OPINION OF ADVOCATE GENERAL TESAURO

delivered on 20 February 1997 *

1. The questions referred to the Court of Justice for a preliminary ruling by the Länsrätten (County Administrative Court), Stockholm, concern the interpretation of Council Directive 70/156/EEC of 6 February 1990 on the approximation of the laws of the Member States relating to type-approval of motor vehicles and their trailers, [1] and of Articles 30 and 36 of the Treaty.

More specifically, the national court seeks to ascertain whether a provision of national law under which vehicles, although covered by a valid Community type-approval certificate, cannot be registered unless a national certificate is produced attesting to their conformity with national requirements concerning exhaust emissions is compatible with Directive 70/156/EEC and, if it is, whether it none the less constitutes a measure having equivalent effect to a quantitative restriction.

The relevant Community and national provisions

2. It is appropriate to summarize the provisions of both national and Community law relevant to this case for a better understanding of the meaning of the questions referred to the Court for a preliminary ruling.

Community law

3. The Community rules on motor vehicles consist of a framework directive and fully 45 'separate' directives. Those directives, which undertook a comprehensive harmonization of the technical and operating rules in the sector, contain a set of provisions enabling the Community type-approval system for M_1 vehicles [2] which include the vehicle at issue in this dispute, to be brought into force. The application of this system, which was left to the choice of individual manufacturers during the period 1 January 1993 to 31 December 1995, became mandatory from 1 January 1996. As of that date, therefore, Member States *are required* to apply and comply with the Community type-approval system.

* Original language: Italian.

1 — OJ, English Special Edition 1970 (I), p. 96.

2 — These are vehicles used for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat.

The framework directive for the sector is, specifically, Directive 70/156/EEC, as amended by Directive 92/53/EEC. [3] It lays down the procedure for Community type-approval of motor vehicles and their trailers built in one or more stages, and of systems, components and separate technical units intended for use on such vehicles and trailers (Article 1). Applications for Community type-approval are to be submitted in one Member State only by the manufacturer to the approval authority competent to grant approval and must be accompanied by the specific information required; until the date on which approval is either issued or refused, the information package in respect of each separate directive is to be made available to the approval authority (Article 3(1)). The authorities of the Member State to which the application is submitted are to draw up a type-approval certificate attesting that the vehicle type conforms to the particulars in the information folder and meets the technical requirements of the relevant separate directives (Article 4(1)). Consequently, Community type-approval is evidence that the vehicle type concerned complies with all the technical requirements laid down by each separate directive.

In accordance with Article 6(1), the certificate of conformity is to be issued by the manufacturer for each vehicle in the series and attests that the vehicle conforms to the approved vehicle type. Article 7(1), the relevant provision in this case, provides that '[E]ach Member State shall register, permit the sale or entry into service of new vehicles on grounds relating to their construction and functioning if, and only if, they are accompanied by a valid certificate of conformity'. Article 7(3) then provides that '[I]f a Member State finds that vehicles, components or separate technical units of a particular type are a serious risk to road safety although they are accompanied by a valid certificate of conformity or are properly marked, then that State may, for a maximum period of six months, refuse to register such vehicles or may prohibit the sale or entry into service in its territory of such vehicles, components or separate technical units. It shall forthwith notify the other Member States and the Commission thereof, stating the reasons on which its decision is based. If the Member State which granted type-approval disputes the risks to road safety notified to it the Member States concerned shall endeavour to settle the dispute. The Commission shall be kept informed and shall, where necessary, hold appropriate consultations for the purpose of reaching a settlement'. [4]

Where a vehicle does not conform to a an approved type, it is for the Member State which granted type-approval to take the necessary measures which may extend to withdrawal of type-approval (Article 11(2)). The other Member States, where they have doubts as to the conformity of a vehicle to the approved type, may only request the

3 — OJ 1992 L 225, p. 1.

4 — A similar procedure is laid down by Article 4(1) in connection with the grant of type-approval.

Member State which granted approval to verify that conformity (Article 11(3)).

4. Council Directive 70/220/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to measures to be taken against air pollution by gases from positive-ignition engines of motor vehicles [5] is also relevant to this case. That 'separate' directive provides *inter alia* that 'no Member State may refuse to grant EEC type approval or national type approval of a vehicle on grounds relating to air pollution by gases from positive-ignition engines of motor vehicles' where that vehicle satisfies certain requirements (Article 2). The same directive, as amended by Directive 91/441/EEC, [6] provides moreover that 'the components liable to affect tailpipe and evaporative emissions must be so designed, constructed and assembled as to enable the vehicle, in normal use, to comply with the requirements of this directive despite the vibrations to which they may be subjected. The technical measures taken by the manufacturer must be such as to ensure that the tailpipe and evaporative emissions are effectively limited, pursuant to this directive, throughout the normal life of the vehicle and under normal conditions of use. For tailpipe emissions, these provisions are deemed to be met if the provisions of sections 5.3.1.4 and 7.1.1.1 are respectively complied with' (section 5.1.1 of Annex I).

5 — OJ, English Special Edition 1970 (I), p. 171.

6 — OJ 1991 L 242, p. 1.

The national legislation

5. According to Point 9 of the first subparagraph of Section 12 of the 'Bilregisterkungörelsen' (Vehicle Registration Order), registration is conditional upon production of a national certificate of conformity in addition to the Community certificate of conformity. That certificate, issued by the Swedish importer, must attest that the engine family to which the vehicle in question belongs has obtained approval certifying that the vehicle satisfies the conditions laid down by the Swedish rules on exhaust emissions (Bilavgasförordningen (Vehicle Emission Ordinance ...), 'BAF'). When manufacturers bring out a new model of car they must submit an application for a national certificate which covers an 'engine family', that is to say a category of vehicles with a similar engine (Article 2 of the BAF). Manufacturers themselves choose the engine family in which the new vehicle model is to be classified. The requirements laid down by the BAF are held to be satisfied when the engine family to which the vehicle in question belongs has been approved by an authority within the European Economic Area (Section 6(2) of the BAF).

Where a vehicle has been issued with a certificate of Community type-approval, the Swedish rules therefore merely require that certificate to be converted into a national certificate, in the sense that there are no additional tests to check whether the vehicle actually satisfies the relevant domestic exhaust emission pollution rules. The national certificate is, however, issued only on production of specific information, which broadly coincides with that already supplied by the manufacturer to obtain Community type-approval, and on payment of SKR 32 330 a year for each engine family, [7] to which must be added SKR 25 per vehicle sold, and SKR 75, again per vehicle and paid to the Environmental Protection Agency in order to finance the Swedish procedure for type-approval concerning exhaust emissions.

6. It would seem that the requirement of a national certificate is linked to the Swedish system of vehicle control and manufacturers' liability. Any manufacturer proposing to market cars in Sweden must undertake to repair without charge vehicles which are found in an official test [8] no longer to comply with the exhaust emission rules. That undertaking does not however apply to private vehicles more than five years old or which have travelled more than 80 000 kilometres. Where there is a serious fault, the manufacturer may be required to change some parts of the antipollution system at its own expense or even, in extreme cases, to recall all vehicles of the same type from the market ('recall procedure'). In order to ensure that those undertakings are properly complied with, the Swedish rules require manufacturers of vehicles produced abroad to appoint an official representative in Sweden.

In short, the purpose of the Swedish national certificates and the relevant register is, precisely, to classify cars within an engine family, thus putting at the disposal of the competent authorities the information concerning defective vehicles — from the point of view of their conformity with the exhaust emission rules — belonging to one engine family which they consider necessary if manufacturers are to incur liability.

The facts and the questions

7. By decision of 24 May 1995 the Stockholm County Administrative Board refused VAG Sverige AB's application for the registration of an Audi A 4. The ground for the

7 — The certificate, which is valid for an engine family, must be applied for each year.

8 — In addition to an annual technical test, mandatory for vehicles more than three years old, vehicles may have to undergo a much more thorough test of the quality of their anti-pollution system carried out by the Swedish Environmental Protection Agency. The agency periodically carries out checks on a sample of vehicles from one engine family in respect of the requirements laid down by Community law. If, as a result of the test, the vehicles involved are found to be faulty, the manufacturer concerned is required to take the necessary measures in relation to all vehicles belonging to that engine family.

refusal was that, although the vehicle in question had been issued with a valid Community certificate of conformity, the national certificate provided for by Point 9 of the first subparagraph of Section 12, cited above, namely the certificate attesting that the engine family to which the vehicle in question belonged conformed to the exhaust emission requirements laid down by the BAF, had not been produced.

VAG Sverige AB appealed against that decision to the Länsrätten Stockholm, maintaining *inter alia* that the interpretation given by the County Administrative Board was incompatible with Community law, in particular with Directive 70/156/EEC, on the procedure for type-approval of vehicles.

8. Considering that the decision in the case depended on interpretation of Community law, the national court decided to refer the following questions to the Court for a preliminary ruling:

'1. Is the requirement of a (Swedish) certificate under Section 12(1)(9) of the Bilregisterkungörelsen compatible with the provisions of Directive 70/156/EEC, as worded in its latest version?

2. If so, is the requirement in question compatible with Article 30 of the Treaty of Rome, or does it constitute a "measure having equivalent effect"?

3. If the answer to Question 1 is "Yes" and the answer to Question 2 is that the measure must be regarded as a "measure having equivalent effect", can the insistence by Sweden that such a certificate should be produced be maintained on the basis of Article 36?'

Question 1

9. By its first question, the national court is asking therefore whether the relevant provisions of Directive 70/156/EEC, in the version currently in force, preclude national legislation under which vehicles, even though they have been issued with a valid Community type-approval certificate, cannot be registered unless a national certificate is produced attesting that they conform to an engine family which has been approved as satisfying the national requirements concerning exhaust emissions.

Accordingly, the question to be resolved is whether the type-approval procedure laid down in Directive 70/156/EEC — including the certificate of conformity issued by the manufacturer — still permits Member States to make vehicle registration subject to national procedures and/or certificates.

10. I shall begin by noting that the relevant Community legislation could not be clearer:

(a) the Member States are to register new vehicles or permit their sale or entry into service 'if, and only if, they are accompanied by a valid certificate of conformity' (Article 7(1));

(b) Member States may refuse to register or may prohibit the sale or entry into service of vehicles accompanied by a valid certificate of conformity only where the vehicles 'are a serious risk to road safety' and in any event for a period of no longer than six months during which, if the State which granted type-approval disputes the risk to road safety, a settlement must be reached under the supervision of the Commission (Article 7(3)).

In short, the possibility of refusing to register a vehicle accompanied by a valid Community certificate of conformity is limited to a period of six months and is permitted only on grounds relating to road safety; moreover, the Member State adopting such a decision must forthwith notify the other Member States and the Commission. Save in those circumstances, Directive 70/156/EEC does not provide for any possibility of refusing to register vehicles covered by a valid Community certificate of conformity, still less of making registration subject to the satisfaction of additional requirements or the production of additional evidence. Consequently, Article 7(1) must be interpreted as meaning that a vehicle accompanied by the certificate in question *must* be registered.

11. Let me point out that, in the case before the Court, registration was refused precisely because no national certificate was produced attesting that the vehicle concerned complied with the requirements of a national law on exhaust emissions. We are therefore confronted by a requirement — what is more, systematically imposed — which does not stem from reasons specific to road safety and which therefore cannot in any way fall within the scope of Article 7(3).

That is sufficient basis for the conclusion that Directive 70/156/EEC precludes application of national legislation such as that under consideration. I would also observe that the 'separate' Directive 70/220/EEC on exhaust emissions adds nothing in this context, since the Community type-approval procedure as provided for by Directive 70/156/EEC demands that all the technical requirements, including those relating to exhaust emissions, laid down in the separate directives should be satisfied. Furthermore, as the Swedish Government itself stated during the proceedings, the relevant national rules are no more stringent than the Community rules, but

identical in substance; indeed, the national certificate of conformity is not made subject to any additional tests.

12. In reality, the national legislation in issue instead meets the need to ensure that manufacturers incur liability, in particular by operating a recall procedure. That need cannot, however, alter the terms of the problem, since it is beyond dispute that, save in the circumstances and within the narrow limits laid down in Article 7(3), Directive 70/156/EEC does not admit the possibility of refusing or even delaying registration of vehicles accompanied by a valid Community certificate of conformity.

I would next observe that the requirement in question is already safeguarded by Community legislation, at least in so far as it answers the need, as explained by the Swedish Government, to take action in respect of vehicles already in circulation but which prove, on undergoing one of the Environmental Protection Agency's periodic tests, no longer to comply with the relevant exhaust emission rules. [9] Indeed, Directive 70/156/EEC is certainly not incomplete on this point: Article 11 takes account of the situation in which the vehicle in question is found not to conform to the approved type after its release into circulation by providing that it is for the Member State which granted type-approval to undertake the necessary checks in the circumstances and to take the necessary measures which may even extend to withdrawal of type-approval.

13. To sum up, it does not appear to me that the need to ensure that manufacturers incur liability, even if it is linked — albeit indirectly — to environmental concerns, can be considered in isolation in the context of a harmonized system such as that under consideration. Moreover, I fail to see how that system could result in a denial of the liability of the manufacturer, who is most certainly identifiable from the certificate of conformity and who may well incur liability — we may reasonably assume — quite apart from any undertaking to that effect.

14. Nor do I consider (it remains to be said) that the Court should take account of the Swedish Government's argument that at the time of accession the Community granted Sweden the right to maintain the rules in question. On this point, suffice it to note that the declaration relied upon by the Swedish Government merely states that the relevant directives 'do not preclude maintaining in force the recall system in force in Sweden, provided that it is operated in compliance with Community directives on liability and safety. The Community intends to clarify the

9 — Here, let me point out that the relevant technical exhaust emission rules contained in Directive 70/220/EEC, as amended by Directive 91/441/EEC, are deemed to have been complied with, thus leading to the granting of type-approval, having regard also, and specifically, to the normal life expectancy of the vehicle under normal conditions of use.

matter in discussions with Swedish experts'. [10]

That declaration, far from permitting the national legislation under discussion to remain in force, does no more therefore than leave open the possibility of negotiations on that point. In any event, it suffices to note here that the Court has consistently held that declarations recorded in minutes are of limited value, since they cannot be used 'for the purpose of interpreting a provision of secondary legislation where (...) no reference is made to the content of the declaration in the wording of the provision in question. The document therefore has no legal significance'. [11]

15. Article 112 of the Act of Accession expressly provides for a transitional period of four years from the date of accession in order to adjust national legislation to the measures of Community law listed in detail in Annex XII to the Act of Accession. The annex, however, does not mention either Directive 70/156/EEC or Directive 70/220/EEC, which means that Sweden did not even avail itself of a transitional period as regards those directives and that it was accordingly required to comply with the relevant existing Community law from the moment of its accession.

Questions 2 and 3

16. In the light of the conclusion I have reached with regard to the first question, there is plainly no need to reply to the second and third. However, it is strikingly obvious that the requirement of a national certificate of conformity constitutes a measure having equivalent effect to a quantitative restriction, as prohibited by Article 30 of the Treaty. Even the Swedish Government, which cited the judgment in *Keck and Mithouard* [12] during the hearing — albeit without a great deal of conviction and in any event without good grounds — does not deny it. Indeed, it would be hard to dispute the infringement of Article 30, given that the provision in question (a) requires additional documents to be produced and an official representative to be present in Sweden and (b) entails, in addition to the payment of not unsubstantial sums, a delay of about eight weeks in registration.

In those circumstances, the fact that there are no further checks and that in substance the Community certificate is simply transformed into a national one can only be regarded as wholly irrelevant. I would point out that the case-law on this subject is unambiguous, in the sense that the issuing of licences, even if prompt and automatic, is contrary to Article 30: one of the fundamental freedoms guaranteed by the Treaty is not to be made subject

10 — Declaration of 27 May 1993, recorded in the minutes of the Fifth Ministerial Conference of 21 December 1993.

11 — Case C-292/89 *Antonissen* [1991] ECR I-745, paragraph 18.

12 — Joined Cases C-276/91 and C-268/91 [1993] ECR I-6097.

to consent on the part of the administrative authorities, regardless of whether a greater or lesser degree of discretion is involved. [13]

17. Let me add that, contrary to what the Swedish Government maintains, it is impossible in the present case to point to any exception which might justify the measure in question. On this point, let it suffice to recall that recourse to Article 36 'is no longer possible where Community directives provide for harmonization of the measures necessary to achieve the specific objective which would be furthered by reliance on this provision'. [14]

It is scarcely necessary to point out, in this case, that the relevant Community legislation is comprehensive. As we have already seen, this is borne out by the Swedish legislation itself which does not subject the issuing of the certificate in question to any further test designed to check compliance with the anti-pollution rules.

Conclusion

18. In the light of the foregoing considerations, I suggest that the Court should reply as follows to the questions referred by the Länsrätten i Stockholms Län:

(1) Council Directive 70/156/EEC is to be construed as precluding national legislation under which motor vehicles, although covered by a valid Community type-approval certificate, cannot be registered unless a national certificate is produced attesting to their conformity with national requirements concerning exhaust emissions;

(2) In light of the answer given to the first question, there is no need to reply to the second and third questions.

13 — See, for example, Case 124/81 *Commission* v *United Kingdom* [1983] ECR 203, paragraph 18.

14 — Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, paragraph 18.