hand side of the road and who could have them registered in Lithuania only on condition that the steering-wheel be repositioned to the left side. Since it considered that condition infringed Articles 4(3) of Directive 2007/46 and 2a of Directive 70/311, on 3 November 2009, the Commission sent the Republic of Lithuania a letter of formal notice. According to the Commission, it is apparent from those provisions that the Member States are obliged to register a new vehicle satisfying the technical requirements provided for by those directives, concerning, *inter alia*, its steering equipment.
- 26 By letter of 5 January 2010, the Lithuanian authorities replied to that letter of formal notice by contending that the condition imposed by the Lithuanian legislation was the only appropriate and proportionate means of ensuring road safety and of protecting the lives and health of road users. At issue, therefore, were imperative requirements in the public interest justifying a possible impediment to the free movement of goods. Furthermore, Directives 2007/46 and 70/311 do not oblige the Member States to register new passenger vehicles with steering equipment which satisfies the requirements of those directives without taking account of the side of the vehicles where that equipment is installed.
- 27 On 25 November 2010, the Commission sent the Lithuanian authorities a reasoned opinion in which it stated that they had not sufficiently justified the impediments to the registration of passenger vehicles equipped with a steering system on the right. The Commission repeated its argument that if a passenger vehicle satisfies the technical requirements of those directives, the provisions of which apply irrespective of which side of the road the traffic moves, the side of the vehicle where its steering equipment is installed may not justify a refusal to register that vehicle.
- 28 The Lithuanian authorities responded to the reasoned opinion on 19 January 2011, by contending that the national legislation at issue was based on considerations of road safety and was not connected with the technical requirements provided for by Directives 2007/46 and 70/311. That legislation is therefore outside the context of those directives and should be assessed having regard solely to Articles 34 TFEU and 36 TFEU. That legislation does not infringe the rules relating to the free movement of goods, to the extent that the import, export, sale and transfer of passenger vehicles equipped with a steering system on the right-hand side is authorised in the Lithuanian territory.
- 29 In any event, the measure at issue is appropriate for attaining the objective of improving road safety, having regard to the state of the Lithuanian road network, the number of fatal accidents which take place, and the number and age of the vehicles in circulation on that road network. That measure is also proportionate, given that it authorises the use of vehicles equipped with a steering system on the right registered before 1993, of vehicles temporarily in the Lithuanian territory, of vintage vehicles and vehicles designed for specific purposes.
- 30 After examining those arguments, the Commission decided to bring the present action.
- 31 By order of the President of the Court of 20 June 2012, the Republic of Estonia, the Republic of Latvia and the Republic of Poland were given leave to intervene in support of the form of order sought by the Republic of Lithuania.

The action

- 32 As a preliminary point, it should be noted that the Commission makes a distinction in its application, between new passenger vehicles, in respect of which the national measure in question should be assessed in the light of Directives 2007/46 and 70/311, and vehicles previously registered in another Member State, in respect of which the assessment should be carried out on the basis of Article 34 TFEU. In its assessment, the Court will adopt that distinction.

The application of Directives 2007/46 and 70/311 to new passenger vehicles

Arguments of the parties

- 33 The Commission claims, in essence, that Directives 70/311 and 2007/46, and the separate directives referred to in Annex IV to the latter directive, regulate exhaustively the technical requirements which must be satisfied by new passenger vehicles and leave no discretion to the Member States in that field. The steering equipment of a vehicle is covered by those technical requirements, so that the obligation, provided for by a national regulation, to reposition that equipment is a technical requirement which the Member States are not authorised to impose. The Commission adds that the technical requirements provided for by those directives seek to ensure a high level of road safety.
- 34 According to the Commission, it is apparent from the wording of Article 2a of Directive 70/311 and Article 4(3) of Directive 2007/46 that the side of a vehicle where the driver's seat is positioned is not a technical requirement, within the meaning of the directives relating to type-approval of new vehicles, connected with adapting the vehicle for driving on the left or on the right. The reference made, in several provisions of Directives 2007/46 and 70/311, to 'hand of drive: ... left/right' means only that the construction of the vehicle, concerning its steering equipment, satisfies the technical requirements, provided for in those directives, relating to the hand of drive and does not state that, in order to drive on the right, the steering equipment must be located on the left.
- 35 The Lithuanian Government, supported by the Estonian, Latvian and Polish Governments, claims that the prohibition of registering vehicles with steering equipment on the right is not connected with considerations relating to the functioning or compliance of the steering equipment of those vehicles with the technical requirements of Directives 2007/46 and 70/311, but with whether it is possible for the driver to drive such vehicles safely on roads where traffic moves on the right. Those directives merely lay down requirements concerning the manufacture, assembly and approval of vehicles and do not concern the position of the steering-wheel, since that is not connected with a technical requirement relating to the vehicle, but with road safety which, for the most part, falls within the competence of the Member States.
- 36 The technical requirements have also a road safety objective, but are not the only measures allowing that safety to be ensured. Consequently, the national measure at issue does not come within the scope of those directives and should be assessed in the light of Articles 34 TFEU and 36 TFEU, whether new or used vehicles are at issue. Although that measure constitutes a restriction of the principle of the free movement of goods, it is, however, justified by imperative requirements in the public interest relating to road safety.
- 37 According to the Lithuanian Government, paragraphs 1.8 and 1.8.1 of Annexes I and III to Directive 2007/46, and Appendix I, paragraph 1.8, of Annex I to Directive 70/311, establish a distinction between vehicles according to whether they are intended to be driven on the right or on the left. None of the provisions of those directives allows it to be claimed that a Member State is obliged to register a vehicle without being able to take account of the hand of drive adopted in that State.

Moreover, the explanatory note (d) of Annex IX to Directive 2007/46 allows a Member State, in which driving on the right is obligatory, to require the steering wheel to be moved to the left-hand side before the vehicle is registered.

Findings of the Court

- 38 It follows from the juxtaposition of those arguments that the main point of disagreement between the parties is whether the position of the driver's seat of a vehicle is included in the harmonised framework established by Directives 2007/46 and 70/311, or whether it does not come within that harmonisation, so that it is permissible for Member States, with a view to the registration of a new vehicle in their territory, to require, for the purposes of safety, that the driver's seat of that vehicle be moved to the side opposite the direction of the traffic.
- 39 In that regard, it should be noted that Directive 2007/46, a so-called 'framework directive', laid down, as is apparent from Article 1 thereof, read in conjunction with recitals 2, 3 and 14 in the preamble thereto, a uniform type-approval procedure for new vehicles, based on the principle of total harmonisation as regards their technical characteristics, the specific technical requirements concerning the construction and functioning of vehicles being prescribed by the separate directives included in Annex IV to that directive.
- 40 It follows from the above-mentioned provisions that the aim of that harmonised framework is the establishment and functioning of the internal market, while seeking to ensure a high level of road safety by means of the total harmonisation of technical requirements concerning, inter alia, the construction of vehicles.
- 41 Thus, Article 4(3) of Directive 2007/46 provides that the Member States may not impede in any way, inter alia, the registration of vehicles on grounds related to aspects of their construction covered by that directive, if they satisfy the requirements of the latter.
- 42 The steering equipment and, correlatively, the position of the driver's seat which is part of that equipment, constitute essential elements of the design of a vehicle.
- 43 Although Directives 2007/46 and 70/311 do not determine the position of the driver's seat of a vehicle, by providing, for example, that it must always be placed on the side opposite the direction of the traffic, it does not follow that that element does not come within their scope. It must be considered that the European Union legislature granted in that regard freedom to vehicle manufacturers that may not be cancelled or impeded by national legislation.
- 44 The steering equipment of vehicles is specifically covered by Directive 70/311, Article 2a of which requires the Member States not to prohibit, in particular, the registration of vehicles 'on grounds relating to [their] steering equipment' if the latter satisfies the requirements of that directive.
- 45 The prohibition of refusal to register included in Article 2a thereof is categorical and general and the meaning of the wording 'on grounds relating to their steering equipment' is clear, for the terms 'steering equipment' covers also the driver's seat, that is to say, the position of the steering-wheel of vehicles, an integral part of the steering equipment.
- 46 Article 2a was added to Directive 70/311 by the Act relating to the conditions of accession, inter alia, of Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Communities, the only Member States at that time in which road traffic moved on the left-hand side of the road, without the list of requirements in Annex I to that directive being supplemented.

- 47 In that context, it cannot reasonably be considered that the European Union legislature was unaware of the fact that the accession of Member States in the territory of which the direction of road traffic was on the left, and one of which was a manufacturer of vehicles with, in principle, their driver's seat on the right-hand side, was liable, in an internal market involving the right to free movement, to have an effect on driving habits, even to involve a certain risk connected with road traffic. By contrast, it must be concluded that the legislature took account of that potential risk and chose to adopt Article 2a of Directive 70/311.
- 48 It is apparent from those considerations that the reference made, in certain provisions of Directives 2007/46 and 70/311, to 'hand of drive: ... left/right', which must be stated on the information document for the purpose of type-approval of a vehicle, and the indication, which must be made on the certificate of conformity, that the vehicle is 'adapted' to traffic on the right or on the left, may not cover fundamental elements of the construction of the vehicle, such as the position of the steering-wheel, but only other elements, such as vehicles' lighting and windscreen wiping devices or indirect vision systems.
- 49 The same conclusion is valid with regard to explanatory note (d) concerning Annex IX to Directive 2007/46, according to which, where the purchaser's choice relates to such a vehicle, the constructor's declaration in the certificate of conformity does not restrict the right of Member States to require 'technical adaptations' with a view to its registration.
- 50 As was pointed out by the Advocate General in point 48 of his Opinion, the adaptations that may be required may not relate to the repositioning of the driver's seat, which would amount to a procedure having a significant impact on the design of the vehicle, contrary to the wording and purpose of Directive 70/311, but solely to procedures having a minimal impact such as those referred to in paragraph 48 of the present judgment.
- 51 In addition, the argument that only the grounds relating to technical requirements and not those seeking to ensure road safety come within the prohibition of the refusal to register included in Article 2a of Directive 70/311 cannot be accepted. First, as the Commission correctly states, the technical requirements defined by the directives relating to the approval of new vehicles aim to ensure a high level of road safety, so that it is not possible to restrict the scope of the prohibition referred to in Article 2a of Directive 70/311 to grounds other than those connected with road safety. Secondly, the interpretation suggested by the Polish and Lithuanian Governments would deprive Article 2a of its effectiveness, for that interpretation would permit the registration of new vehicles satisfying the technical requirements to be prevented for reasons connected with road safety, which is duly ensured by those technical requirements.
- 52 Consequently, it must be concluded that the position of the driver's seat, an integral part of the steering equipment of a vehicle, comes within the harmonisation established by Directives 2007/46 and 70/311, so that the Member States may not require, for reasons of safety, with a view to the registration of a new vehicle in their territory, the driver's seat of that vehicle to be moved to the side opposite to the direction of the traffic.

The application of Article 34 TFEU to passenger vehicles previously registered in another Member State

Arguments of the parties

- 53 The Commission maintains that the registration of vehicles previously registered in another Member State is not covered by secondary European Union legislation, but by the rules of primary law concerning the free movement of goods. It considers that the contested national legislation, although

applicable without distinction to all vehicles, constitutes a measure having equivalent effect to quantitative restrictions on imports since it has as its object or effect less favourable treatment of goods originating in other Member States.

- 54 The Commission claims that the legislation at issue is not suitable for attaining the road safety objective pursued, in the light of the other relevant factors which influence that safety. According to the Commission, the level of road safety does not depend on which side of the vehicle the steering equipment is placed, but is linked to the behaviour and experience of drivers, and the condition of the roads and vehicles. In any event, the measure at issue is disproportionate, since other less restrictive measures, such as fixing additional external rear-view mirrors and the adaptation of lighting and windscreen wiping devices, would be capable of furthering the objective pursued.
- 55 The Lithuanian Government considers that the contested legislation is justified in view of road safety, held by the Court's case-law to be an imperative requirement in the public interest for the purpose of the protection of the lives and health of road users.
- 56 In the opinion of the Lithuanian Government, the legislation at issue is, from that point of view, appropriate for attaining the objective pursued, in light of the fact that, when the direction of the traffic is on the right, the driver of a vehicle equipped with a steering-wheel on the right has a field of vision considerably reduced in relation to a driver whose vehicle is equipped with a steering-wheel on the left, which is not disputed by the Commission. That constitutes a danger for road safety, the level of protection of which is to be assessed by the Member States. The contested measure is, moreover, proportionate. The alternative measures suggested by the Commission are either completely disproportionate, if not dangerous, or do not ensure the same level of protection.

Findings of the Court

- 57 In view of the Court's settled case-law, the contested legislation constitutes a measure having equivalent effect to quantitative restrictions on imports within the meaning of Article 34 TFEU, in so far as its effect is to hinder access to the Polish market for vehicles with steering equipment on the right, which are lawfully constructed and registered in Member States other than the Republic of Lithuania (see, concerning the origins of that case-law, Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5; Case 120/78 *Rewe Zentral, 'Cassis de Dijon'* [1979] ECR 649, paragraph 14; and, more recently, Case C-110/05 *Commission v Italy* [2009] ECR I-519, paragraph 58).
- 58 In accordance with that case-law, such legislation may be justified in order to meet imperative requirements, on condition that it is appropriate for securing the attainment of the objective pursued and that it does not go beyond what is necessary in order to attain that objective (*Commission v Italy*, paragraph 59 and case-law cited).
- 59 The Lithuanian Government puts forward, as justification for the legislation at issue, the need to ensure road safety, about which it is not disputed that it constitutes, according to the case-law, an imperative requirement relating to the public interest capable of justifying a hindrance to the free movement of goods (*Commission v Italy*, paragraph 60 and case-law cited).
- 60 It should be noted that, in accordance with equally settled case-law, in the absence of full harmonisation at European Union level, which is the case of registration in a Member State of vehicles already registered in another Member State, 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. In that regard, it is for the competent national authorities to show that their legislation is appropriate for ensuring the attainment of the objective pursued and does not go further than is necessary in order to attain that objective (see, to that effect, *Commission v Italy*, paragraphs 61 and 62 and case-law cited).

- 61 With regard, in the first place, to the appropriateness of the legislation at issue, the Lithuanian Government contends that the positioning of the steering-wheel of a vehicle on the same side as the direction of the traffic reduces the driver's field of vision, makes overtaking and manoeuvres considerably more difficult, in particular on single-carriageway roads with two-way traffic, like the majority of roads making up the Lithuanian road network, and increases, thereby, the risk of accidents.
- 62 In that regard, it should be noted that national legislation which prohibits the registration, in the territory of a Member State, of a vehicle with steering equipment positioned on the same side as the direction of the traffic, is likely to reduce the number of such vehicles in use in that Member State and, consequently, the risk connected with that use. As regards such a risk, it corresponds to empirical evidence according to which the positioning of the steering-wheel directly affects the driver's field of vision and the risk is, furthermore, confirmed by the standard practice of vehicle manufacturers and dealers consisting in offering for sale, in principle, in each country, vehicles with steering-wheels situated on the side opposite the direction of the traffic.
- 63 With regard, in the second place, to whether the legislation at issue goes beyond what is necessary in order to attain the objective pursued, the Lithuanian Government contends that no other measure and no other alternative technical means ensure the same level of protection as the measure at issue in the light of the traffic risks connected with the position of the steering-wheel on the right.
- 64 In that regard, it should be noted, first of all, that the risk arising from the use in the Lithuanian territory of vehicles with the steering-wheel situated on the right is the same, whether those vehicles are new or previously registered in another Member State. With regard to new vehicles, it was concluded, in paragraph 47 of the present judgment, that the legislature took account of that potential risk when it adopted Article 2a of Directive 70/311.
- 65 It must be noted, next, that the legislation at issue provides for exceptions with regard to the use of vehicles equipped with a steering-wheel on the right by people who reside in other Member States, for example tourists, and travel to Lithuania for a limited period, and vehicles registered in that Member State before 1993, which shows that that legislation tolerates the risk involved in such use. The risk taken in the area of road safety is, in that case, the same, particularly as the flow of those visitors in the Lithuanian territory is continuous, and the risk cannot be considered to be less important on the ground that the visitors visiting Lithuania for a limited period with such a vehicle drive more carefully than those whose vehicle is registered in that Member State. Likewise, the poor condition of vehicles registered before 1993 also does not contribute to the reduction of that risk.
- 66 In addition, according to the information at the disposal of the Court, the legislation of 22 Member States, that is to say the large majority of the Member States, either allows explicitly the registration of vehicles which have their steering equipment on the same side as the direction of the traffic, or tolerate such, even if, in some of those Member States, the state of the roads is similar to that in the Republic of Lithuania (see, by analogy, Case C-333/08 *Commission v France* [2010] ECR I-757, paragraph 105).
- 67 Moreover, it should be noted that the statistical data relied on by the Lithuanian Government concerning the number of fatal accidents which took place on the Lithuanian road network do not sufficiently establish the relationship between the number of accidents put forward and the involvement of vehicles with the driver's seat located on the right. Furthermore, the fact that the Republic of Lithuania is a particular case in that it has a very large number of vehicles registered per 1000 inhabitants and that the vehicles in Lithuania are among the oldest in the European Union are not relevant factors.

- 68 It must be pointed out, finally, that there exist means and measures less restrictive of the free movement of goods than the measure at issue and, at the same time, capable of significantly reducing the risk which could be created by the use of vehicles with the steering-wheel situated on the same side as the direction of the traffic. It must be pointed out in particular that the Member States enjoy in that regard discretion for the purpose of imposing measures, including those proposed by the Commission, that would be capable, according to the state of technology, of ensuring sufficient rear and forward visibility for the driver of the vehicle with the steering wheel situated on the same side as the direction of the traffic.
- 69 Therefore, in contrast to the situation giving rise to the judgment in *Commission v Italy*, it does not appear, in the light of the foregoing considerations, that the measure at issue may be considered to be necessary in order to attain the objective pursued. In the light of those considerations, the measure at issue is not compatible with the principle of proportionality.
- 70 Consequently, it must be declared that the Republic of Lithuania has failed to fulfil its obligations, in accordance with the Commission's application.

Costs

- 71 Under Article 138(1) of the Rules of Procedure of the Court, 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 Republic of Lithuania has been unsuccessful, the latter must be ordered to pay the costs. Under Article 140(1) of the Rules of Procedure, Member States intervening in the proceedings are to bear their own costs; it must therefore be held that the Republic of Estonia, the Republic of Latvia and the Republic of Poland must bear their own costs.

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

- 1. Declares that, by prohibiting the registration of passenger vehicles having their steering-wheel on the right-hand side, and/or by requiring, for the purpose of registering passenger vehicles with the steering equipment situated on the right-hand side, whether they are new or previously registered in other Member States, the steering-wheel to be repositioned to the left-hand side, the Republic of Lithuania has failed to fulfil its obligations under Article 2a of Council Directive 70/311/EEC of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers, Article 4(3) 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), and under Article 34 TFEU;**
- 2. Orders the Republic of Lithuania to pay the costs;**
- 3. Orders the Republic of Estonia, the Republic of Latvia and the Republic of Poland to bear their own costs.**

[Signatures]