



## Reports of Cases

### JUDGMENT OF THE COURT (Fifth Chamber)

15 June 2017\*

(Reference for a preliminary ruling — Internal market — EC type-approval — Directive 2003/37/EC — Scope — Agricultural or forestry tractors — Placement on the market and registration in the European Union of used or second-hand vehicles imported from a third country — Concepts of ‘new vehicle’ and ‘entry into service’)

In Case C-513/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 17 September 2015, received at the Court on 25 September 2015, in the proceedings brought by

**‘Agrodetalė’ UAB,**

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, M. Berger, A. Borg Barthet (Rapporteur), E. Levits and F. Biltgen, Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 12 January 2017,

after considering the observations submitted on behalf of:

- ‘Agrodetalė’ UAB, by O. Žilėnas and R. Černiauskas, advokatai,
- the Lithuanian Government, by M. Šavelskis, K. Dieninis and D. Kriauciūnas, acting as Agents,
- the Spanish Government, by V. Ester Casas and A. Gavela Llopis, acting as Agents,
- the European Commission, initially by R. Dobilaitė and D. Kukovec, acting as Agents, and subsequently by A. Steiblytė and A.C. Becker, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 February 2017,

gives the following

\* Language of the case: Lithuanian.

## Judgment

- 1 This 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 (OJ 2003 L 171, p. 1), as amended by Commission Directive 2014/44/EU of 18 March 2014 (OJ 2014 L 82, p. 20) ('Directive 2003/37').
- 2 The request has been made in the context of proceedings between 'Agrodetalė' UAB and Vilniaus miesto savivaldybės administracija (Municipal Council of the City of Vilnius, Lithuania) ('the Municipality of Vilnius') concerning the latter's refusal to grant Agrodetalė's request to register second-hand tractors imported from Belarus in the national register of tractors, self-propelling and agricultural machinery and trailers for use therewith.

### Legal context

#### *EU law*

- 3 Recital 4 of Directive 2003/37 stated:

'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.'

- 4 Article 1(1) of that directive provided:

'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.

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

- 5 Article 2 of that directive provided:

'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";

...

- (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;

...

- (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.’

6 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.’

7 Article 4(1) to (3) of that directive provided:

‘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;

...

2. If a Member State finds that a vehicle, system, component or separate technical unit which complies with the provisions of paragraph 1 is nevertheless a serious risk to road safety, the environment or occupational safety, it may refuse to grant EC type-approval. It shall forthwith notify the other Member States and the Commission thereof, stating the reasons on which its decision is based.

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.’

8 Article 6(1) of the directive provided:

‘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.’

9 Under the first subparagraph of Article 7(1) of that directive:

‘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.’

10 Article 10(1) of Directive 2003/37 provided:

‘For end-of-series vehicles, Member States may, at the request of the manufacturer, within the quantitative limits set out in Annex V, Section B, and for the limited period specified in the third subparagraph, register and permit the sale or entry into service of new vehicles that conform to a type of vehicle the approval of which is no longer valid.’

11 Under Article 15(1) of that directive:

‘If a Member State establishes that vehicles, systems, components or separate technical units of a particular type pose a serious risk to road safety or occupational safety although they are accompanied by a valid certificate of conformity or are properly marked, it may, for a maximum period of six months, refuse to register such vehicles or prohibit the sale or entry into service in its territory of such vehicles, systems, components or separate technical units.’

12 Article 23(1) of Directive 2003/37 provided:

‘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.’

13 Article 76 of Regulation (EU) No 167/2013 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) repealed Directive 2003/37 with effect from 1 January 2016.

### *Lithuanian law*

14 Paragraph 1 of žemės ūkio ministro įsakymas Nr. 3D-396 (Order No 3D-396 of the Minister of Agriculture) of 1 July 2014 inserted in the rules for the registration of tractors, self-propelled and agricultural machinery and trailers for use therewith, which had been approved by žemės ūkio ministro įsakymas Nr. 3D-384 ‘Dėl Traktorių, savaeigių ir žemės ūkio mašinų ir jų priekabų registravimo taisyklių patvirtinimo’ (Order No 3D-384 of the Minister of Agriculture approving rules for the registration of tractors, self-propelled and agricultural machinery and trailers for use therewith) of 2 October 2006, a paragraph 19<sup>1</sup> in the following terms:

‘Used wheeled 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].’

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

- 15 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.
- 16 By decisions of 4 July and 13 October 2014, the Municipality of Vilnius refused Agrodetalė's request, on the ground that it had not supplied documents certifying that the tractors complied with the requirements of paragraph 19<sup>1</sup> of the rules for the registration of tractors, self-propelled and agricultural machinery and trailers for use therewith, as inserted by paragraph 1 of Order No 3D-396.
- 17 In an action brought by Agrodetalė for annulment of those decisions, the Vilniaus apygardos administracinis teismas (Regional Administrative Court, 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), requesting that court to consider whether paragraph 19<sup>1</sup> of the rules for the registration of tractors, self-propelled and agricultural machinery and trailers for use therewith was compatible with a number of rules of national law taking precedence over it in the hierarchy of norms.
- 18 In the view of the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius), the technical requirements laid down by Directive 2003/37 are applicable only to the registration of new vehicles before entry into service.
- 19 The Žemės ūkio ministerija (Ministry of Agriculture, Lithuania) maintains, on the contrary, that the requirements of Directive 2003/37 apply to all tractors manufactured after 1 July 2009, whether new or second-hand, irrespective of where they were manufactured.
- 20 The referring court expresses doubts regarding that interpretation of the provisions of Directive 2003/37. In addition, it considers that it is not clear from Article 23(1)(b) whether the provisions of that directive are applicable to all vehicles in categories T1, T2 and T3 from 1 July 2009 or only those manufactured after that date.
- 21 Considering that the case before it raises 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 [vehicles] in categories T1, T2 and T3 manufactured after 1 July 2009?'

## Consideration of the questions referred

### *The first question*

- 22 By its first question, the referring court asks, in essence, whether Directive 2003/37 must be interpreted as meaning that the placing on the market and registration in a Member State of used or second-hand tractors imported from a third country are subject to compliance with the technical requirements laid down by that directive.
- 23 As a preliminary point, it must be noted that Directive 2003/37 provides for a uniform approval procedure for vehicles falling within its scope and is based, as is apparent from recital 4, on the principle of total harmonisation.
- 24 Under Article 4(1)(a) of that directive, the Member States must grant EC-type approval to the vehicle types which, according to their category, meet the technical requirements of the separate directives set out in Annex II, Chapter B, thereto.
- 25 By that uniform approval procedure, the Member States certify that a vehicle type meets those technical requirements, which, in essence, seek to ensure, as is apparent from Article 4(2) and Article 15(1) of Directive 2003/37, road safety, protection of the environment and safety at work.
- 26 Furthermore, in accordance with the principle of total harmonisation on which Directive 2003/37 is based, Article 7(1), read together with Article 6(1), requires Member States to register new vehicles that are type-approved, that is to say manufactured in conformity with the approved vehicle type, and to permit their sale or their entry into service, where those vehicles are accompanied by a valid certificate of conformity issued by the vehicle manufacturer. It thus follows from those provisions, read in the light of Article 3(4) and Article 4(3) of Directive 2003/37, that new vehicles that have been covered by such EC type-approval in a Member State may be marketed and registered in other Member States without any other formal checking concerning technical requirements.
- 27 The EU type-approval procedure, as provided for by the EU legislature, is thus based on the principle of mutual recognition of the monitoring carried out 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 set out in Annex II, Chapter B, thereto (see, to that effect, judgment of 18 November 2010, *Lahousse and Lavichy*, C-142/09, EU:C:2010:694, paragraph 27). Its objective is to guarantee and promote the operation of the internal market while safeguarding road safety, the environment and safety at work.
- 28 In that context, it should be observed, in the first place, that the State in which the vehicles are manufactured is irrelevant for the purpose of the application of the EC type-approval procedure. As the Advocate General observed in points 51 to 53 of his Opinion, the obligation imposed on Member States to register new type-approved vehicles only where they are accompanied by a valid certificate of conformity, laid down by Article 7(1) of Directive 2003/37, applies both to vehicles manufactured within the European Union and to those manufactured in a third State and then imported into the European Union.
- 29 In the second place, it should be noted that it is apparent from the wording of Article 7(1) and Article 10(1) of Directive 2003/37 that the requirements that they lay down concerning the registration and the entry into service of vehicles expressly concern only ‘new vehicles’. Article 23(1)(b) of that directive provides, moreover, that as regards vehicles belonging to categories T1, T2 and T3, Member States are to apply that directive to all ‘new vehicles’ entered into service from 1 July 2009.

- 30 Having regard to its characteristics, the system established by the directive is intended, in respect of vehicles manufactured within the European Union, to apply to new vehicles. All vehicles which, when new, came under Directive 2003/37 and were entered into service within the European Union were consequently covered by EC type-approval.
- 31 However, it must be pointed out, as the Advocate General observed in point 66 of his Opinion, that the system established by Directive 2003/37 has the aim of ensuring that all vehicles, new or used, which belong to specified categories and which are placed on the EU market for the first time, from 1 July 2009 in respect of vehicles in categories T1, T2 and T3, comply with the technical requirements laid down in that directive.
- 32 That interpretation is borne out by Regulation No 167/2013 which, unlike Directive 2003/37, specifies in Article 3(37) that ‘new vehicle’ means ‘a vehicle which has never been previously registered or entered into service’. It is apparent both from Article 2(q) of Directive 2003/37 and from Article 3(40) of Regulation No 167/2013 that ‘entry into service’ must be understood as the first use of a vehicle within the European Union.
- 33 That interpretation is, moreover, confirmed by the view expressed by the Commission in paragraph 72 of the ‘Guide to application of the Machinery 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)), in which the Commission indicated that ‘in general, the Machinery Directive does not apply to the placing on the market of used or second-hand machinery’, while recognising that there is ‘one exception to this general rule’. According to the Commission, ‘the Machinery Directive applies to used or second-hand machinery that was first made available with a view to distribution or use outside the [European Union], when it is subsequently placed on the market or put into service for the first time in the [European Union]’.
- 34 Furthermore, as the Advocate General pointed out, in essence, in points 68 to 69 of his Opinion, a different interpretation that allows each Member State to lay down itself the technical requirements for the entry into service and registration of second-hand vehicles imported from a third country would run counter to the objective of ensuring and promoting the functioning of the internal market pursued successively by Directive 74/150, Directive 2003/37 and now Regulation No 167/2013, since the powers thus conferred on Member States would be liable to impede trade between them.
- 35 In addition, an interpretation of the provisions of Directive 2003/37 which is different from that adopted in paragraph 31 above could undermine the objectives of that directive of seeking to ensure road safety, the environment and safety at work.
- 36 Accordingly, it must be held that a second-hand vehicle imported from a third country which does not have EC type-approval and is intended to be used for the first time within the European Union is a ‘new vehicle’, within the meaning of Directive 2003/37.
- 37 In the light of all the foregoing considerations, the answer to the first question is that Directive 2003/37 must be interpreted as meaning that the first placing on the market and the registration in a Member State of used or second-hand tractors imported from a third country are subject to compliance with the technical requirements laid down by that directive.

### *The second question*

- 38 By its second question, the referring court asks, in essence, whether Article 23(1)(b) of Directive 2003/37 may be interpreted as meaning that the provisions of that directive apply to vehicles in categories T1, T2 and T3 manufactured after 1 July 2009.

- 39 In view of the answer given to the first question and in particular paragraph 29 above, the answer to the second question is that Article 23(1)(b) of Directive 2003/37 must be interpreted as meaning that the provisions of that directive apply to second-hand vehicles coming under categories T1, T2 and T3 and imported into the European Union from a third country, where they are entered into service in the European Union for the first time on or after 1 July 2009.

### **Costs**

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

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

1. **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 the first placing on the market and the registration in a Member State of used or second-hand tractors imported from a third country are subject to compliance with the technical requirements laid down by that directive.**
2. **Article 23(1)(b) of Directive 2003/37, as amended by Directive 2014/44, must be interpreted as meaning that the provisions of that directive apply to second-hand vehicles coming under categories T1, T2 and T3 and imported into the European Union from a third country, where they are entered into service in the European Union for the first time on or after 1 July 2009.**

[Signatures]