OPINION OF ADVOCATE GENERAL JÄÄSKINEN
delivered on 16 September 2010[1]

1. By its question referred for a preliminary ruling,[2] the Rechtbank van Eerste Aanleg te Dendermonde (Court of First Instance, Dendermonde) (Belgium), seeks an interpretation of Article 1(1)(d) of Directive 2002/24/EC of the European Parliament and of the Council of 18 March 2002 relating to the type-approval of two- or three-wheel motor vehicles and repealing Council Directive 92/61/EEC.[3]

2. More specifically, the Court is asked to rule on national anti-tampering measures for two- or three-wheel vehicles. The national law at issue prohibits, inter alia, the marketing and use of equipment designed to increase the engine power and/or speed of mopeds. Consequently, the Court is being called on to examine whether and, where necessary, to what extent equipment for tuning a moped beyond the technical specifications referred to in the European Union legislation may benefit from the free movement of goods guaranteed under European Union law.

3. For the purposes of this opinion, I should point out that the definition of 'moped' within the meaning of Directive 2002/24 is an autonomous, unequivocal concept of European Union law. According to the secondary legislation, any vehicle presented as a moped which does not meet this definition is therefore a 'non-moped'.

I — Legal framework

A — *European Union law*

4. Directive 2002/24 repealed Council Directive 92/61/EEC of 30 June 1992 relating to the type-approval of two- or three-wheel motor vehicles.[4]

1 — Original language: French.

2 — Since the dispute in the main proceedings concerns the application of a national law adopted in 1985, references to the provisions of the EC Treaty follow the numbering applicable before the entry into force of the Treaty on the Functioning of the European Union ('TFEU').

3 — OJ 2002 L 124, p. 1.

4 — OJ 1992 L 225, p. 72.

5. As stated in the sixth recital in the preamble to Directive 2002/24, the procedure for Community type-approval of two- or three-wheel motor vehicles is intended to enable each Member State to confirm that each type of vehicle has undergone the checks provided for in the separate directives and has been issued with a type-approval certificate.

6. Article 1 of Directive 2002/24 is worded as follows:

'1. This Directive applies to all two- or three-wheel motor vehicles, whether twin-wheeled or otherwise, intended to travel on the road, and to the components or separate technical units of such vehicles.

This Directive does not apply to the following vehicles:

…;

(d) vehicles intended for use in competition, on roads or in off-road conditions;

…;

nor to the components or technical units thereof unless they are intended to be fitted to vehicles covered by this Directive.

…'

7. Article 4 of Directive 2002/24 provides that:

'1. Each Member State shall grant type-approval to all types of vehicle, systems, separate technical units or components if these meet the following conditions:

…

(b) the system, separate technical unit or component meets the technical requirements of the relevant separate directive and is as described by the manufacturer in accordance with the data provided for in the exhaustive list set out in Annex I;

…'

8. Under Article 15 of that directive, which appears in Chapter III, entitled 'Conditions attached to free movement, provisional arrangements, exemptions and alternative procedures':

'1. Member States shall not prohibit the placing on the market, sale, entry into service or use of new vehicles complying with this Directive. Only vehicles complying with this Directive may be presented for initial registration.

2. Member States shall not prohibit the placing on the market, sale or use of new separate

technical units or new components complying with this Directive. Only separate technical units and components complying with this Directive may be placed on the market and sold for the first time for use in the Member States.

3. By way of derogation from paragraphs 1 and 2:

(a) Member States may exempt vehicles, systems, separate technical units and components intended:

(i) either for production in small series of up to a maximum of 200 units a year per type of vehicle, per system, per component or per separate technical unit;

(ii) or for the armed forces, law enforcement agencies, civil defence services, fire brigades or public-works bodies, from compliance with any of the requirements of the separate directives.

The other Member States shall be informed of these exemptions within one month of their being granted. Within three months these Member States shall decide whether they accept the type-approval for vehicles to be registered within their territory. The certificate of such type-approval may not bear the heading "EC type-approval certificate";

…

4. This Directive shall not affect the right of the Member States to lay down — in accordance with the Treaty — the requirements which they consider necessary to ensure the protection of users during the use of the vehicles in question, provided that this does not entail modification to the vehicles.'

9. Part 2 of Annex II to Directive 2002/24 refers, for certain technical characteristics of the systems, components and separate technical units covered by it, to separate directives which lay down the technical requirements to qualify for the type-approval procedure.

10. As provided in recital 3 in the preamble to Directive 97/24/EC of the European Parliament and of the Council of 17 June 1997

on certain components and characteristics of two- or three-wheel motor vehicles: [5]

'the drawing-up of harmonised requirements concerning those components and characteristics of two- and three-wheel motor vehicles is necessary in order to enable the type-approval and component type-approval procedures covered by Council Directive 92/61/EEC of 30 June 1992 relating to the type-approval of two- or three-wheel vehicles to be implemented in respect of each type of the aforesaid vehicles.'

11. Chapter 7 of the Annex to Directive 97/24, entitled 'Anti-tampering measures for two-wheel mopeds and motorcycles', includes the following definitions in section 1:

'1. For the purposes of this Chapter:

1.1. "Anti-tampering measures for two-wheel mopeds and motorcycles" means a series of technical requirements and specifications the aim of which is to prevent, as far as possible, unauthorised modifications which may prejudice safety, in particular by increasing vehicle performance, and damage the environment.

...

1.3.1. Category A vehicles — mopeds.

...

1.4. "Unauthorised modification" means a modification which is not permitted by this Chapter.'

12. Chapter 7, section 2 of the Annex to Directive 97/24 includes, inter alia, general provisions regarding the interchangeability of non-identical parts between component-type-approved vehicles. Chapter 7, section 2.1.1.(b) states that the maximum design speed or the maximum net engine power of the relevant category may not be exceeded. In particular, for the low-performance mopeds as referred to in the Note in Annex I to Directive 92/61, the maximum design speed is 25 km/h.

13. Chapter 7, section 3 of the Annex to Directive 97/24 regarding specific requirements for vehicles in categories A and B provides that:

'The requirements in this section are not mandatory unless a single requirement or combination of requirements proves necessary to

5 — OJ 1997 L 226, p. 1.

impede tampering resulting in the vehicle's maximum design speed increasing by more than 5 km/h in the case of category A vehicles … In no case may the maximum design speed or maximum net engine power of the relevant category be exceeded.'

B — *National law*

14. Article 1(5) of the Law of 21 June 1985 on the technical requirements with which any vehicle that is used for transport by land must comply, as well as its components and safety equipment ('the Law on technical requirements') [6] provides:

'The manufacture, import, possession with a view to sale, offer for sale, sale, and distribution free of charge of equipment designed to increase the engine power and/or speed of mopeds is prohibited, as is the offer of assistance with or provision of advice on the installation of such equipment.'

6 — *Moniteur belge* of 13 August 1985, p. 11647.

II — Background to the proceedings and the question referred for a preliminary ruling

15. Mr Lahousse is the manager of the company Lavichy BVBA (referred to jointly as 'the defendants'), the business objects of which are 'the running of a bicycle shop and garage, including the import and export, purchase and sale, hire, maintenance and repair of all new and second-hand bicycles, mopeds …, accessories and spare parts'. The order for reference indicates that the defendants had in their possession and sold tuning-up equipment, that they allowed mopeds to be tuned up and, moreover, provided advice in that regard.

16. Following an investigation, a coordinated search and seizure of evidence, the defendants were found guilty by the Politierechtbank (Local Criminal Court), Sint-Niklaas, of having contravened Article 1(5) of the Law on technical requirements, in that they made, imported, had in their possession with a view to sale, offered for sale, sold or distributed free of charge equipment designed to increase the engine power and/or speed of mopeds, and offered assistance in that regard.

17. The defendants appealed against that judgment before the referring court.

18. The referring court, taking the view that there was a potential contradiction between Article 1(5) of the Law on technical requirements and Directive 2002/24, decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Directive 2002/24, in particular Article 1(1)(d) thereof (according to which the directive does not apply to vehicles intended for use in competition, on roads or in off-road conditions), be interpreted as allowing the Member States to extend its scope so as to render it applicable to all traffic by land (that is to say, also to the use of two- or three-wheel motor vehicles off-road and/or on private land), without granting the exception in respect of vehicles intended for use in competition on roads (racing) or for vehicles in off-road conditions?'

III — The proceedings before the Court

19. The reference for a preliminary ruling was lodged at the Court Registry on 22 April 2009.

20. Written observations were submitted by Mr Lahousse, the Belgian Government, the United Kingdom Government and the European Commission.

21. In a letter dated 17 May 2010, the Court Registrar asked the Belgian Government and the Commission to answer a question relating to Chapter 7 of the Annex to Directive 97/24, and those parties submitted their answers on 1 June 2010.

IV — General assessment

A — *Initial observations on the question referred for a preliminary ruling*

22. By its question, the referring court is asking whether a Member State may extend the scope of Directive 2002/24 so as to render it applicable to vehicles which are expressly excluded from it. Extending the scope of Directive 2002/24 to vehicles intended for use in competition on roads or in off-road conditions would lead to those vehicles being regarded as coming under the harmonised type-approval procedure.

23. However, the national court does not specify whether the equipment or vehicles at issue in the main proceedings are intended for competition or for customers who wish to increase the engine power and/or speed of mopeds in order that they may travel on

the road. However, this seems to me to be a specific question of fact which cannot affect the admissibility of the reference for a preliminary ruling.

24. Moreover, the national court states that it has asked the Court for a ruling to clarify the concept of 'transport by land'. However, this concept is peculiar to the Belgian Law on technical requirements, which it is not for the Court to interpret. I should point out that Directive 2002/24 applies only to vehicles intended to travel 'on the road' and to the components or separate technical units of such vehicles.

25. Consequently, it is necessary to examine whether a law such as the one at issue in the main proceedings comes within the scope of Directive 2002/24, and if not, which of the rules of European Union law the Member State should observe.

26. In addition, in the light of the Belgian Government's line of argument that Article 1(5) of the Law on technical requirements was introduced in order to ensure better protection of users, thus responding to the dangers linked to increases in the speed and engine power of mopeds, reference must also be made to Chapter 7 of the Annex to Directive 97/24, which governs, inter alia, the issue of anti-tampering measures for mopeds.

27. As regards the temporal aspect of the case referred to the Court, it is apparent from the order for reference that the charges relate to the period from 1 January 2002 to 7 December 2005 inclusive.

28. In so far as that period predated the adoption of Directive 2002/24, it is common ground that Directive 92/61 was applicable to the facts in the main proceedings. Since the concepts relevant to this case have remained fundamentally the same in those two directives, I consider that the interpretation provided in relation to Directive 2002/24 applies *mutatis mutandis* to the interpretation of Directive 92/61.

B — *The provisions governing the two- or three-wheel vehicle sector*

1. Objectives and level of harmonisation of Directive 2002/24

29. Within the context of the adoption of measures intended to ensure the operation

of the internal market, a series of directives governs the issue of the requirements which must be satisfied by the components and characteristics of two- or three-wheel motor vehicles. A framework directive [7] and several technical directives [8] have been adopted in that regard.

30. According to the eighth recital in the preamble to Directive 92/61, since the harmonised technical requirements applying to the various components and characteristics of the vehicles were brought together in separate directives, the monitoring of compliance with those requirements and recognition by each Member State of the checks carried out by other Member States has required the implementation of a Community approval procedure for each type of vehicle.

31. Directive 2002/24 is designed to harmonise the procedure for type-approval of two- or three-wheel motor vehicles covered by the Directive. It also applies to components and separate technical units complying with the technical requirements set out in the separate directives. Annex I to Directive 2002/24 contains an exhaustive list of the requirements applicable for the purpose of vehicle type-approval. Heading No 19 in Annex I refers to Directive 97/24, which covers anti-tampering measures for mopeds and motorcycles.

32. The purpose of the type-approval procedure for the vehicles coming within the scope of Directive 2002/24 is to ensure the proper functioning of the single market through the introduction of uniform requirements with a view to obtaining vehicle type-approval as well as the certification of its components and characteristics. [9]

33. The abovementioned procedure enables each Member State to confirm that each type of vehicle has undergone the checks provided for in the separate directives and has been issued with a type-approval certificate. It also enables manufacturers to prepare a certificate of conformity for all vehicles conforming to the type that has been approved. When a vehicle is accompanied by this certificate, it may be placed on the market, sold and registered for use throughout the European Union.

34. Following the establishment of harmonised type-approval in the European Union, a citizen of the Union may buy a new vehicle in any Member State and, should the need arise, register it without individual approval in any

7 — Directive 92/61, repealed by Directive 2002/24.

8 — Between 1992 and 2009, 37 directives governing two- or three-wheel vehicles and quadricycles were adopted. See the web site of the European Commission's Directorate General for Enterprise and Industry: http://ec.europa.eu/enterprise/sectors/automotive/documents/directives/motorbikes/index_en.htm.

9 — Proposal for a European Parliament and Council Directive amending Council Directive 92/61/EEC relating to the type-approval of two- or three-wheel motor vehicles, COM(1999) 276 final (OJ 1999 C 307 E, p. 1).

other Member State. Only vehicles, components and separate technical units complying with the requirements of European Union law may be placed on the market and sold for the first time for use in the Member States.

35. A result of type-approval is that a Member State cannot prohibit the placing on the market, entry into service or use of vehicles and components complying with Directive 2002/24. Consequently, the type-approval procedure does not apply to single vehicles as referred to in this directive. [10]

36. Directive 92/61, now repealed, included an indication of the nature of the harmonisation required in the sector in question. According to the last recital in the preamble to Directive 92/61, road safety and environmental and consumer protection require design and manufacturing requirements based on high standards. Since those requirements were intended to ensure market unity, it was necessary for this directive to be based on total harmonisation.

37. Since no similar indication was reproduced in Directive 2002/24, it is justified to raise the question of the extent of harmonisation provided for by Directive 2002/24.

38. In that regard, I note that the proposal for a Directive amending Directive 92/61 expressly pointed out that the Community type-approval procedure for two- and three-wheel motor vehicles had been designed within a system of total harmonisation. [11] According to the opinion of the Economic and Social Committee, the aim of adopting that proposal was to update and clarify Directive 92/61. [12]

39. In addition, I note that the proposal was based, inter alia, on the need to clarify the requirements, in particular as regards the length of validity of the national approvals, and to introduce new requirements on, for example, the numbering of type-approval certificates, special provisions for end-of-series vehicles and new technologies,

10 — It is true that Directive 2002/24 does not define the concept of 'single vehicle'. However, in the light of the aim and content of that directive, the concept of 'single vehicle' should be interpreted as contrasting with vehicles covered by the type-approval procedure and referring to vehicles whose characteristics do not allow them to be included in the type-approval system provided for by the directive.

11 — COM(1999) 276 final.

12 — Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive amending Council Directive 92/61/EEC relating to the type-approval of two- or three-wheel motor vehicles' **(OJ 1999 C 368, p. 1).**

following the example of the requirements already in force for other motor vehicles. [13]

40. Consequently, I find that Directive 2002/24 continues the effort towards exhaustive harmonisation with regard to the vehicles coming within its scope of application. On the other hand, it goes without saying that it does not harmonise exhaustively the legal framework applicable to all two- or three-wheel vehicles, given, inter alia, the exclusion of certain types of vehicles from its scope of application. [14]

41. Thus, when a vehicle, component or separate technical unit comes within the scope of Directive 2002/24, it should be examined solely in the light of that directive. Once a matter has been harmonised at European Union level, the national measures relating thereto must be assessed in the light of the provisions of that harmonising measure and not those of the Treaty. [15]

42. I do, however, consider that the Member States enjoy considerable leeway when adopting legislation concerning vehicles expressly excluded from the scope of Directive 2002/24, such as vehicles intended for use in competition or vehicles that are not intended to travel on the road.

2. Scope of Directive 2002/24

43. Under Article 1 of Directive 2002/24, that directive applies to all two- or three-wheel vehicles, whether twin-wheeled or otherwise, intended to travel on the road, and to the components or separate technical units of such vehicles.

44. The vehicles listed in Article 1(1)(a) to (h), which include vehicles intended for use in competition, on roads or in off-road conditions, are excluded from the scope of

13 — See recital 4 in the preamble to Directive 2002/24.

14 — See Article 15(4) of Directive 2002/24, which shows that the conditions of use of the vehicles in question are not harmonised.

15 — See Case 227/82 *van Bennekom* [1983] ECR 3883, paragraph 35; Case C-150/88 *Eau de Cologne & Parfümerie-Fabrik 4711* [1989] ECR 3891, paragraph 28; Case C-37/92 *Vanacker and Lesage* [1993] ECR I-4947, paragraph 9; Case C-324/99 *DaimlerChrysler* [2001] ECR I-9897, paragraph 32; Joined Cases C-211/03, C-299/03 and C-316/03 to C-318/03 *HLH Warenvertriebs and Orthica* [2005] ECR I-5141, paragraphs 58 and 59; and Case C-257/06 *Roby Profumi* [2008] ECR I-189, paragraph 14.

Directive 2002/24. Similarly, the general definition in Article 1 of Directive 2002/24 excludes *a contrario* from the Directive's scope vehicles which are not intended to travel on the road.

45. In respect of components or separate technical units of vehicles considered not to come within the scope of Directive 2002/24, a distinction should be drawn between two scenarios.

46. Firstly, Directive 2002/24 does not apply to components or units which are part of vehicles not covered by that directive. Secondly, however, if a component of a vehicle excluded from the scope of Directive 2002/24 is intended to be fitted to vehicles covered by that directive, such a component or separate technical unit does come within the scope of Directive 2002/24.

47. The question therefore arises of how to interpret the concept of 'intended use', that is to say, whether the applicability of Directive 2002/24 may be contingent on the use to which the component in question may be put.

48. In that regard, I consider that the concept of 'intended use' of a vehicle or a vehicle component must be understood in terms of the industrial purpose of that good. By 'industrial purpose', I mean the use envisaged by the manufacturer as a benchmark in the technical design of a vehicle, determining, for example, the technical standards with which the vehicle must comply. The intended use is therefore defined by the manufacturer during the process of design or manufacture. [16]

49. The opposite interpretation would lead to a paradoxical situation in which the legislation would have to take into account any possible, hypothetical use that a user is likely to make of a vehicle component or even of technical components which are not intended by the manufacturer for certain vehicles but have properties allowing for interchangeability. [17]

50. Consequently, the applicability of Directive 2002/24 cannot depend on a subjective element, whether on the use — or even the multiple uses — to which a component could be put or on the technical possibility of fitting a part to a vehicle other than the one for which the component is formally intended.

16 — Under the technical harmonisation system, manufacturers may obtain approval for a vehicle type in one Member State provided it meets the harmonised technical requirements, and then market it throughout the EU with no need for further tests or checks. Registration must be granted upon simple presentation of a European certificate of conformity. See: http://ec.europa.eu/enterprise/sectors/automotive/technical-harmonisation/index_en.htm.

17 — For example, two-stroke engine parts can be used on light machinery, such as gardening machines, or on boats.

51. Lastly, the exclusion of single vehicles from the scope of Directive 2002/24 seems to me particularly relevant for the purposes of the present proceedings.

52. In that regard, I note that, in the context of this Opinion, the concept of 'non-moped' covers both a moped which previously complied with Directive 2002/24 but has been tampered with — for example, by being tuned up — so that it no longer complies with the requirements of that directive, and a two- or three-wheel vehicle which is presented as a moped but, from the outset, has not met the definition of a moped laid down in Directive 2002/24.

53. In the light of the wording of Article 1(1) in fine of Directive 2002/24, the view may reasonably be taken that a tuned-up moped is not covered by the Directive's provisions on type-approval and on free movement, firstly, because it is a non-moped and, secondly, because it is a single vehicle.

54. However, as Article 1 in fine of Directive 2002/24 shows, Member States granting type-approval of single vehicles are to accept any type-approval of components and separate technical units granted under that directive and not under the relevant national provisions.

C — *Legislation providing for anti-tampering measures for vehicles*

1. Preliminary observations

55. The entry into force of Directive 97/24 allowed the type-approval procedure to be applied in full. Therefore it is one of the separate directives for the purposes of the type-approval procedure established by Directive 2002/24. [18]

56. In that regard, it is important to note that the respective scopes of Directive 2002/24 and Directive 97/24 overlap but are not identical.

57. Article 1 of Directive 97/24 provides that that directive is to apply to the components listed in that article, for all types of vehicles as defined in Article 1 of Directive 92/61. The

18 — Directive 97/24 was adopted in order to enable the implementation of Directive 92/61. See recital 3 in the preamble to Directive 2002/24.

latter provision was reproduced in almost identical terms in Directive 2002/24, which merely added one new exclusion category relating to the approval of single vehicles. [19]

braking system, tyres and lighting and light-signalling devices.

2. Anti-tampering measures in secondary legislation

60. In addition, it is apparent from recital 11 in the preamble to Directive 97/24 that restrictions on tampering with certain types of two- or three-wheel vehicle are based on safety or environmental requirements, and that, if they are not to prove an obstacle to owner servicing and maintenance, such restrictions should be strictly limited to tampering which significantly modifies the vehicle's performance and pollutant and noise emissions.

58. The issue of anti-tampering measures for vehicles is an integral part of the legislation relating to mopeds and motorcycles.

61. Under Article 1(2)(a) of Directive 2002/24, mopeds are two-wheel or three-wheel vehicles with a maximum design speed of not more than 45 km/h. They are characterised by their cylinder capacity and power, which differ according to the number of wheels.

59. The Explanatory Memorandum to Directive 97/24 shows that the measures put forward in order to restrict to a minimum the scope for users to tamper with mopeds and motorcycles in order to boost their performance responds to a need which is being felt more and more throughout the Member States as a result of the increasing spread of this phenomenon, which undermines road safety. It is necessary, with regard to mopeds, to put a stop to young users altering the engine characteristics of such vehicles in order to increase their performance to such a level that — in certain cases — this outstrips the performance of, in particular, the vehicle's

62. Tuning up a moped consists of increasing various aspects of its performance, in particular its engine power. However, the moped's technical braking and road-holding properties are not adapted to such a scenario, which can increase the risk of an accident.

63. Reports on anti-tampering measures for two- or three-wheel vehicles show that these

19 — See COM(1999) 276 final.

issues are determined by social and psychological factors, linked to road safety and environmental protection. [20]

64. Chapter 7 of the Annex to Directive 97/24 governs anti-tampering measures for two-wheel mopeds and motorcycles. The general provisions of Chapter 7 relate mainly to the issue of interchangeability of non-identical parts between component-type-approved vehicles. [21]

65. It is important to note that Chapter 7 of the Annex to Directive 97/24 provides that in no case may the maximum design speed or the maximum net engine power of the relevant category be exceeded. That confirms that the 'industrial purpose' approach proposed above in regard to Directive 2002/24 also applies in that context.

66. It is also clear from Chapter 7 that the specific requirements in Directive 97/24 are mandatory where a single requirement or combination of requirements proves necessary in order to prevent tampering resulting in an increase in the vehicle's speed or power.

67. Under Annex I to Directive 2002/24, which establishes the exhaustive list of the requirements applicable for the purpose of vehicle type-approval, information relating to anti-tampering measures is among the data whose conformity with requirements laid down in Community legislation has to be checked. Under Annex II to Directive 2002/24, the information to be supplied on the vehicle to be type-approved, with regard to existing system, separate technical unit or component approvals, includes information relating to anti-tampering measures for the vehicles in question.

68. At the national level, anti-tampering legislation for mopeds is one of a number of measures intended to ensure road safety, and is found in several Member States of the European Union. [22] The practice of tuning-up is monitored or measures are taken to

20 — 'Study on anti-tampering devices relating to two- or three-wheeled motor vehicles', by order of the Commission, Contract No FIF 20020691, Final Report, 18 December 2003, p. 31.

21 — See Chapter 7, section 2.1.1. of Directive 97/24.

22 — As regards the French Republic, for example, see Article L. 321-1 of the Code de la route (Highway Code). French law provides for a road safety certificate in order to train young moped drivers in the essential rules of road traffic safety: see Colin, F., 'Le brevet de sécurité routière', *Droit Administratif*, 2006, No 8. In Finland, it is an offence for a tuned-up moped to travel on the road (see Article 96(I)(5) of the Ajoneuvolaki (Law on vehicles)). In addition, the owner must pay a higher vehicle tax and higher mandatory insurance premiums on a light motorcycle which has been put on the road without being registered.

counter it because of the great risks and harm it entails both for the driver, putting his life in danger due to travel at speeds for which the vehicle is not designed, and for other road users.

D — *The legal consequences of tampering with a vehicle*

69. The effects of tampering can change a moped into a 'non-moped', that is to say, into a vehicle which does not meet the definition of a moped set out in Directive 2002/24. Tampering can convert a moped intended to travel normally on the road into a vehicle for competition on roads or in off-road conditions.

70. In the system provided for by Directive 2002/24, applications for type-approval shall, under Article 3 of that directive, be submitted by the manufacturer to the approval authority of a Member State so that vehicles can enjoy free movement within the internal market. That article provides that applications for a given type of vehicle, system, separate technical unit or component may be submitted to one Member State only. Under Article 9(1) of Directive 2002/24, it is the manufacturer who is responsible for the manufacture of each vehicle or the production of each system, separate technical unit or component in compliance with the approved type. [23]

71. Accordingly, a vehicle does not come within the scope of Directive 2002/24 simply because it fulfils the conditions provided for by Article 1 of that Directive. [24] That directive is intended to establish a system of vehicle type-approval and mutual recognition, as regards the conformity of vehicles and their components produced according to the requirements of Directive 2002/24 and of the separate directives. Free movement established through total harmonisation is applicable only to vehicles whose 'industrial purpose', as it has been defined and is guaranteed by the manufacturer, is to meet the requirements of European Union law.

72. Consequently, when a tuned-up moped is not covered by any of the definitions given by Directive 2002/24, it is a 'non-moped'

23 — Under Article 8 of Directive 2002/24, any vehicle produced in conformity with the type which has been type-approved is to bear a type-approval mark composed in accordance with section 1, section 3 and section 4 of the type-approval number, set out in Annex V, Part A, and any separate technical unit and any component produced in conformity with the type having been type-approved shall include, if the relevant separate directive so provides, a type-approval mark which meets the requirements set out in Annex V, Part B.

24 — Thus, for example, a vehicle that would fully meet all the technical requirements laid down by European Union law does not qualify for the system created by Directive 2002/24 if it has not been submitted for the prescribed type-approval.

and therefore does not qualify for the system created by Directive 2002/24, even though it comes within the material scope of that directive. The same is true for its components or separate technical units, with the exception of those intended to be fitted to vehicles governed by Directive 2002/24.

73. While I recognise that vehicles intended for use in competition have, as a category, been excluded from the scope of Directive 2002/24, nevertheless I must point out that the concept of 'intended use', viewed in terms of the suggested industrial purpose, presumes that a vehicle has been designed by the manufacturer as suitable to take part in competitions.

74. When a moped is tampered with using a tuning kit, it is converted into a single vehicle, albeit one that will actually be able to take part in competitions. Consequently, on the one hand, a tuned-up vehicle cannot be regarded as 'intended for use in competition', since its purpose was defined differently by the manufacturer. Before being tuned up, it was not intended for use in competition. On the other hand, after it has been tuned up, the vehicle will be a single vehicle which does not qualify for type-approval.

75. If, from the industrial point of view, a tuning kit is not intended for dual use,[25] I conclude that it is intended either to increase the power of mopeds intended for use in competition or to convert mopeds into 'non-mopeds'. In both cases, the equipment is outside the system of type-approval and mutual recognition provided for by Directive 2002/24, since those tuning kits are not intended to be fitted to vehicles governed by Directive 2002/24.

76. Lastly, Directive 2002/24 does not generally apply to single vehicles; therefore a tuning kit which is used to tamper with a moped cannot come within the scope of Directive 2002/24 and does not qualify for the system of mutual recognition established by that directive.

25 — If the same tuning kit is intended for use with mopeds and, for example, with light motorcycles, then it obviously comes within the scope of Directive 2002/24. However, the provisions of Chapter 7 of the Annex to Directive 97/24 seem to be intended to prevent such a scenario from occurring.

V — Extending the scope of Directive 2002/24

77. By its question, the national court is essentially asking whether it is permissible for a Member State to extend the scope of Directive 2002/24, in particular to vehicles mentioned in Article 1(1)(d) of the directive, namely those intended for use in competition, on roads or in off-road conditions. In so doing, the Member State would, as regards those vehicles, be extending the scope of Directive 2002/24, which relates to travel on the road, to all traffic by land.

78. I must admit that the scope of the question is not clear to me. It could relate to the application of the concept of 'moped' as defined under Directive 2002/24 and of the resulting technical requirements for vehicles intended for use in competition. The question could also be interpreted as meaning that the referring court is asking whether a Member State can unilaterally extend the system of type-approval and mutual recognition created by Directive 2002/24 to vehicles that do not fall under its scope.

79. According to the Commission, Directive 2002/24, in particular Article 1(1)(d) thereof, must be interpreted as allowing Member States to extend its scope to vehicles intended for use in competition, on roads or in off-road conditions.

80. In the opinion of the United Kingdom Government, Member States are entitled to lay down technical requirements in respect of the vehicles referred to in Article 1(1)(a) to (h) so long as those requirements comply with Community law, including Article 28 EC and other provisions protecting the free movement of goods such as Regulation (EC) No 764/2008 [26] and Directive 98/34/EC. [27]

81. Restrictions on the legal effects of a directive may take the form of an exception or an exemption. This is a question of not applying a rule laid down by the directive to a given case, even though the latter would be covered by that rule.

82. In the present case, like the United Kingdom Government, I consider that Article 1(1)(d) of Directive 2002/24 is not an exception to the requirements of that directive.

26 — Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC (OJ 2008 L 218, p. 21).

27 — Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37).

83. That article does not provide that Member States must exempt competition and off-road vehicles from the requirements contained in the directive. Exclusion from the scope of the directive leaves Member States the power to legislate in the area in question, always in accordance with the rules of the Treaty, of course.

84. Directive 2002/24 is designed to establish a procedure for type-approval of two- or three-wheel motor vehicles, of components and of separate technical units produced in conformity with the technical requirements set out in separate directives. The legal consequence of that procedure is the free movement of those goods, based on the obligation of mutual recognition of conformity with the technical requirements, which are totally harmonised. As indicated in Article 15(1) of Directive 2002/24, only vehicles, separate technical units or components complying with that directive qualify for the system established by it.

85. Nevertheless I note that, in this instance, the issue of tuning up mopeds remains at the heart of the case pending before the referring court.

86. As I have already explained above with regard to anti-tampering measures for mopeds, the provisions of Directive 2002/24 should be read together with Chapter 7 of the Annex to Directive 97/24.

87. Consequently, since vehicles and components are covered by Directive 2002/24, the provisions relating to anti-tampering measures in Directive 97/24 are applicable. Yet this is generally not the case for vehicles intended for use in competition.

88. In that regard, it is important to note that extending the scope of Directive 2002/24 implies extending the application of the type-approval procedure. The question of extending anti-tampering measures for vehicles, which seems to be at the heart of the referring court's concerns, is a separate issue.

89. However, when it comes to rendering the type-approval procedure applicable to vehicles intended for use in competition, on roads or in off-road conditions, I consider that the Member State is empowered to take that action, subject to compliance with the objective of Directive 2002/24.

90. As Article 2(7) of Directive 2002/24 shows, the type-approval procedure is a measure whereby a Member State certifies that a type of vehicle, system, separate

technical unit or component satisfies the technical requirements set out in that directive or the separate directives and the checks on the correctness of the manufacturer's data, as provided for in the exhaustive list set out in Annex I to that directive. [28]

91. Moreover, under Article 6 of the same directive, the competent authority in each Member State is to forward to those of the other Member States a copy of the type-approval certificate, together with the annexes for each type of vehicle that they type-approve or refuse to type-approve. In addition, under Article 4(6) of that directive, if a Member State refuses, for reasons connected with serious risks to road safety, to grant type-approval to a vehicle, system, separate technical unit or component, it must inform the other Member States and the Commission thereof.

92. Given the risk of confusion and legal uncertainty resulting from the application of that procedure to vehicles falling outside the scope of Directive 2002/24, I consider that the Member State concerned must indicate unequivocally that the certificate involved is not a type-approval certificate as provided for by Directive 2002/24 and that it does not produce the legal effects provided for by that directive. In that regard, I wish to point out that Article 15(3) of that directive requires Member States to avoid any confusion likely to arise from the individual exemptions provided for by that article. The same principle must apply to any extension of the scope of type-approval.

93. If the measures adopted by the Member State are covered by Directive 2002/24, the Member State is in a system of interdependence which is based on trust and collaboration between the competent national authorities and on the technical specifications established in the separate directives. [29]

28 — Under Article 4 of Directive 2002/24, each Member State is to grant type-approval to all types of vehicle, or component type-approval to separate technical units or components, if they meet the following conditions. Firstly, the type of vehicle must meet the technical requirements of the separate directives and be as described by the manufacturer in accordance with the data provided for in the exhaustive list set out in Annex I to the directive. Secondly, the system (brakes, emission control equipment, etc.), the separate technical unit (a device such as an exhaust silencer) or the component (a device such as a lamp) must meet the technical requirements of the relevant separate directive and be as described by the manufacturer in accordance with the data provided for in the exhaustive list set out in Annex I to Directive 2002/24.

29 — See, in that regard, Case C-470/03 *AGM-COS.MET* [2007] ECR I-2749, paragraphs 61 to 64, concerning Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery (OJ 1998 L 207, p. 1). In addition, the 'E' marking indicates that a product has been type-approved to travel on roads open to traffic. That marking is followed by a number indicating the State which has type-approved the product. Type-approval is generally linked to a European standard specific to the product in question.

94. Consequently, it seems to me that the application of the type-approval procedure by a Member State to a type of vehicle falling outside the scope of Directive 2002/24 can be legally envisaged only on condition that it complies with the obligation of transparency inherent in both the type-approval procedure and the general principle of legal certainty. The Member State may therefore apply the directive to situations which do not fall within its scope as a national standard, with the proviso that no impression must be given that the legal effects of the national standard at issue have been extended to European Union level.

95. Lastly, there is nothing to prevent a Member State drawing inspiration from the rules laid down in Directive 2002/24 in order to regulate the situation of vehicles and components which are excluded from the scope of the directive, subject to compliance with the rules of the Treaty.

VI — Analysis of the wording of the national legislation in the light of European Union law

96. In the light of the objective of the Law on technical requirements, the Court put the following question to the Belgian Government and to the Commission:

'Does Article 1(5) of the Law of 21 June 1985 transpose, and to what extent, the provisions of Chapter 7 of the Annex to Directive 97/24, entitled "Anti-tampering measures for two-wheel mopeds and motorcycles", in the version applicable to the facts in the main proceedings?'

97. In its answer, the Belgian Government observed that the provisions of Chapter 7 of the Annex to Directive 97/24 were incorporated into the Royal Decree of 8 November 1998. [30] Article 1(5) of the Law on technical requirements, on the other hand, came into force before then — to be precise, on 1 July 1995. However, since the scope of the Law on technical requirements is much broader, Article 1(5) has remained in force.

98. According to the Commission, Article 1(5) of the Law on technical requirements cannot be viewed as a transposition of Directive 97/24.

30 — Arrêté royal du 8 novembre 1998 modifiant l'arrêté royal du 4 août 1996 portant exécution des directives des Communautés européennes relatives à la réception des véhicules à moteur à deux ou trois roues, leurs composants et entités techniques ainsi que leurs accessoires de sécurité (Decree amending the Royal Decree of 4 August 1996 implementing the European Community directives relating to type-approval of two- or three-wheel motor vehicles, their components, separate technical units and safety equipment).

99. As to the relationship between Directive 2002/24 and the legislation at issue in the main proceedings, the Belgian Government, referring to Article 15 of Directive 2002/24, submits that the prohibition laid down in Article 1(5) of the Law on technical requirements was imposed in order to ensure better protection of users. It suggests that the Court regard Article 1(5) of the Law on technical requirements as consistent with Directive 2002/24.

100. The Belgian Government adds that vehicles which, after manufacture, are equipped by the seller, buyer or user with components designed to increase the engine power and/or speed are often not (or no longer) suited to the modifications made, with the result that they represent a potential danger to the user.

101. In that regard, I observe, firstly, that Article 1(5) of the Law on technical requirements prohibits the manufacture, import, possession and sale of all equipment making it possible to increase the engine power and/or speed of mopeds, as well as the offer of assistance with or provision of advice on the installation of such equipment.

102. The objective of Article 1(5) of the Law on technical requirements appears to be prohibit tampering with the nature of mopeds by prohibiting the marketing and use of parts which can be used for that purpose. [31] From this point of view, the aim of this legislation coincides with the scope of Directive 2002/24.

103. Only a vehicle which fulfils the criteria set out in Article 1(2) of Directive 2002/24 is considered to be a moped within the meaning of that directive.

104. In prohibiting all equipment which is 'designed to' [32] increase the power or speed of mopeds, the Belgian legislation appears to be to the same effect as Directive 2002/24, which, in my view, uses the industrial purpose to determine the 'intended use' of a vehicle, a component or a separate technical unit.

105. However, I also note that the Law on technical requirements governs a much broader set of issues than that covered by Directive 2002/24. The applicability of that directive is limited by the requirement that the vehicle be 'intended to travel on the road'. As both the referring court and the Belgian Government have indicated, the Law on technical requirements governs the requirements

31 — It seems to me that the possibility of a prohibition on the provision of assistance with or advice on tuning-up is not covered by the reference for a preliminary ruling.

32 — And not 'whose effect is to'.

with which any vehicle that is used for transport by land must comply, and the concept of transport by land encompasses much more than the concept of road transport.

106. Secondly, as regards anti-tampering measures for mopeds, I note the Belgian Government's argument that the measures provided for in Chapter 7 of the Annex to Directive 97/24 are twofold. Chapter 7 includes general provisions on the interchangeability of non-identical parts between component-type-approved vehicles (sections 2.1 to 2.4) and also imposes specific requirements on vehicle manufacturers to prevent tampering with the maximum speed of those vehicles by introducing a series of design requirements (sections 3.1 to 3.10).

107. Yet Directive 97/24 does not provide for measures on the installation of parts designed to increase the engine power or speed and do not come from the original manufacturer, and this differs from the objective seemingly pursued by the Law on technical requirements. Moreover, according to the Belgian Government, Directive 97/24 in part duplicates Article 1(5) of the Law on technical requirements.

108. Even though Directive 97/24 was transposed after the Law on technical requirements was adopted, I consider that Article 1(5) of that law seems to meet the objective pursued by Chapter 7 of the Annex to Directive 97/24 concerning measures designed to restrict tampering with mopeds, which come under Directive 2002/24.

109. It follows that, in so far as the scope of the Law on technical requirements coincides with the scope of Chapter 7 of the Annex to Directive 97/24 and both relate to vehicles coming under Directive 2002/24, such as mopeds, those directives do not preclude the legislation at issue.

110. Consequently, the prohibition on marketing equipment 'designed' to increase the power or speed of mopeds which falls within the restrictions laid down in Chapter 7 of the Annex to Directive 97/24 — namely, a prohibition limited to tampering which significantly modifies the vehicle's performance and pollutant and noise emissions — is compatible with that directive. I should add that the law at issue does not require that the modifications be made to vehicles qualifying for European Union technical harmonisation. On the contrary, it prohibits tampering intended to modify the design of a vehicle as designed by the manufacturer. The law therefore complies with the requirement laid

down in Article 15(4) of Directive 2002/24 that conditions for use imposed by the Member States cannot entail modification to vehicles.

111. However, since the prohibition laid down by the Law on technical requirements lies to a great extent outside the scope of Directive 2002/24 and Directive 97/24, it is appropriate to provide the national court with some guidance under Articles 28 EC and 30 EC (now Articles 34 TFEU and 36 TFEU), whilst addressing the issue of vehicles intended for use in competition.

112. As the Commission has stated, the directives at issue do not totally harmonise the two- or three-wheel vehicle sector, since they do not apply to all two- or three-wheel vehicles, in particular, not to vehicles intended for use in competition.

113. In that regard, it must be observed that, in proceedings under Article 234 EC, which is based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court. However, in order to give the national court a useful answer, the Court may, in a spirit of cooperation with the national court, provide it with all the guidance that it deems necessary. [33]

114. As I have already indicated, subject to compliance with the provisions of the Treaty, the Member States enjoy considerable leeway as regards legislation on vehicles intended for use in competition, which are expressly excluded from the scope of Directive 2002/24.

115. In addition, I think that European Union law leaves the Member States wide discretion to determine whether or not to permit and, where relevant, in what conditions, the organisation of moped and/or motorcycle competitions. It is common knowledge that even perfectly organised motor-vehicle competitions seriously endanger the life and health of participants, notably in comparison with any other sport.

116. The United Kingdom Government points out that, since vehicles intended for competition or for use in off-road conditions fall outside the scope of Directive 2002/24, it follows that that directive does not require Member States to enact any legislation in respect of those vehicles.

33 — See, inter alia, Case C-433/05 *Sandström* [2010] ECR I-2885, paragraph 35.

117. According to the United Kingdom Government, the Member States are entitled to lay down technical requirements in respect of the vehicles referred to in Article 1(1)(a) to (h) of Directive 2002/24, so long as those requirements comply with European Union law, including, in particular, Article 28 EC.

118. The documents in the present case show that the prohibition at issue is equally applicable to domestic goods and to goods imported from other Member States.

119. Moreover, it cannot be disputed that, by generally and absolutely prohibiting, throughout Belgium, the manufacture, import, possession, offer for sale, sale, and distribution of equipment designed to increase the engine power and/or speed of mopeds, the national legislation at issue may impede the free movement of goods.

120. However, such a prohibition may be justified in the light of Article 30 EC or in order to meet imperative requirements as referred to in the case-law, subject to the proviso that the national legislation at issue must be appropriate for securing the attainment of the objective pursued and not go beyond what is necessary in order to attain it. [34]

121. In my view, the secondary legislation of the European Union holds that tuning up mopeds is incompatible with road safety, the protection of users and environmental protection. It is apparent from the national legislation at issue that equipment used to tune up mopeds intended to travel on the road cannot enjoy free movement within the internal market. Consequently, the Member States may restrict the placing on the market, sale, entry into service or use of kits for tuning up mopeds intended for use in competition, if those kits are technically interchangeable with those for tuning up mopeds intended to travel on the road.

122. In the event that the tuning kits do not meet that interchangeability condition and if the national rules at issue have had the effect of preventing users of components or separate technical units from using them in accordance with their intended use or have had the effect of severely limiting their use, which it is for the referring court to ascertain, such rules impede the access of those goods to the domestic market in question and therefore, subject to justification under Article 30 EC or imperative requirements in the public

34 — See Case C-110/05 *Commission* v *Italy* [2009] ECR I-519, paragraph 59.

interest, constitute a measure having equivalent effect to quantitative restrictions on imports, which is prohibited by Article 28 EC.

123. In that regard, I would point out that the free movement of goods, as far as motor vehicles and their components within the European Union are concerned, has not been achieved by direct application of Treaty articles, but following a long process of harmonising technical legislation, in the light of the need to protect the life and health of users of such goods, as well as of road safety and the environment. European integration in this matter is therefore based on the premiss that any barriers to trade within the Community can be justified under Article 30 EC.[35] Consequently, the factors which justified the adoption of the European Union's secondary legislation in the motor vehicle sector seem to me to justify a general prohibition, such as that provided for by the Law on technical requirements, even where it applies to a kit for tuning up mopeds allegedly intended for use in competition.

VII — Conclusion

124. I propose that the Court answer the question referred by the Rechtbank van Eerste Aanleg te Dendermonde as follows:

'(1) A Member State may apply Directive 2002/24/EC of the European Parliament and of the Council of 18 March 2002 relating to the type-approval of two- or three-wheel motor vehicles and repealing Council Directive 92/61/EEC or

35 — See the second and fourth recitals in the preamble to Directive 92/61, now repealed.

national rules with similar content, in compliance with the rules of the EC Treaty, in order to govern vehicles and components which are excluded from the scope of that directive, both with regard to the vehicle type-approval procedure and with regard to the technical requirements applicable to vehicles intended to travel off-road and those intended for use in competition on roads or in off-road conditions, subject to compliance with the obligation for transparency integral to both the type-approval procedure and the general principle of legal certainty.

(2) In so far as a national law, such as the one at issue in the main proceedings, goes beyond the anti-tampering measures for mopeds provided for by Directive 97/24/EC of the European Parliament and of the Council of 17 June 1997 on certain components and characteristics of two- or three-wheel motor vehicles, it comes within the scope of Articles 28 EC and 30 EC. It constitutes a restriction which is justified in the light of those articles even if it applies to equipment designed to increase the engine power and/or speed of mopeds intended for use in competition on roads or in off-road conditions.'