JUDGMENT OF THE COURT (Fifth Chamber)
29 May 1997 *

In Case C-329/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Länsrätten i Stockholms län (Sweden) for a preliminary ruling in the administrative proceedings brought before that court by

VAG Sverige AB

on the interpretation of Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers (OJ, English Special Edition 1970 (I), p. 96) and Articles 30 and 36 of the EC Treaty,

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, C. Gulmann, D. A. O. Edward, J.-P. Puissochet and M. Wathelet (Rapporteur), Judges,

Advocate General: G. Tesauro,
Registrar: H. von Holstein, Deputy Registrar,

* Language of the case: Swedish.

after considering the written observations submitted on behalf of:

— VAG Sverige AB, by Ulf Roos, Ingenjör, and Carl Riben, Bolagsjurist, assisted by Francis Herbert, of the Brussels Bar,

— the Swedish Government, by Lotty Nordling, Rättschef in the Department of External Trade in the Ministry of Foreign Affairs, acting as Agent,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Finance, acting as Agent,

— the French Government, by Catherine de Salins, Head of Subdirectorate in the Legal Directorate of the Ministry of Foreign Affairs, and Régine Loosli-Surrans, Chargée de Mission in the same Directorate, acting as Agents,

— the Commission of the European Communities, by Michel Nolin and Knut Simonsson, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of VAG Sverige AB, represented by Francis Herbert, the Swedish Government, represented by Lotty Nordling, the German Government, represented by Bernd Kloke, Oberregierungsrat in the Federal Ministry of Finance, acting as Agent, the French Government, represented by Régine Loosli-Surrans, and the Commission, represented by Michel Nolin and Knut Simonsson, at the hearing on 23 January 1997,

after hearing the Opinion of the Advocate General at the sitting on 20 February 1997,

gives the following

Judgment

1 By order of 13 October 1995, received at the Court on 19 October 1995, the Länsrätten i Stockholms län (Stockholm County Administrative Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions concerning Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers (OJ, English Special Edition 1970 (I), p. 96, 'the Directive' or 'the framework directive') and Articles 30 and 36 of the EC Treaty.

2 Those questions were raised during administrative proceedings brought by VAG Sverige AB, general agent in Sweden for Audi and Volkswagen cars, against the refusal of the Länsstyrelsen i Stockholms län (Stockholm County Administrative Board) to register a new Audi A 4.

3 Community rules on motor vehicles consist, on the one hand, of a framework directive, namely Directive 70/156, which introduces a procedure for Community type-approval and, on the other, of more than 40 so-called 'separate' directives harmonizing the technical rules. They permit manufacturers of M_1 category vehicles, that is to say vehicles used for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat, to obtain from the authorities of a Member State an approval valid in all the Member States ('Community type-approval') for a model ('vehicle type') if it complies with the specifications of the separate directives. Until 31 December 1995 manufacturers could choose either the Community or the national type-approval system. Since then, the Community type-approval system has been mandatory and it replaces national procedures and technical rules.

4 In accordance with Directive 70/156, as most recently amended at the material time by Council Directive 92/53/EEC of 18 June 1992 (OJ 1992 L 225, p. 1), applications for Community type-approval are to be submitted by the manufacturer to the approval authority of a Member State (Article 3(1)). No application in respect of one type of vehicle, system, component or separate technical unit may be submitted to more than one Member State (Article 3(5)). Applications are to be accompanied by an 'information folder' and, where appropriate, the approval certificates already obtained for each of the separate directives (Article 3(1) and (2)).

5 The information package in respect of each separate directive is to be made available to the approval authority of that Member State throughout the period up to the date when the approval is either issued or refused (Article 3(1)). The authority is to complete an approval certificate stating that the vehicle type in question conforms to the particulars in the information folder and meets the technical requirements of all the relevant separate directives (Article 4(1) and (3)). The completed certificate is then delivered to the applicant (Article 4(3)).

6 On that basis, the manufacturer is to issue a certificate of conformity for each vehicle in the series, certifying that the vehicle conforms to the approved vehicle type (Article 6(1)).

7 Article 7(1) provides that 'Each 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'.

8 However, Article 7(3) adds that 'If 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'.

9 On 24 May 1995 the Stockholm County Administrative Board refused to register a new Audi A 4. Since the manufacturer had opted for the Community type-approval system, the vehicle had, however, been duly issued with a Community certificate of conformity. The Board gave as grounds for its refusal the fact that the national certificate of conformity declaring that the motor family to which the vehicle in question belonged satisfied the conditions specified by the 'Bilavgasförordningen' (Swedish Vehicle Emission Ordinance, 'the BAF') was defective. 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.

10 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 not to comply with the exhaust emission rules. However, that undertaking does not affect private vehicles which are more than five years old or 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. In extreme cases, it can be constrained to recall all vehicles of the same type. In order to ensure that those undertakings are performed, the Swedish rules require manufacturers of vehicles produced abroad to appoint an official representative in Sweden.

11 The purpose of the Swedish national certificate and the relevant register is to classify cars within an engine family, thus putting at the disposal of the competent authorities the information concerning defective vehicles which is necessary if the manufacturer is to incur liability.

12 When manufacturers bring out a new model of car they must submit an application for a national certificate; the application 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.

13 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). Accordingly, where a vehicle type has been given Community type-approval, the Swedish authorities do not carry out an additional test to check whether it actually satisfies the domestic exhaust emission rules.

14 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 various fees which amount to approximately SKR 200 for each vehicle sold.

15 Before the Länsrätten i Stockholms län, VAG Sverige AB claimed that the Stockholm County Administrative Board's interpretation of the Swedish rules was incompatible with Community law and, in particular, with the framework directive.

16 Those were the circumstances in which the Länsrätten i Stockholms län referred 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

17 By its first question the national court is asking essentially whether Directive 70/156 must be interpreted as precluding national legislation under which motor vehicles 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.

18 It is clear from Article 7(1) and (3) of Directive 70/156 that a Member State may refuse to register a vehicle with a valid Community type-approval certificate only if it finds that the vehicle is a serious risk to road safety. Moreover, this refusal may

last no longer than six months and the Member State taking such a decision must forthwith notify the other Member States and the Commission.

19 Save in those highly specific circumstances, Directive 70/156 does not provide for any possibility of refusing to register new vehicles covered by a valid Community type-approval certificate.

20 It must be held that national rules such as those at issue in the main proceedings do not satisfy the conditions governing derogation laid down in Article 7(3). Refusal to register under the national rules is linked to considerations of protection of the environment and not to reasons relating to road safety.

21 The Swedish Government points out, however, that, during the negotiations concerning the accession of the Kingdom of Sweden to the European Union, the representatives of the European Union stated that in the absence of any Community provisions on manufacturers' liability, the Kingdom of Sweden could maintain its system if it complied with the directives concerning product liability and safety.

22 It must be noted, however, that nothing in the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21) exempts the Kingdom of Sweden from compliance with Directive 70/156 or postpones its application in this regard. Annex XII, which details the transitional measures relating to the environment referred to in Article 112 of the Act of Accession, does not in fact mention the Directive.

23 Moreover, it should be borne in mind that declarations recorded in minutes are of limited value, since they cannot be used for the purposes of interpreting a provision of Community law where no reference is made to the content of the declaration in the wording of the provision in question and the declaration therefore has no legal significance (Case C-292/89 *Antonissen* [1991] ECR I-745, paragraph 18).

24 In the light of the foregoing considerations, the answer to the first question must be that Directive 70/156 must be interpreted as precluding national legislation under which motor vehicles 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.

Questions 2 and 3 (Articles 30 and 36 of the Treaty)

25 Having regard to the answer to the first question, there is no need to reply to the second and third questions.

Costs

26 The costs incurred by the Swedish, German and French Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Länsrätten i Stockholms län by order of 13 October 1995, hereby rules:

Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers, as amended by Council Directive 92/53/EEC of 18 June 1992, must be interpreted as precluding national legislation under which motor vehicles 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.

Moitinho de Almeida Gulmann Edward

Puissochet Wathelet

Delivered in open court in Luxembourg on 29 May 1997.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber