



Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 8 February 2017¹

Case C-513/15

‘Agrodetalė’ UAB

v

Vilniaus miesto savivaldybės administracija (Request for a preliminary ruling

from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court, Lithuania))

(Reference for a preliminary ruling — Internal market — Agricultural or forestry tractors — Directive 2003/37/EC — Ambit of the directive — Placing on the market and registration within the European Union of used or second-hand vehicles manufactured outside the European Union — Whether the Member States may regulate the registration of such vehicles — New vehicles entering into service from 1 July 2009 — Meaning of ‘new vehicle’ and ‘entry into service’)

1. The present request for a preliminary ruling concerns the interpretation of Directive 2003/37/EC of the European Parliament and of the Council of 26 May 2003 on type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units and repealing Directive 74/150/EEC,² as amended by Commission Directive 2014/44/EU of 18 March 2014.³
2. This request has been made in proceedings between ‘Agrodetalė’ UAB, a company (‘Agrodetalė’) and Vilniaus miesto savivaldybės administracija (Municipal Council of the City of Vilnius, Lithuania, ‘the Municipality of Vilnius’) concerning the latter’s refusal to register used tractors imported from Belarus in the national register of tractors, self-propelling and agricultural machinery and trailers for use therewith.
3. The questions asked by the referring court relate, essentially, to whether those used vehicles imported into the European Union from a third country, must, in order to be capable of being registered in a Member State, comply with the technical requirements laid down by Directive 2003/37.
4. In this Opinion, I shall maintain that Directive 2003/37 must be interpreted as meaning that, in order to be capable of being registered in a Member State, used vehicles imported into that Member State from a third country and belonging to the categories covered by that directive must, before their first entry into service in the European Union and when that takes place on or after 1 July 2009, comply with the technical requirements laid down by that directive.

1 — Original language: French.

2 — OJ 2003 L 171, p. 1.

3 — OJ 2014 L 82, p. 20, ‘Directive 2003/37’.

I – Legal context

A – EU law

5. As is apparent from the first recital of Council Directive 74/150/EEC of 4 March 1974 on the approximation of the laws of the Member States relating to the type-approval of wheeled agricultural or forestry tractors,⁴ the EU legislature took as its starting point the observation that ‘in each Member State tractors must comply with certain mandatory technical requirements; ... such requirements differ from one Member State to another and consequently hinder trade within the European Economic Community’.

6. In view of that observation, the EU legislature considered, as can be seen from the second recital of the directive, that ‘such hindrances to the establishment and proper functioning of the common market can be reduced, and even eliminated, if all Member States adopt the same requirements, either in addition to or in place of their existing laws’.

7. In the third recital of Directive 74/150, the EU legislature states that ‘the requirements of this Directive apply to tractors fitted with pneumatic tyres and having a maximum design speed between 6 and 25 km/h [and] these requirements are intended principally to improve safety on the road and at work in so far as the design of these vehicles is concerned’.

8. Having pointed out, in the fourth recital of Directive 74/150, that ‘it is the established practice of the Member States to check that tractors comply with the relevant technical requirements before they are placed on the market [and] this check is carried out on tractor types’, the EU legislature stated, in the sixth recital of the directive, that ‘at Community level it is necessary to introduce a Community type-approval procedure for each tractor type in order that compliance with [harmonised technical] requirements can be checked and that each Member State may recognise checks carried out by other Member States’.

9. According to the seventh recital of Directive 74/150, ‘that procedure must enable each Member State to ascertain whether a tractor type has been submitted to the checks laid down by special Directives and listed in a type-approval certificate; ... that procedure must enable manufacturers to complete a certificate of conformity for all tractors which conform to an approved type; ... a tractor accompanied by such a certificate must be considered by all Member States as conforming to their own laws’.

10. Directive 74/150 was repealed by Directive 2003/37, with effect from 1 July 2005.⁵

11. The fourth recital to Directive 2003/37 states:

‘This Directive being based on the principle of total harmonisation, the period before EC type-approval becomes compulsory should be long enough to allow the manufacturers of those vehicles to adjust to the new harmonised procedures.’

12. Article 1 of that directive provides:

‘1. This Directive applies to the type-approval of vehicles, whether built in one or more stages. It applies to vehicles defined in Article 2(d) having a maximum design speed of not less than 6 km/h.

4 — OJ 1974 L 84, p. 10.

5 — See Article 24(1) of Directive 2003/37.

This Directive also applies to the EC type-approval of the systems, components and separate technical units intended for use on such vehicles.

2. This Directive shall not apply to:

(a) approval of single vehicles;

However, this procedure may apply to certain categories of vehicles which fall within the scope of this Directive and for which EC type-approval is obligatory;

(b) machinery that has been specially designed for forestry use, such as skidders and forwarders as defined in standard ISO 6814:2000;

(c) forestry machinery based on chassis for earthmoving equipment as defined in standard ISO 6165:2001;

(d) interchangeable machinery that is fully raised from the ground when the vehicle to which it is attached is in use on a road.'

13. Article 2 of Directive 2003/37 provides:

'For the purposes of this Directive:

(a) "EC type-approval" means the procedure whereby a Member State certifies that a type of vehicle, system, component or separate technical unit satisfies the relevant technical requirements of this Directive; the EC type-approval of systems, components and separate technical units may also be referred to as "EC component type-approval";

...

(c) "approval of single vehicles" means the procedure whereby a Member State certifies that a vehicle approved individually satisfies the national requirements;

(d) "vehicle" means any tractor, trailer or interchangeable towed machinery, whether complete, incomplete or completed, which is intended to be used in agriculture or forestry;

(e) "vehicle category" means any set of vehicles which have identical design characteristics;

(f) "type of vehicle" means vehicles of a particular category which do not differ in the essential respects referred to in Annex II, Chapter A; the different variants and versions of a type of vehicle set out in Annex II, Chapter A are permissible;

...

(p) "manufacturer" means the natural or legal person who is responsible to the EC type-approval authority for all aspects of the type-approval process and for ensuring conformity of production, regardless of whether that person be directly involved in all stages of the construction of a vehicle, system, component or separate technical unit; the following are also considered to be manufacturers:

(i) any natural or legal person who, for his own use, designs, has designed, manufactures or has manufactured a vehicle, system, component or separate technical unit;

- (ii) any natural or legal person who is responsible for ensuring compliance with this Directive at the time a vehicle, system, component or separate technical unit is placed on the market or enters into service;

...

- (q) “entry into service” means the first use for its intended purpose within the Community of any vehicle which requires no installation or adjustment by the manufacturer or a third party designated by him prior to its first use; the date it is registered or placed for the first time on the market shall be considered the date of entry into service;

...

- (z) “certificate of conformity” means the document set out in Annex III, delivered by the manufacturer, in order to certify that a particular vehicle, approved according to this Directive, complies with all applicable regulatory instruments at the time of its production and stating that it may be registered or put into service in all Member States without any additional inspection.’

14. Under Article 3 of Directive 2003/37:

‘1. The manufacturer shall submit an application for vehicle EC type-approval to the approval authority of a Member State. It shall be accompanied by an information folder containing the information required by Annex I.

...

4. Applications for EC type-approval of a type of vehicle, system, component or separate technical unit may be submitted to only a single Member State. A separate application shall be submitted for each type to be approved.’

15. Under Article 4 of the directive:

‘1. Each Member State shall grant:

- (a) the EC type-approval to the vehicle types which conform to the particulars in the information folder and which, according to their category, meet the technical requirements of all the separate directives set out in Annex II, Chapter B;

...

3. For each vehicle type in respect of which they have granted, refused to grant or withdrawn EC type-approval, the approval authority in each Member State shall send a copy of the EC type-approval certificate accompanied by the attachments specified in Chapter C of Annex II to the type-approval authorities in the other Member States within one month.’

16. Article 6(1) of the directive provides:

‘In his capacity as holder of a vehicle EC type-approval certificate, the manufacturer shall issue a certificate of conformity.

This certificate, specimens of which are given in Annex III, shall accompany each vehicle, whether complete or incomplete, manufactured in conformity with the approved vehicle type.’

17. Under the first paragraph of Article 7(1) of Directive 2003/37:

‘Each Member State shall register new type-approved vehicles, permit their sale or permit their entry into service on grounds relating to their construction and functioning only if they are accompanied by a valid certificate of conformity.’

18. Article 12 of that directive provides:

‘1. Acting by a qualified majority on a proposal from the Commission, the Council may acknowledge equivalence between the conditions or provisions for EC type-approval of vehicles, systems, components and separate technical units established by this Directive together with the separate directives, and the procedures established by international regulations or regulations of third countries in the framework of multilateral agreements or bilateral agreements between the Community and third countries.

...

3. The equivalence of type-approvals issued on the basis of the UN/ECE regulations which are annexed to the revised 1958 Agreement set out in Annex II, Chapter B, Part II-B, to this Directive, is acknowledged.

...’

19. Article 23(1) of Directive 2003/37 provides:

‘1. As regards vehicles belonging to categories T1, T2 and T3, Member States shall apply this Directive to:

- (a) new types of vehicles from 1 July 2005;
- (b) all new vehicles entered into service from 1 July 2009.’

20. In accordance with Article 25 thereof, Directive 2003/27 entered into force on the day of its publication in the *Official Journal of the European Union*, namely 9 July 2003.

B – Lithuanian law

21. Paragraph 1 of žemės ūkio ministro įsakymas Nr. 3D-396 dėl žemės ūkio ministro 2006 m. spalio 2 d. įsakymo Nr. 3D-384 ‘dėl traktorių, savaeigių ir žemės ūkio mašinų ir jų priekabų registravimo taisyklių patvirtinimo’ pakeitimo (Order No 3D-396 of the Minister of Agriculture, amending Order No 3D-384 of the Minister of Agriculture, of 2 October 2006, approving rules for the registration of tractors, self-propelled and agricultural machinery and trailers for use therewith),⁶ of 1 July 2014, inserted in the rules for the registration of tractors, self-propelled and agricultural machinery and trailers for use therewith approved by Order No 3D-384, a paragraph 19¹ in the following terms:

‘Used agricultural tractors manufactured outside the European Union after 1 July 2009 and not registered in a Member State shall be registered in accordance with these rules if manufactured pursuant to the requirements of [Directive 2003/37].’

⁶ — Žin., 2014, No 9566 (‘Order No 3D-396’).

II – The facts of the main proceedings and the questions referred for a preliminary ruling

22. On 1 July and 8 October 2014, Agrodetalė lodged applications with the Municipality of Vilnius for the registration, in the national register of tractors, self-propelled and agricultural machinery and trailers for use therewith, of used tractors manufactured in Belarus after 1 July 2009.

23. By decisions of 4 July and 13 October 2014, the Municipality of Vilnius refused Agrodetalė's request, on the grounds that it had not supplied documents certifying that the tractors complied with the requirements of paragraph 1 of Order No 3D-396.

24. In an action brought by Agrodetalė for annulment of those decisions, the Vilniaus apygardos administracinis teismas (Regional Administrative Court of Vilnius, Lithuania), by order of 17 February 2015, stayed the proceedings and referred the matter to the Lietuvos vyriausioji administracinis teismas (Supreme Administrative Court of Lithuania) with a request for that court to consider whether paragraph 1 of Order No 3D-396 was compatible with numerous rules of national law taking precedence over it in the hierarchy of norms.

25. In the view of the Vilniaus apygardos administracinis teismas (Regional Administrative Court of Vilnius), the technical requirements laid down by Directive 2003/37 are applicable only to the registration of new vehicles before entry into service. That court considers that the provisions of the directive do not therefore lay down technical requirements for used vehicles and, accordingly, do not prohibit Member States from registering used vehicles without EC type-approval or manufacturer's certificates of conformity.

26. The Žemės ūkio ministerija (Ministry of Agriculture, Lithuania) maintains, on the contrary, that the requirements of the directive apply to all tractors manufactured after 1 July 2009, including used tractors.

27. Having regard to those divergent positions, the referring court enquires whether the Ministry of Agriculture was entitled to provide, at paragraph 19¹ of the rules for the registration of tractors, self-propelled and agricultural machinery and trailers for use therewith approved by Order No 3D-384, inserted by paragraph 1 of Order No 3D-396, for the registration of used tractors to be conditional upon compliance with the requirements laid down by the directive.

28. The referring court considers that the view can be taken that the technical requirements laid down by Directive 2003/37 apply only to the registration of new vehicles before entry into service, in other words, that the provisions of the directive do not lay down technical requirements for used vehicles, nor do they prohibit Member States from registering such vehicles without EC type-approval or manufacturer's certificates of conformity. The referring court also emphasises that the directive does not specify whether the place of manufacture is relevant to the application of its provisions, particularly if the vehicles are manufactured outside the European Union.

29. Considering that the case before it raised questions of interpretation of EU law, the Lietuvos vyriausioji administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do the provisions of Directive 2003/37 ... apply to the supply to the EU market and registration of used or second-hand vehicles manufactured outside the European Union, or may Member States regulate the registration of such vehicles in a Member State by special national rules and impose requirements applicable to such registration (for example, the obligation to comply with the requirements of Directive 2003/37)?

- (2) Can Article 23(1)(b) of Directive 2003/37 ..., read in conjunction with Article 2(q) thereof, be interpreted as providing that the provisions of the directive are applicable to machinery in categories T1, T2 and T3 manufactured after 1 July 2009?

III – My analysis

30. By its first question, the referring court asks the Court, essentially, for a ruling as to whether Directive 2003/37 must be interpreted as meaning that, in order to be capable of being registered in a Member State, used vehicles imported into that State from a third country must comply with the technical requirements laid down by that directive.

31. There are two opposing views as to how this question should be answered.

32. According to the first view, advanced by Agrodetalè, the Spanish Government and the European Commission, the system of EC type-approval for agricultural tractors put in place by the directive can apply only to new vehicles; that is to say, to vehicles that have never been registered or put into service. Accordingly, used vehicles imported into the European Union from a third country are not required to have EC type-approval and are not, therefore, subject, under EU law, to the technical requirements laid down by the directive. It follows that the Member States are free to make such vehicles subject to specific national requirements. According to Agrodetalè, such national requirements must observe the principles of proportionality and non-discrimination. The Spanish Government and the Commission, unlike Agrodetalè, consider that it is open to the Member States, in the exercise of their regulatory power, to extend the technical requirements laid down by Directive 2003/37 to used vehicles imported from a third country.

33. The second view, which is advanced by the Lithuanian Government, is based by contrast on the idea that compliance with the technical requirements laid down by the directive is mandatory for used vehicles imported into the European Union from a third country.

34. At first sight, it might be tempting to take the view that, since the directive makes numerous references to ‘new vehicles’,⁷ it is for Member States to determine the technical requirements applicable to used vehicles imported into their territory from a third country. Thus the Member States may, but do not have to, align those requirements with those laid down by Directive 2003/37.

35. However, I share the view of the Lithuanian Government, in favour of the mandatory application of the harmonised technical requirements to used vehicles imported into the European Union from a third country. This seems to me to be the only view apt to guarantee the effectiveness of the directive.

36. I observe that, under Article 2(a) of the directive, EC type-approval is the procedure whereby a Member State certifies that a type of vehicle, system, component or separate technical unit satisfies the relevant technical requirements of Directive 2003/37.

37. The framework for EC type-approval is based on the principle that all new vehicles manufactured in conformity with a vehicle type approved by a Member State are entitled to be marketed and registered freely in the other Member States.

38. As stated in the fourth recital, Directive 2003/37 is based on the principle of total harmonisation. With that directive, the EC type-approval procedure therefore became mandatory for agricultural or forestry tractors belonging to a category covered by the directive, whereas it had previously been optional. Thus, under Article 23(1) of Directive 2003/37, as regards vehicles belonging to

⁷ — See Article 7(1), Article 10(1), and Article 23(1)(b) of Directive 2003/37.

categories T1, T2 and T3, Member States were required to apply the directive to new types of vehicles from 1 July 2005, and to all new vehicles entering into service from 1 July 2009. Total harmonisation also means that, for the purposes of EC type-approval, the technical requirements concerning the construction and functioning of the vehicles are laid down by EU law.

39. In accordance with Article 3(1) of Directive 2003/37, the manufacturer submits his application for vehicle EC type-approval to the approval authority of a Member State. The application must be accompanied by an information folder containing the information required by Annex I to that directive.

40. It follows from Article 4(1)(a) of that directive that EC type-approval is granted to vehicle types that conform to the particulars in the information folder and, according to their category, meet the technical requirements of all the separate directives set out in Annex II, Chapter B of Directive 2003/37.

41. Under Article 4(3) of that directive, for each vehicle type in respect of which it has granted, refused to grant or withdrawn EC type-approval, the approval authority in that Member State then sends a copy of the EC type-approval certificate to the type-approval authorities in the other Member States.

42. Article 6(1) of that directive provides that, in his capacity as holder of a vehicle EC type-approval certificate, the manufacturer is to issue a certificate of conformity, indicating that the vehicle has been manufactured in conformity with the approved vehicle type. This certificate must accompany every new vehicle which has EC type-approval.

43. New vehicles that have been granted EC type-approval and are accompanied by a valid certificate of conformity may not be made subject to further approval of their technical characteristics or their conformity with further technical requirements concerning their construction and functioning, unless they have manifestly been modified after leaving the manufacturer's factory. National legislation under which motor vehicles covered by a valid Community type-approval certificate may not be registered unless a national certificate is produced attesting to their conformity with national requirements is therefore precluded.⁸

44. Vehicles that have been approved in one of the Member States, in accordance with those harmonised rules, may subsequently lawfully be marketed throughout the European Union.

45. The type-approval procedure has therefore introduced a mechanism of mutual recognition of the monitoring by the approval authorities of the various Member States of compliance with the requirements set out in Directive 2003/37 and in the separate directives.⁹

46. Article 7(1) of the directive thus provides that 'each Member State shall register new type-approved vehicles, permit their sale or permit their entry into service on grounds relating to their construction and functioning only if they are accompanied by a valid certificate of conformity'. Following the same logic, Article 5(2) of Regulation (EU) No 167/2013¹⁰ provides that 'Member States shall permit the placing on the market, registration or entry into service only of such vehicles ... that satisfy the requirements of this Regulation'. Furthermore, Article 5(3) of that regulation provides that 'Member States shall not prohibit, restrict or impede the placing on the market, registration or entry into service of vehicles ... on grounds related to aspects of their construction and functioning covered by this Regulation, if they satisfy its requirements'.

8 — See judgment of 29 May 1997, *VAG Sverige* (C-329/95, EU:C:1997:256).

9 — See, by analogy, judgment of 18 November 2010, *Lahousse and Lavichy* (C-142/09, EU:C:2010:694, paragraph 27).

10 — Regulation of the European Parliament and of the Council of 5 February 2013 on the approval and market surveillance of agricultural and forestry vehicles (OJ 2013 L 60, p. 1). As indicated in Article 76(1) of that regulation, it repealed Directive 2003/37 with effect from 1 January 2016.

47. The fact that the type-approval procedure is intended to be applied to a type of vehicle before its mass production does not, in my opinion, prevent a Member State drawing inferences from the finding that a used vehicle imported from a third country has no certificate of conformity, as is the case in the main proceedings.

48. As Agrodetalé states in its written observations, the tractors at issue in the main proceedings have declarations of conformity or approvals that are held at the national vehicle testing centre. According to Agrodetalé, the only reason why the tractors do not have certificates of conformity is that their polluting emissions exceed, by a few tenths of a percentage point at most, the requirements which must be satisfied in order to obtain EC vehicle type-approval.

49. In view of those statements, it thus appears that the tractors at issue have no certificate of conformity because they do not satisfy the technical requirements of Directive 2000/25/EC of the European Parliament and of the Council of 22 May 2000 on action to be taken against the emission of gaseous and particulate pollutants by engines intended to power agricultural or forestry tractors and amending Directive 74/150.¹¹

50. It should be pointed out that a new vehicle imported into a Member State from a third country might not be registered in that Member State if it belongs to a category of vehicles covered by Directive 2003/37, and not to a type of vehicle with EC type-approval.

51. It is irrelevant in this regard where the vehicle was manufactured. As the Commission rightly observes, the issue of an EC type-approval is unrelated to the place of manufacture of a new vehicle. Directive 2003/37 must therefore be applied in the same way, whether the new vehicle has been manufactured within the European Union or outside it.

52. I note too that, as stated by the Commission in its proposal for a Regulation of the European Parliament and of the Council on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles,¹² the right, enjoyed by all new vehicles produced in conformity with a type of vehicle approved by one Member State, to be freely marketed and registered in the other Member States ‘applies to all such vehicles, irrespective of their origin of production. This means that ... vehicles produced outside the [European Union] can be freely imported within the [European Union] provided [that] the manufacturer has certified that they have been produced in compliance with a type of vehicle approved in one of the [European Union] Member States’.¹³

53. Thus, the requirement of a valid certificate of conformity, laid down by Article 7(1) of Directive 2003/37, applies not only to new vehicles manufactured within the European Union, but also to new vehicles manufactured outside the European Union and imported into it from a third country.

54. In my opinion it would be paradoxical and could potentially give rise to abuse if it were to be accepted that a used vehicle imported into the European Union from a third country may, for its part, be registered when it has no certificate of conformity. A Member State into which such a vehicle is imported is therefore entitled, in my view, under Article 7(1) of Directive 2003/37, to refuse to register that vehicle.

55. I consider that, in such a situation, a used vehicle imported from a third country, which does not have EC type-approval and is intended to be used within the European Union for the first time, must be regarded as being a new vehicle and, accordingly, subject to the same legal rules under Directive 2003/37.

11 — OJ 2000 L 173, p. 1.

12 — COM(2016) 31 final, presented on 27 January 2016.

13 — Section 3.2 of the explanatory memorandum to the proposal, p. 6.

56. Several provisions of that directive make reference to ‘new vehicles’ (Article 7(1), Article 10(1) and Article 23(1)(b)), although they do not provide a definition.

57. A definition of the term is, however, given in Article 3(37) of Regulation No 167/2013. There it is provided that ‘new vehicle’ means ‘a vehicle which has never been previously registered or entered into service’. Both Article 2(q) of Directive 2003/37 and Article 3(40) of Regulation No 167/2013 define such entry into service as the first use of a vehicle within the European Union.

58. In those circumstances, it can, in my opinion, be considered that Directive 2003/37 applies to used vehicles, imported from a third country, which are used for the first time within the Union.

59. Furthermore, I consider it appropriate to apply, by analogy, the position expressed by the Commission in paragraph 72 of the Guide to application of the Machinery Directive 2006/42/EC.¹⁴ In that paragraph the Commission states that ‘in general, the Machinery Directive does not apply to the placing on the market of used or second-hand machinery’ and that there is ‘one exception to this general rule’. It goes on to state that ‘the Machinery Directive applies to used or second-hand machinery that was first made available with a view to distribution or use outside the EU, when it is subsequently placed on the market or put into service for the first time in the EU’.¹⁵

60. As the Lithuanian Government has in essence indicated, the reference to ‘new vehicles’ in Article 7(1) of Directive 2003/37 is explained by the fact that vehicles which belong to categories covered by that directive and have been manufactured within the European Union may not be put into service within the internal market without obtaining EC type-approval, which means that such vehicles cannot have been previously put into service and are therefore new. Similarly, if those new vehicles manufactured in a third country are imported into the European Union, they must obtain EC type-approval before they can be marketed.

61. Once the formalities provided for by Directive 2003/37 have been completed, the vehicles may move freely in all Member States of the European Union and, in principle, the requirements laid down by the directive must not be applied to them again. Accordingly, all used vehicles that fell, when new, within a category covered by secondary EU law and have been put into service within the European Union belong to categories of vehicles with EC type-approval. On the basis of Article 28 TFEU, therefore, trade in those vehicles between the Member States must not thereafter be hindered.

62. It follows from the foregoing that Directive 2003/37 is in fact intended to ensure that vehicles placed on the EU market for the first time comply with the harmonised technical requirements, but the subsequent movement between Member States of such vehicles, having type-approval, is governed by primary EU law.

63. As the Lithuanian Government has pointed out, the situation at issue in the present case is nevertheless one in which used vehicles, in respect of which no EC type-approval procedure has ever been performed, have been imported into the European Union from a third country, that is to say, those vehicles have never been put into service in the Member States of the European Union. Like that government, I consider that such vehicles, put into service in the EU market for the first time, must be regarded as new within the meaning of Directive 2003/37.

64. In summary, the premiss on which free movement of tractors within the European Union is based is that they were, when new, that is to say before they were put into service, covered by an EC type-approval.

14 — Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (OJ 2006 L 157, p. 24).

15 — Second edition of the Guide, June 2010, p. 61.

65. In my opinion, used tractors imported from a third country and put into service in the European Union for the first time should be subject to equally stringent requirements.

66. This approach is consistent with the system put in place by Directive 2003/37, which is based on the principle that all vehicles belonging to specified categories must satisfy uniform technical requirements before first entering into circulation within the European Union.

67. I would add that, as the Lithuanian Government has in substance observed, if the interpretation according to which used vehicles imported into the European Union from a third country are not subject to the harmonised technical requirements were to be accepted, there would be a risk of those requirements being circumvented. An importer or distributor would have only to declare that it was importing used vehicles in order to escape those requirements. In addition, if the technical requirements laid down by Directive 2003/37 did not apply to used vehicles placed on the EU market for the first time, their importers and distributors would obtain a competitive advantage by comparison to manufacturers, importers and distributors of vehicles which had never entered into service.

68. Such an interpretation would also run counter to the objective of strengthening the internal market pursued successively by Directive 74/150, then Directive 2003/37 and now Regulation No 167/2013. Creating a lacuna in the harmonisation of technical requirements applicable to tractors would also affect, for the worse, the objectives of ensuring road safety, safety at work and the protection of the environment.

69. To leave it to the Member States to lay down the technical requirements applicable to used vehicles imported from a third country into the European Union would create disparities between those States, of a kind liable to hinder the movement between them of used vehicles imported from a third country. The fragmentation of the internal market which would follow would be incompatible not only with that objective of strengthening the internal market to which I have referred, but also with the principle, expressed in the fourth recital of Directive 2003/37, that that directive is based on the principle of total harmonisation.

70. It is, however, for the referring court to determine whether the mechanism of equivalence provided for by Article 12(3) of Directive 2003/37 can be implemented in the present case. Under that provision, 'the equivalence of type-approvals issued on the basis of the UN/ECE regulations which are annexed to the revised 1958 Agreement set out in Annex II, Chapter B, Part II-B, to this Directive, is acknowledged'. Setting that mechanism in motion could, potentially, preclude the refusal to register the used tractors imported by Agrodetalė.

71. Finally, I would point out, in answer to the second question, that the foregoing analysis militates in favour of aligning the conditions applicable to the first entry into service in the European Union of new vehicles and of used vehicles imported into the European Union from a third country. In accordance with Article 23(1)(b) of Directive 2003/37, and with regard to used vehicles imported into the European Union from a third country, the technical requirements laid down by that directive must therefore be satisfied by vehicles put into service in the European Union for the first time on or after 1 July 2009.

IV – Conclusion

72. Having regard to the foregoing considerations, I suggest that the response to the Lietuvos vyriausiosios administracinės teisėsaugos (Supreme Administrative Court, Lithuania) should be as follows: Directive 2003/37/EC of the European Parliament and of the Council of 26 May 2003 on type-approval of agricultural or forestry tractors, their trailers and interchangeable towed machinery, together with their systems, components and separate technical units and repealing Directive 74/150/EEC, as amended by Commission Directive 2014/44/EU of 18 March 2014, must be

interpreted as meaning that, in order to be capable of being registered in a Member State, used vehicles imported into that State from a third country and belonging to the categories covered by Directive 2003/37 are required to comply, before their first entry into service in the European Union and when that takes place on or after 1 July 2009, with the technical requirements laid down by that directive.