

Commission notice on procedures for the type-approval and registration of vehicles previously registered in another Member State

(88/C 281/08)

I. Introduction

This notice sets out the principles of Community law governing the conditions for the type-approval⁽¹⁾ and registration in the Member States of vehicles imported from other Member States. It describes the rights which individuals derive from the direct applicability of Community law when importing a vehicle previously registered in another Member State of the Community, and the procedural guarantees to which they are entitled in such a case. The principles here set out are, however, without prejudice to restrictions on the direct or indirect import of vehicles from third countries which are applied by certain Member States.

II. General

Every year thousands of Community citizens apply in the Member State in which they live to register a vehicle previously registered in another Member State.

It may be:

- a vehicle imported by the applicant on transferring his residence;
- a second-hand vehicle imported from another Member State by a dealer or by the applicant himself;
- a vehicle bought new on the market in another Member State and which the applicant has imported either himself or via a third party, usually to take advantage of a lower pre-tax purchase price in that State, the vehicle being temporarily registered there in order to deliver it by road.

Although these three situations are very different in many respects, in particular from the point of view of taxation, they do raise similar problems as regards the conditions governing type-approval and registration in the importing Member State. In this notice, an 'imported vehicle' means any vehicle that is imported from another Member State in which it was previously registered.

Over the past few years the Commission has received numerous complaints about the procedures for the type-approval and registration of imported vehicles in the Member States that raise doubts as to the compatibility of such procedures with Community law, and in particular with Articles 30 and 36 of the EEC Treaty, which deal with the free movement of goods.

The Commission has approached the Member States concerned on numerous occasions in order to improve these procedures. It has therefore been able to establish a number of general principles on the basis of which it can assess the compatibility with Articles 30 and 36 of the Treaty of procedures introduced by the Member States for the type-approval and registration of imported vehicles.

Moreover, the Court of Justice has had the opportunity to pronounce on various aspects of these procedures in three recent judgments: that of 12 June 1986 in Case 50/85 (*Schloh v. Auto Contrôle Technique*), that of 11 June 1987 in Case 406/85 (*Goffette and Gilliard*), and that of 17 June 1987 in Case 154/85 (*Commission v. Italy*). These judgments largely confirmed the principles that the Commission had itself established and added important details as regards some specific aspects of the matter.

In accordance with its commitment in the 'White Paper on completing the internal market' (paragraphs 155 and 156), the Commission is therefore able to state the principles governing the application of Articles 30 and 36 of the Treaty to procedures introduced by the Member States for the type-approval and registration of imported vehicles.

This notice is therefore in line with the aim of transparency of Community law as laid down in the 'White Paper'. It relates to an aspect of the completion of the internal market by 1992 that is of importance for Community citizens. As the Court said in its judgment of 5 May 1982 in Case 15/81 (*Gaston Schul*): it is essential that not only commerce as such but also private persons conducting an economic transaction across national frontiers should be able to enjoy the benefits of the common market, which involves the removal of all barriers to intra-Community trade in order to merge the national markets into a single market and thus bring about conditions as close as possible to those of a genuine internal market.

In this context, it seemed advisable to include in this notice information on matters which, although they are not legally related to the subject, inevitably arise for any individual who imports a vehicle previously registered in another Member State.

Moreover, it should be mentioned that several Member States apply restrictions on the import of vehicles originating in third countries, particularly those originating in Japan. Such restrictions, which would be to no avail if they were not also applied to vehicles from other Member States, are not affected by the application of the principles set out in this notice.

⁽¹⁾ To the extent that Member States make such approval a condition of registration.

III. Compatibility with Community law of procedures for the type-approval and registration of imported vehicles

The type-approval and registration in a Member State of a vehicle previously registered in another Member State raises two problems, a distinction between which needs to be drawn:

- the first concerns the examination of the technical characteristics of the vehicle and the relevant documents (infra, A),
- the second concerns the inspection of the physical conditions of the vehicle at the time of importation (infra, B).

Certain procedural guarantees also have to be provided for the person applying to register the vehicle in case registration is refused (infra, C).

A. Examination of the technical characteristics of the vehicle and the relevant documents (type-approval)

Motor vehicles must generally satisfy certain technical requirements that are laid down in the form of mandatory provisions. At the moment, these provisions are largely, but not fully, harmonized at Community level.

The cornerstone of harmonization in this sector is Council Directive 70/156/EEC⁽¹⁾, which provides for a Community type-approval procedure known as 'EEC type-approval' for which the manufacturer or his authorized agent may apply. When it is fully operational, EEC type-approval will mark the completion of the procedure whereby a Member State certifies that a vehicle type satisfies the technical requirements of the separate Directives listed in the EEC type-approval certificate, the model of which is set out in Annex II to Directive 70/156/EEC. In this way, it will be possible for vehicles that satisfy the harmonized technical requirements to be freely put on the road anywhere in the Community with the certificate of conformity issued by the manufacturer or his authorized agent who applied for 'EEC type-approval'.

Pending the adoption of the last three separate Directives (on tyres, weights and dimensions, and safety glass), manufacturers are only able to carry out 'national type-approval' of their products although this does cover some aspects of 'EEC type-approval' (partial EEC type-approval), these varying in number depending upon the vehicle model. In this context, account must be taken of the 'optional' nature of the separate Directives, which means that the Member States are able to maintain or adopt national requirements in addition to the harmonized requirements and in some cases enables manufacturers to decide whether they wish to base their models on the harmonized requirements or the national requirements.

If the application for registration in a Member State is made at a time when the vehicle is already registered in another Member State, the technical characteristics of that vehicle will in principle already have been checked in the other Member State. This check, which is carried out as part of 'national type-approval', is intended to ensure compliance with the technical requirements applicable — either harmonized or national, as the case may be. The outcome of this check is set out in the type conformity certificate issued by the manufacturer or his authorized agent.

However, as the Court stated in its Judgment of 11 June 1987 in Case 406/85 (*Goffette and Gilliard*), the introduction by a Member State of a procedure for the type-approval of vehicles imported from another Member State where they have already undergone type-approval is not in itself incompatible with Articles 30 and 36 of the Treaty, provided that certain conditions are met. Although Member States are entitled, in the absence of full harmonization at Community level, to invoke Article 36 in order to adopt provisions and provide for checks to guarantee road safety, they may only do so in compliance with the conditions laid down by this Article, as interpreted by the Court. In this respect, two aspects of the procedures for the type-approval and registration of imported vehicles deserve special attention:

- the first is a matter of substance since it relates to the question of what technical requirements the imported vehicle is required to satisfy;
- the second is a matter of proof that concerns the documents relating to the technical characteristics of the vehicle.

1. Technical requirements to be satisfied by the imported vehicle

Member States may not make the registration of a vehicle imported from another Member State where it has been previously type-approved and registered conditional upon its conformity with an approved type or upon its strict compliance with requirements in force on their territory. As the Court stated in its Judgment of 28 January 1986 in Case 188/84 (*Commission v. France*), it would be contrary to the principle of proportionality for national regulations to require that imported products literally and exactly meet the technical requirements or characteristics laid down for products manufactured in the Member State in question if the imported products guarantee the same level of safety for users. The Court has consistently held that it is for the national authorities that invoke Article 36 of the Treaty to prove, in each specific case, that a measure that hinders intra-Community trade is necessary for the effective

⁽¹⁾ OJ No L 42, 23. 2. 1970.

protection of an interest referred to by that provision and, in particular, that import of the product concerned would constitute a serious risk to human health and life.

It cannot reasonably be argued that the mere fact that a vehicle has been type-approved in another Member State and possibly, but not necessarily, has certain technical characteristics that differ from those laid down in law in the importing Member State or those of the equivalent type approved in that State constitutes a serious risk to human health and life.

It follows that Member States may not object to the type-approval and registration of a vehicle previously type-approved and registered in another Member State, for reasons relating to the technical characteristics of that vehicle unless safety reasons are involved, in which case they must state them in detail and substantiate them. The fact that a vehicle type-approved and registered in another Member State does not correspond to a type approved in the importing Member State or that its technical characteristics differ from those laid down in law in that State does not of itself constitute adequate grounds under Article 36 of the EEC Treaty for refusing the type-approval and registration of the vehicle concerned.

2. Documents relating to the technical characteristics of the vehicle

In its Judgment of 11 June 1987 in Case 406/85 (*Goffette and Gilliard*), the Court of Justice ruled that, at the present stage in the development of Community law, 'Articles 30 and 36 of the EEC Treaty are to be interpreted as meaning that an approval procedure laid down in a Member State for vehicles imported from another Member State and already approved for use in that State only complies with the Treaty if:

- the testing procedure does not entail unreasonable costs or delays and the public authorities ensure that those conditions are fully met where the manufacturer or his authorized agent has the task of carrying out the necessary checks;
- the importer may, as an alternative to the checking procedure, produce documents issued in the exporting Member State where those documents provide the necessary information based on tests already carried out.'

(a) Alternative

As regards the documentation on the technical characteristics of the vehicle that the applicant is required to produce in support of his application, it follows that Member States must offer the alternative between:

- the production of a document issued by the manufacturer or his authorized agent in the importing Member State which describes the vehicle in terms of the most similar type that has been approved in that State;
- the production of documents (certificate of conformity and the documents to which it refers, registration certificate) issued in the exporting Member State, provided that they contain the information required.

Certain other conditions, as described below, also have to be satisfied in both cases.

(b) Action by the manufacturer or his authorized agent

If the Member States delegate certain public-law functions, such as the issue of documents needed for the type-approval and registration of an imported vehicle, to manufacturers or their authorized agents, they are required to ensure that these persons carry out these functions in a manner compatible with the requirements of the free movement of goods within the Community. In particular, manufacturers or their authorized agents are required to issue the documents requested of them:

- without presentation of the vehicle, since their action concerns the technical characteristics of the vehicle at the time it is first put on the road and not its physical condition at the time of importation;
- without requiring the presentation of commercial documents relating to the vehicle (sales invoice, VAT receipt, etc.);
- at reasonable costs and within reasonable periods of time: according to the Commission, the cost should not under any circumstances exceed 100 ECU and the period should not be more than three weeks.

(c) Acceptance of documents prepared in the exporting Member State

If the documents prepared in the exporting Member State contain the information required for registration in the importing Member State, the latter is required to accept these documents in the form and manner in which they are legally valid in the Member State in which they were prepared. In particular, Member States are not empowered to make the acceptance of documents issued in other Member States conditional upon their being validated or authenticated or on their compliance with a model laid down by the importing Member State (cf. ruling of the Court of 17 June 1987 in Case 154/85 — *Commission v. Italy*).

B. Inspection of the physical condition of the vehicle (roadworthiness tests)

Council Directive 77/143/EEC ⁽¹⁾ lays down various measures for harmonizing the roadworthiness testing of motor vehicles. However, this Directive applies to certain categories of vehicle only and, at the moment, does not cover motor cars (cf., however, the proposal for a Directive in this field ⁽²⁾). At the present state of Community law, Member States are thus at liberty to lay down roadworthiness tests for vehicles not covered by the above Directive, subject to the provisions of the Treaty.

As the Court held in its Judgment of 12 June 1986 in Case 50/85 (*Schlob v. Auto Contrôle Technique*), roadworthiness testing is a formality which makes the registration of imported vehicles more difficult and more expensive and consequently amounts to a measure having an effect equivalent to a quantitative restriction. Nevertheless, Article 36 may justify such a formality on grounds of the protection of human health and life, provided that it is established, (a) that the test at issue is necessary for the attainment of that objective and (b) that it does not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

As far as (a) is concerned, the Court indicated that roadworthiness testing may be regarded as necessary for the protection of human health and life where the vehicle in question has already been put on the road, i. e. if it has previously been registered in the exporting Member State, even if only provisionally. In such cases, roadworthiness testing performs a useful function inasmuch as it makes it possible to check that the vehicle has not been damaged or modified and that it is in a good state of repair.

As far as (b) is concerned, the Court stressed that the roadworthiness testing of imported vehicles cannot be justified under Article 36 if it is established that such testing is not required in the case of vehicles of local origin presented for registration in the same circumstances. If that were the case, it would become apparent that the measure in question was not in fact inspired by a concern for the protection of human health and life but in reality constituted a means of arbitrary discrimination in trade between Member States.

It follows that, at the present state of Community law, Member States may not inspect the physical state of a vehicle previously registered in another Member State for the purpose of registering it unless such an inspection is also called for, in the same circumstances, where the registration of a vehicle previously registered on its territory is changed.

⁽¹⁾ OJ No L 47, 18. 2. 1977.

⁽²⁾ OJ No C 133, 31. 5. 1986, p. 3.

C. Procedural guarantees for the person applying for registration

On a very large number of occasions, the Commission has found that, whatever the grounds for refusing to register a vehicle previously registered in another Member State, these grounds are not always made clear to the person applying for registration. For the person applying for registration, failure to understand the exact problem regarding the registration of the vehicle and, consequently, his inability to do anything about it, constitute a handicap that is at least as great as trying to solve the actual problem.

In this respect, the Commission would draw attention to Article 14 of Directive 70/156/EEC which provides that 'All decisions taken pursuant to the provisions adopted in implementation of this Directive and refusing or withdrawing type approval, or refusing registration or prohibiting sale or use, shall state in detail the reasons on which they are based. A decision shall be notified to the party concerned, who shall at the same time be informed of the remedies available to him under the laws in force in the Member States and of the time limits for the exercise of such remedies'.

This Article is one of the general provisions of Directive 70/156/EEC, the entry into force of which is not affected by the delay in the implementation of 'EEC type-approval'. The Commission therefore considers that the procedural guarantees provided for in that Article should be extended to any person applying for registration, whatever the legal grounds for the registration.

IV. Examples

A number of examples are provided below in order to provide a detailed illustration of how the above principles are to be applied in practice.

1. Mr X, resident in Member State A, goes to Member State B in order to buy a new vehicle. He orders from a dealer established in B a vehicle intended for the market in Member State A. The vehicle is thus supplied to him together with a certificate of conformity with a type that has been approved in Member State A. In this instance the authorities in Member State A are required to register that vehicle under the same conditions as if the vehicle had been bought from a dealer established in Member State A.
2. Mr Y, resident in Member State A, buys, in Member State B, a new vehicle intended for the market in Member State B (i. e. conforming to a type that has been approved in Member State B). The vehicle is registered in B, on a temporary basis ('transit' plate), and imported into A. Mr Y contacts the official representative of the maker of the vehicle for Member State A, and requests from him a certificate of conformity or equivalent document. The manufacturer's representative confirms that the vehicle is

similar to a type that has been approved in A, except for a few details: in particular the vehicle is fitted with a three-way catalytic converter meeting the new European standards, whereas the similar vehicles marketed in A are not fitted with an exhaust system of this type. The manufacturer's representative thus issues a document certifying that the vehicle corresponds to the type that has been approved in A, apart from the small number of points that he mentions. Mr Y submits this document together with his application for registration. Since the points mentioned by the manufacturer's representative do not raise any safety problem, the vehicle must be registered forthwith.

3. Mr Z transfers his domicile from Member State B to Member State A. He therefore requests that his personal vehicle, which had been registered in B for three years, be registered in A. He appends to his application for registration the documents that he has in his possession: certificate of conformity issued in B (and possibly the descriptive note to which it refers) and the certificate of registration in B. The authorities in Member State A confirm that the vehicle at issue differs from the closest type that has been approved in A: different engine capacity (1 100 cc instead of 1 000 cc), four doors instead of two, higher gear ratios. These differences do not raise any safety problem and may therefore not delay registration. On the other hand, the vehicle is not fitted with a rear fog lamp, although that accessory is mandatory in Member State A. Mr Z is notified of this problem, who has a rear fog lamp fitted. The vehicle is resubmitted for registration and must this time be registered without delay.

V. Various matters relating to import of a vehicle previously registered in another Member State

A. In what Member State must a vehicle be registered?

The taxation systems applicable to vehicles still vary considerably from one Community Member State to another. An individual therefore cannot register his vehicle in the Member State of his choice as this would mean that all vehicles would be registered in the Member State with the lowest tax rates.

In principle, everyone has to register his vehicle in the Member State in which he has his normal residence. If the vehicle was acquired or imported under the general conditions of taxation in force on the domestic market of that Member State, it may be temporarily imported into other Member States exempt of the taxes applied by those States under the conditions laid down in Council Directive 83/182/EEC⁽¹⁾.

This Directive defines 'normal residence' as 'the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupa-

tional ties or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living'. Additional, more specific rules are laid down for persons whose occupational ties are situated at a place other than that of their personal ties.

A Member State which grants the temporary duty-free import of a vehicle obviously cannot demand that the vehicle be registered on its territory.

B. What taxes are payable on import of a vehicle?

The answer to this question obviously depends on the circumstances in which the vehicle is being imported.

If the vehicle is being imported in connection with a transfer of normal residence of the vehicle owner, Community law provides for exemption from the taxes payable on the purchase of the vehicle, provided the vehicle was acquired under the general conditions of taxation in force on the domestic market of another Member State and that it has actually been used by the person concerned, in that state, for at least six months (cf. Council Directive 83/183/EEC⁽¹⁾).

If the vehicle was purchased in the exporting Member State with a view to import into and registration in another Member State, it will usually have been exempt from purchase tax in the exporting Member State and will therefore be taxed on import into the importing Member State (cf. Sixth Council Directive 77/388/EEC⁽²⁾). In this case, the vehicle can obviously only be registered temporarily in the exporting Member State ('customs', 'transit' plates, etc.).

In all other cases, and in particular if the vehicle was purchased secondhand, any tax imposed on the vehicle in the importing Member State must take account of the VAT already paid on the vehicle in the exporting Member State so as to avoid double taxation (cf. Commission communication on the decisions of the Court of 5 May 1982 and 21 May 1985 (*Gaston Schul cases*)⁽³⁾ relating to import by an individual of used goods purchased in another Member State from an individual).

The approximation of rates of VAT by reducing the difference between the rates applied by the Member States has been identified as a priority objective by the Commission⁽⁴⁾.

C. How long is temporary registration valid?

It is for the Member State which issues a temporary registration ('customs', 'transit' plates, etc.) to determine the period of validity of the registration, which therefore

⁽¹⁾ OJ No L 105, 23. 4. 1983, p. 64.

⁽²⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽³⁾ OJ No C 13, 21. 1. 1986.

⁽⁴⁾ OJ No C 250, 18. 9. 1987, p. 3.

⁽¹⁾ OJ No L 105, 23. 4. 1983, p. 59.

varies from one Member State to another and according to the registration series concerned. The Commission furthermore considers that the authorities of the importing Member State may not initiate legal proceedings for exceeding the period of validity of a temporary registration if the delay in the final registration of the vehicle is due to them.

D. Is an imported vehicle covered by the manufacturer's guarantee?

Each manufacturer's distribution network outlets normally provide the minimum level of guarantee, free service and service following a recall laid down by the manufacturer, whatever the place of purchase of the vehicle within the common market (cf. Commission Regulation (EEC) No 123/85 on presentation of the guarantee documents signed by a member of the official distribution network (¹)).

(¹) OJ No L 15, 18. 1. 1985, p. 16.

E. What action should be taken if difficulty is encountered in importing or registering a vehicle?

Any person who finds that the principles set out in this notice are not complied with, or who encounters any difficulties in importing, or registering, a vehicle from another Member State, is asked to contact the Commission either directly through the:

Secretariat-General
rue de la Loi, 200
B-1049 Brussels

or through one of its information offices, a list of which is given below.

Furthermore, the principles set out in this notice may be relied upon in all actions brought before any national court, relating to the approval or registration of an imported vehicle. Articles 30 and 36 of the EEC Treaty are provisions of the Treaty with direct effect and which confer rights on individuals which national courts are obliged to uphold.

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