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REPORT

"HARMONISATION OF NATIONAL LEGISLATION WITH THE *ACQUIS COMMUNAUTAIRE*"

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1. The aim of this lecture/workshop

This lecture/workshop has the aim of explaining what is required from national legislators (either Parliament or Government) when harmonizing domestic legislation with the legal norms of the EU legal order. In the first part, I shall give short overview of what does the EU legal order (or *acquis communautaire*) refers to. Thus, we shall talk about how the EU legal norms are created, what is their legal nature, and what do they require from Member States legislators. The requirements stemming from EU legal norms for national legislator are different depending on which type of EU norms is at issue. As the most complicated task is the correct transposition of Directives, we shall look more closely into this type of EU legal instrument. In the workshop part, we shall look into one Directive, and you will be asked to identify the provisions that leave choice to a national legislator, and make such choices. Then, we shall look into a case decided by the European Court of Justice, in which the Court interpreted the directive at issue. Doing this, we shall discuss the importance of case law for proper harmonization with the EU law.

The legal obligation to harmonize domestic law with EU law exists, of course, only for legislators in the Member States of the European Union. However, there are other countries that have interest in harmonizing their legislation with that existing in the EU. The reasons could be different: the aspiration to become a Member State in the future or simply the realization that harmonized legal system is beneficial for trade and other trans-frontier economic activities, or for attracting foreign investments. Whereas for the first group of non Member States, there is a kind of political obligation to harmonize, as harmonized legal order represents a condition for membership in the EU, the latter group entertains the harmonization exercise entirely voluntary. This has important consequences for the task of domestic legislators. While the Member States' and candidate countries legislators must bring domestic law in complete conformity with the EU law, the countries that harmonize their laws voluntarily have much wider choice, as they may domesticate certain EU solutions while not harmonizing with other parts of EU law. In this workshop I will explain which harmonization requirements were imposed on legislators in EU Member States. The legislators from the countries not aspiring to the EU membership have to take into consideration that for them, the room of manoeuvre is much wider.

2. National legislator in the EU legal order

The task of domestic legislator differs depending on what type of EU legal norms domestic norms are to be adjusted to. Thus, when explaining the harmonization requirements, it is first necessary to explain different types of EU legal norms.

The legal norms pertaining to the EU legal order are systematized in different ways by different authors, depending on the criterion used. All these systematizations were developed for easier explanation of EU law, and none of them is either correct or incorrect. This makes me free to choose adequate systematization for the purposes of this workshop.

Thus, I will divide all EU law into primary and secondary.

2.1. Primary EU Law

Primary law encompasses Founding Treaties and general (unwritten) principles of law.

One of the reasons to call these norms primary comes from the fact that they are formative for the EU legal order. They have created it, and they govern its nature (including its effects in the Member States). The second reason for calling these norms primary is hierarchical. Namely, all other norms which come into being in the EU owe their validity to primary norms. Thus, in order to be considered EU norms, all other norms need to have a legal basis in the primary Treaty norms. Likewise, all other EU norms need to be in conformity with primary norms to be legally

valid norms.

2.1.1. Founding Treaties today (after coming into force of the Lisbon Treaty) are the following: Treaty on European Union (TEU), Treaty on the Functioning of the European Union (ToFEU), and the Euratom Treaty that was not included under the new common structure created by the Lisbon Treaty, but continues being a separate Treaty. Treaties, and all their amendments, are negotiated by Member States. In order for them to enter into force and become legally binding each Member State needs to ratify them according to the procedure envisaged by its own Constitution. Thus, the masters of the primary Treaty law are States.

2.1.2. General principles of EU law are cognizable through the case law of the European Court of Justice (ECJ). It is possible to think of them as an unwritten part of the Founding Treaties, or as something existing in parallel, but this is, for the purposes of their practical effects and meaning irrelevant. An important body of general principles – fundamental human rights recognized in the EU legal order – was codified and formally given legally binding force by the latest (Lisbon) amendments of the Treaties. Before Lisbon entered into force, however, the fundamental rights have existed as legally binding norms in the EU legal order only by the way of their incorporation as general principles by the case law of the ECJ. The Lisbon Treaty incorporated the (previously legally non-binding) EU Charter on Fundamental Rights into the Founding Treaties.

2.1.3. Primary law and the task of national legislator

Legislation of Member States cannot run contrary to EU law.

In that sense, primary EU law represents a constraint for national legislator. Any new legislation adopted within the EU Member State, whether the one adopted in the process of transposition of an EU norm (for example, a Directive), or independently of any requirement imposed by EU law, cannot run counter the Treaty or EU general principles.

Due to constitutional characteristics of the EU legal order, developed through the practice of the European Courts as well as national constitutional or supreme courts, EU law is directly applicable in Member States' legal orders (so called direct effect doctrine) and accorded precedence (so called supremacy doctrine). The consequence of these constitutional doctrines in practice is that national legal norm that is contrary to EU norm cannot be applied by the organs of the state, be they national courts or administration.

As explained by the ECJ in the *Simmenthal* case:[1]

> *14 direct applicability in such circumstances means that rules of community law must be fully and uniformly applied in all the member states from the date of their entry into force and for so long as they continue in force.*
> *15 these provisions are therefore a direct source of rights and duties for all those affected thereby, whether member states or individuals, who are parties to legal relationships under community law.*
> *(...)*

[1] 106/77 Amministrazione delle Finanze dello Stato v. Simmenthal S.p.A., (1978) ECR 643.

> *21 it follows from the foregoing that every national court must, in a case within its jurisdiction, apply community law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent to the community rule .*

Even though, paragraph 21 of the Judgment refers to the national courts, the same obligation, i.e. to set aside national law that is contrary to EU law exists also for national administration.

Thus, even if a Treaty rule does not in itself require any action from national legislator, it always requires a sort of passive action – such rule should be taken into consideration in all other legislation adopted by national legislator. Thus, for example, all rules of negative integration in the internal market, limit the choices national legislator can make in any policy area, not only in the one related to trade.

Let see an example. Article 34 ToFEU prohibits quantitative restriction on imports and all measure having equivalent effect in trade between Member States. It does not require any positive action by national legislator. National legislator does not have to enact any law or by-law in order to give effect to this provision (it might be required to remove inconsistent legislation, though). However, when legislating for the purpose of consumer protection, for instance, national legislator has to take into consideration Article 34 ToFEU. Thus, it cannot set he minimum percentage of the alcohol necessary to call an alcoholic beverage a 'liqueur' if this will obstruct the importation of thus named products from other Member States (case *Cassis de Dijon*)[2]; or, it cannot require that pasta is produced only from durum wheat (case *Zoni*)[3]. Even though the national legislator might still be free in legislating for the sake of preventing confusion of consumers in its territory, the choice of the available measures it may use for that purpose is limited by the requirement not to create obstacle to the import of products from other Member States, or at least by the demand that chosen measure creates the minimal possible obstruction to trade. This is so, even if creation of obstacle was not the intention of the legislator. Thus, Treaties narrow down the choices available to national legislators in efforts to achieve legitimate policy aims.

Primary law has to be observed also when the national legislator is making choices how to transpose other norms of EU law in the national legal order. As an example, we can use the recently decided case *Mangold*.[4] In this case, Germany adopted the Law by which it transposed Council Directive 1999/70/EC concerning the framework agreement on fixed-term work. German solution, however, discriminated older workers in relation to younger ones. Thus, the Court considered it contrary to the principle of non-discrimination in respect of age, which, according to the Court, exists as an expression of the general principle of equality in the EU legal order. Thus, general principle of EU law limited the choice available to national legislator when deciding on appropriate solution for the transposition of Directive.

Finally, Treaty rules sometimes require national legislators to legislate. The example of such provision is Article 157 ToFEU:

> 1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

[2] 120/78 Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon), [1979] ECR 649.

[3] 90/86 Criminal Proceedings against Zoni, [1988] ECR 4285.

[4] C-144/04 Werner Mangold v Rüdiger Helm, [2005] ECR I-9981.

2.2. Secondary EU Law

Secondary law encompasses all the acts which EU institutions may adopt on the basis of the competences transferred to the EU by Member States, and described in the Founding Treaties. These are all the acts enumerated in Article 288 ToFEU and all international agreements that the EU may adopt on the virtue of the Founding Treaties. Besides, the ECJ recognized as EU acts any other acts (so called *sui generis* acts) which are adopted by EU institutions and produce legal effects.

These norms need to be in conformity with primary law in order to be valid, but the hierarchy among them is not clearly established. Even though, the Lisbon Treaty tried to introduce certain clarity in hierarchy between secondary norms by introducing notions of legislative and non-legislative acts, this still does not allow for clear hierarchy. All three types of legally binding acts envisaged by the Treaty – Regulations, Directives and Decisions - might be used as both, legislative and non-legislative instruments. Furthermore, even if there are good arguments (based both on the text of the Treaties and the case law of the Court) to consider international agreements signed by the EU as superior in hierarchy to internal EU acts, this is not today yet so entirely clear.

The important feature of EU secondary law is that it is created by EU institutions, either in one of the decision-making processes envisaged by the Treaties, or in the process of negotiation and adoption of international agreements, also provided for in the Treaties. The rules of those processes are determined by the Treaties, and they describe the role of each institution in the process, and thus influence the inter-institutional balance which results out of it.

Legislative acts may be adopted in the form of either Regulations, or Directives, or Decisions. The standard procedure for their adoption after the Lisbon Treaty is called the ordinary legislative procedure. Without entering into details, it suffices here to say that it happens with the participation of three principal institutions: the European Commission, the European Parliament and the Council of Ministers. The Commission exercises the sole right of initiative, which ensures its position of policy-maker, and the Parliament and the Council co-legislate, so that the Commission's proposal may not become law without both institutions giving their consents. Another important feature of ordinary legislative procedure is that the Council, in which the States' representatives sit, votes with qualified majority voting. Without the need to explain how such majority is achieved, is suffices to say that a State may vote against a proposed act, and still be legally bound by it, provided that necessary majority of other States have voted for the act. Some legislative acts are adopted in other, so-called special legislative procedures, which are all those which depart from certain important aspect of the just described standard procedure.

Non-legislative acts are also adopted in the form of either Regulations, or Directives, or Decisions. They may be adopted by the Commission, or exceptionally by the Council (when the act is an implementing act). Procedure for adoption of such acts is not regulated by the Treaty, but the Treaty organises the mode of the supervision of the Commission by the legislative institutions. Until the Lisbon Treaty came into force, the supervision was organized through the committees composed of the Member States' representatives, in the so-called comitology procedure. The Lisbon Treaty, which introduced differentiation between implementing and delegated acts, has also introduced the difference in the control of the Commission. Thus, when the Commission is implementing EU legislative acts, it is still supervised by the committees in the comitology procedure (the difference is that the Act regulating this procedure will now be jointly adopted by the European Commission and the Parliament).

On the contrary, when the Commission acts on the basis of delegated power, the control will be determined by the legislative act delegating the power to the Commission. This act will determine the objectives, content, scope and duration of delegated norms. The control may be

organized so that the Commission's act may enter into force only if the Parliament or the Council do not express objections during the period of time envisaged by the legislative act, or the Parliament or Council may reserve for them the power to revoke the delegated act.

The difference between the control of delegated acts in comparison to control of implementing acts through comitology is in that in the former case the control is happening after the adoption of the act, rather than during its adoption as in the comitology.

For the purposes of the discussion about harmonization of domestic law with EU law, the difference between legislative and non-legislative acts is not that important. The Member States have to adjust to all EU acts. The difference, which will be explained in more details later, does, however, exist in relation to how EU law organises the participation of national Parliaments in the process of adoption of EU acts. Namely, the national Parliaments must be involved (even if only for the purpose of the control of the subsidiarity principle) in the adoption of legislative acts, but not in the adoption of non-legislative acts.

It is also important to notice that the EU distinction between legislative and non-legislative acts does not in itself give answer to whether the measures of harmonization have to be adopted domestically by the Parliament or the Government.

National legislators of the EU Member States do have interest in this stage of coming into life of EU law, and the level of their involvement at this instance might influence the success of later harmonization efforts. Thus, a study undertaken by Steunenberg and Voermans[5] has shown that the countries (such as Denmark) that take into consideration the manner of future implementation of EU directives already in the phase of their elaboration and enactment in the EU decision-making process, have better transposition results than the countries that do not do that. The envisaged problems in transposition influence the negotiating position of a Member State during negotiations about the final text of proposed legislation.

Unlike EU Member State legislators, legislators from countries that are not EU members do not have access to this phase of the harmonization process.

2.2.1. International Agreements signed by the Union and the task of national legislator

European Union has today extensive external powers. It is empowered, according to the so called doctrine of implied powers (the elaboration of which has started with the case *ERTA*)[6], to negotiate and sign international agreements in all areas for which it is internally competent. Additionally, in certain situations, it has completely taken over the pre-existing powers of Member States to undertake international obligations. Thus, as clearly explained today in the text of the Lisbon Treaty (Article 3/2 ToFEU), the EU power to conclude an international agreement becomes exclusive:

> „when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope. "

Once concluded by the EU institutions, international agreements have to be implemented by the existing organs of the Member States. EU, unlike many federations, does not have its own

[5] *Bernard Steunenberg & Wim Voermans,* The transposition of EC directives: A Comparative Study of Instruments, Techniques and Processes in Six Member States, Leiden University, 2006.

[6] 22/70 Commission v. Council (ERTA), (1971) ECR 263.

implementing organs. Thus, all EU law, including international agreements, has to be given life by Member States' bodies. Thus, upon the signature of an international agreement, national legislator might be under obligation to legislate in order to conform to the obligations undertaken by the EU in relation to a third country or an international organization.

This is sometimes expressly stated by the Treaties, as is the case with the development cooperation agreements. Thus, Article 208/2 ToFEU provides, for example:

> "The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations."

However, even if the action on the part of the Member States is not expressly demanded by the Treaties, it might still be required by an international agreement concluded by the EU.

2.2.2. Acts of EU Institutions

According to the ToFEU, there are three types of legally binding acts which EU institutions may adopt (either as legislative or non-legislative acts). These are Regulations, Directives, and Decision. The Treaty often leaves open the choice of legal act to be deployed in the concrete situation. It is, then, up to the institutions to choose whether to use regulation, directive or decision. Sometimes, however, the Treaties specify which act institutions may use in certain policy area.

The definitions of EU acts are given in Article 288 ToFEU, reproduced below, but their effects for domestic legal orders were subsequently explained and elaborated in the case law of the ECJ.

> *Article 288 ToFEU*
>
> To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.
>
> A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.
>
> A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.
>
> A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.
>
> Recommendations and opinions shall have no binding force.

2.2.2.1. Regulations and the tasks of national legislator

Regulations are usually complete regulatory measures, in the sense that they make all necessary regulatory choices and allocate rights and obligations to certain social groups or institutions. They are published in the Official Journal of the EU in all official languages, and become applicable norms in legal order of every Member State just on the basis of such publication. They, therefore, do not require any action on the part of the state legislators.

Even opposite, transposition of Regulations into the domestic legal orders of Member States is

not allowed. Thus, in case 34/73 Variola,[7] the ECJ held:

> "10 The direct application of a Regulation means that its entry into force and its application in favour or against those subject to it are independent of any measure of reception into national law.
> By virtue of the obligations arising from the Treaty and assumed on ratification, Member States are under a duty not to obstruct the direct applicability inherent in regulations and other rules of Community law.
> Strict compliance with this obligation is an indispensible condition of simultaneous and uniform application of Community regulations throughout the Community.
> 11 More particularly, Member States are under an obligation not to introduce any measure which might affect the jurisdiction of the Court to pronounce on any question involving the interpretation of Community law or the validity of an act of the institutions of the Community, which means that no procedure is permissible whereby the Community nature of a legal rule is concealed from those subject to it."

Sometimes, however, a Regulation will require certain action on the part of domestic legislator in order to enable their implementation in the domestic legal orders. Frequently the Regulation itself will require that some national measures are adopted. In such case, national legislator will be under obligation to enact such measures.

In the EU Member States, thus, Regulations are directly applicable and are not transposed into domestic legal systems by their transformation into any type of norms existing internally. Thus, except when expressly demanded so, national legislators of EU Member States are not invited to act upon Regulation.

The situation is different in non-member States. In these States, Regulations are not directly applicable, as these States did not ratify the Founding Treaties. Thus, if they want to harmonize their legal orders with Regulations they have to introduce them via some type of domestic norm recognized by domestic Constitution. In other words, they have to transform them into the national legislation. As Regulations are, in principle, complete legal norms, this act is formal in nature. It only requires national legislator to adopt proper form of act (law, regulation, decision, depending on internal order) which will transpose the entire and unchanged content of a Regulation. It does not require making any type of substantive policy choices.

Upon membership in the EU, the Regulations will acquire direct applicability in a state that has previously, during the accession period, transposed them into domestic law. This will create the obligation for legislator to repeal these norms. Thus, it is advisable that each Regulation is transposed by single act containing only its copy/pasted text, which can easily be removed from domestic legal system upon accession.

2.2.2.2. Directives and the tasks of national legislator

Directive, unlike a Regulation, is not meant to be complete normative act. It is described by the Treaty as the act which is binding, as to the result to be achieved, upon each Member State to which it is addressed, but which leaves to national authorities the choice of form and methods (Article 288 ToFEU). Thus, directives impose on national legislators the regulatory result which they have to achieve, but leave them the choice how to achieve such result.

The choice left to national legislator might be substantive choice and a formal one.

National legislator always has to make a formal choice. It encompasses a decision at which

[7] 34/73 Fratelli Variola v. Ministry of Finance, (1973) ECR 981.

level of Government should a particular EU Directive be transposed, i.e. whether transposition legislation should be adopted by the Parliament or the Government, and whether it is to be adopted by central, regional or local government. That also means that Member State has to choose the proper form of act to transpose a Directive, or a combination of different types of acts. For example, Directive X may be transposed by enacting one new law, amending few existing laws, and adopting and/or amending several by-laws. Such choice will depend on the internal organization of a legal system of a transposing country. Thus, the same Directive X, will in another state, be transposed by only one law, and in the third, no laws will be adopted, but only by-laws. It is also possible not to adopt any new legislation, provided that the existing one already fully satisfies requirements imposed by a Directive.

Many Directives also leave to a national legislator a substantive choice. That means that they leave to domestic politics a space for making additional policy choices in a given policy area. Thus, even if such Directives bind the States as to the regulatory result to be achieved, the way in which such result will be secured in different states might differ. In practice, Directives vary from those which do leave to national legislator wide space for making additional policy choices to those which are very detailed and leave no real, substantive choice, but only formal one. Proper transposition of Directive requires from the legislative state to make choices which directive leaves open and build them in the transposing legislation.

Even when leaving no substantive choice, Directive always has to be transposed into national law. This means that there is no difference between the tasks of domestic legislator in a Member State and in non Member State (a candidate country, for example) regarding the transposition of Directives.

The Treaties did not explain what is understood under proper transposition of Directives. Thus, many issues had to be clarified in the case law of the ECJ.

Thus, it was clarified that, even if legislator has a formal choice, and can, in principle, choose a type of domestic measure by which a Directive is to be transposed, the transposition measure must be a legally binding domestic measure. Thus, using circulars, or relying on any other type of usual administrative practice is not good enough, if it is not backed by the legal obligation of administration to follow such practice.[8]

Sometimes, the legislator is not even entirely free to choose the type of domestic legally-binding measure, but has to transpose a directive by the legal instrument having same legal force as the one that is used in similar domestic situations. Thus, the Court considered in a case 102/79 Commission v Belgium (tractors)[9], that:

> "10 IT IS APPARENT FROM THE WHOLE OF THESE PROVISIONS AND FROM THE NATURE OF THE MEASURES WHICH THEY PRESCRIBE THAT THE DIRECTIVES IN QUESTION ARE MEANT TO BE TURNED INTO PROVISIONS OF NATIONAL LAW WHICH HAVE THE SAME LEGAL FORCE AS THOSE WHICH APPLY IN THE MEMBER STATES IN REGARD TO THE CHECKING AND TYPE-APPROVAL OF MOTOR VEHICLES OR TRACTORS."

In the same case, the Court has expressed its understanding of proper transposition of Directives in more general terms. Thus, adequate transposition measures must fully meet the requirements of clarity and certainty in legal situations which the directives seek (case 102/79 Commission v Belgium - tractors, para 11).

[8] 116/86 Commission v Italy, [1988] ECR 1323.

[9] [1980] ECR 1473.

In current case-law, the Court expresses this requirement in following wording:

> Implementing measure must "guarantee that the national authorities will in fact apply the directive fully and that, where the directive is intended to create rights for individuals, [their] legal position … is sufficiently precise and clear and the persons concerned are made fully aware of their rights and, where appropriate, afforded the possibility of relying on them before the national courts."[10]

Even though, proper transposition of Directive usually demands the adoption of new legislation or, at least, amendments to the existing one, sometimes the existing law of a State would be satisfactory. Thus, the Court explained that general legal context may be sufficient if it ensures full application of the directive in sufficiently clear and precise manner.[11] This, however, means that existing legal framework guarantees that national authorities will fulfil the obligations envisaged by a Directive and, most importantly, that individuals will be in position to understand and enjoy the rights which Directive aims at creating for them.

The important result which national transposition measures have to achieve is, thus, the application of Directive's regulatory aims in practice and a guarantee that if the rights granted by a directive are breached, there is a legal remedy in front of a national court. Sometimes, securing the application of directive in practice will demand also the imposition of sanctions. There are Directives which require states to impose sanctions, sometimes leaving the choice of sanctions to Member States, and sometimes specifying sanctions in more details. However, even if a Directive is completely silent about the sanctions, the proper transposition will require the imposition of sanctions if this is important for the application of measure in practice.

National transposition measures need not to transpose a Directive literally. In fact, copy/paste job is not an adequate method for proper transposition of Directive. This is so because a Directive is not a complete normative act. It only determines the normative aim, but it does not necessarily contain the solution on how the rights and obligation are to be distributed in the society in order for the aim to be achieved. That is left to Member States, in larger or lesser amount, depending on Directive. Thus, copy/pasting Directive's provision still does not accomplish the normative task imposed by a Directive. States often need to make substantive policy choices and build them in the domestic legislation transposing a Directive.

It is not necessary that national measures use the terminology or follow the structure of a Directive. This, however, may be useful, as it will more successfully keep the link between national legislation and a Directive. Namely, even after the adoption of transposition measures, the transposed Directive does not lose its purpose. National authorities (primarily courts, but also administrative authorities) are obliged to interpret domestic legislation in conformity with the Directive.[12] This interpretative obligation concerns not only the transposition measures, but all domestic law.[13]

2.3. The consequences of non-transposition or improper transposition of a Directive

[10] 29/84 Commission v Germany (nurses), [1985] ECR 1661.

[11] C-131/88 Commission v Germany (groundwater), [1991] ECR I-825.

[12] 14/83 Sabine von Colson and Elisabeth Kamman v. Land Nordrhein-Westfalen, (1984) ECR 1891.

[13] Joined cases C-397/01 to C-403/01 Bernhard Pfeiffer and others v Deutsches Rotes Kreuz, Kreisverband Waldshut eV, [2004] ECR I-8835.

If a Member State legislator does not transpose a Directive, or transposes it wrongly, there are several possible ways to act against that State under the EU law.

First, the European Commission has a possibility to initiate infringement proceedings against a defaulting state. They may end up in the judicial phase, in which it will be for the European Court of Justice to declare whether the state has violated its obligation to transpose a Directive.

Secondly, thanks to certain constitutional qualities of EU law developed through the case-law of the ECJ and accepted subsequently by member States and their courts, individuals can 'force' the legislative state to apply Directive for their benefit even if not transposed.

Thus, they may firstly invoke a Directive directly in the court claiming to have rights against the state. This is, so called vertical direct effect.[14]

Courts of a Member State are also obliged under EU law to try to interpret existing domestic law in conformity with the requirements of a Directive. Such interpretative obligation is understood by the ECJ rather widely, and requires from national courts more creativity in interpretation then most courts are used to in domestic legal order.[15]
Finally, if due to non-transposition or improper transposition of a Directive, individuals sustain damage, they may sue in damages in domestic courts. Domestic courts are obliges to hear such actions on the basis of the EU law concept of state liability in damages, not the national one.[16]

[14] Direct effect of directives started to develop as a doctrine of EU law with the case 41/74 Yvonne Van Duyn v. Home Office, (1974) ECR 1337.

[15] For important cases by which the interpretative obligation developped see notes 12 and 13. The obligation of conform interpretation is not limitless. See, for instance, cases 80/86 Criminal Proceedings against Kolpinghuis Nijmegen BV, (1987-89) ECR 3969 and 105/03 Criminal proceedings against Maria Pupino, [2005] ECR I-5285.

[16] State liability in damages started to develop with the joined cases C-6 i 9/90 Andrea Francovich and Danila Bonifaci and Others v. Italian Republic, (1991) ECR I-5357.

Workshop – materials and discussion issues

Below, you will find the text of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles.[17]

We will jointly look into the structure of that Directive.

Then, you will be asked to read the Directive and try to identify which choices the state needs to make for its proper transposition into domestic law.

Finally, we will read a case C-64/09 Commission v France,[18] in which the ECJ found that France has wrongly transposed a Directive in certain of its aspects. On the basis of this case, we will discuss the importance of the case-law for proper transposition of Directives.

Directive 2000/53/EC of the European Parliament and of the Council

of 18 September 2000

on end-of life vehicles

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the Economic and Social Committee(2),

Having consulted the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty in the light of the joint text approved by the Conciliation Committee on 23 May 2000(3),

Whereas

(1) The different national measures concerning end-of life vehicles should be harmonised in order, first, to minimise the impact of end-of life vehicles on the environment, thus contributing to the protection, preservation and improvement of the quality of the environment and energy conservation, and, second, to ensure the smooth operation of the internal market and avoid distortions of competition in the Community.

(2) A Community-wide framework is necessary in order to ensure coherence between national approaches in attaining the objectives stated above, particularly with a view to the design of vehicles for recycling and recovery, to the requirements for collection and treatment facilities, and to the attainment of the targets for reuse, recycling and recovery, taking into account the principle of subsidiarity and the polluter-pays principle.

(3) Every year end-of life vehicles in the Community generate between 8 and 9 million tonnes of waste, which must be managed correctly.

(4) In order to implement the precautionary and preventive principles and in line with

[17] Published in OJ L 269, of 21. 10. 2000., p. 34 – 43.

[18] [2010] ECR I-0000.

the Community strategy for waste management, the generation of waste must be avoided as much as possible.

(5) It is a further fundamental principle that waste should be reused and recovered, and that preference be given to reuse and recycling.

(6) Member States should take measures to ensure that economic operators set up systems for the collection, treatment and recovery of end-of life vehicles.

(7) Member States should ensure that the last holder and/or owner can deliver the end-of life vehicle to an authorised treatment facility without any cost as a result of the vehicle having no or a negative, market value. Member States should ensure that producers meet all, or a significant part of, the costs of the implementation of these measures; the normal functioning of market forces should not be hindered.

(8) This Directive should cover vehicles and end-of life vehicles, including their components and materials, as well as spare and replacement parts, without prejudice to safety standards, air emissions and noise control.

(9) This Directive should be understood as having borrowed, where appropriate, the terminology used by several existing directives, namely Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances(4), 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(5), and Council Directive 75/442/EEC of 15 July 1975 on waste(6).

(10) Vintage vehicles, meaning historic vehicles or vehicles of value to collectors or intended for museums, kept in a proper and environmentally sound manner, either ready for use or stripped into parts, are not covered by the definition of waste laid down by Directive 75/442/EEC and do not fall within the scope of this Directive.

(11) It is important that preventive measures be applied from the conception phase of the vehicle onwards and take the form, in particular, of reduction and control of hazardous substances in vehicles, in order to prevent their release into the environment, to facilitate recycling and to avoid the disposal of hazardous waste. In particular the use of lead, mercury, cadmium and hexavalent chromium should be prohibited. These heavy metals should only be used in certain applications according to a list which will be regularly reviewed. This will help to ensure that certain materials and components do not become shredder residues, and are not incinerated or disposed of in landfills.

(12) The recycling of all plastics from end-of life vehicles should be continuously improved. The Commission is currently examining the environmental impacts of PVC. The Commission will, on the basis of this work, make proposals as appropriate as to the use of PVC including considerations for vehicles.

(13) The requirements for dismantling, reuse and recycling of end-of life vehicles and their components should be integrated in the design and production of new vehicles.

(14) The development of markets for recycled materials should be encouraged.

(15) In order to ensure that end-of life vehicles are discarded without endangering the environment, appropriate collection systems should be set up.

(16) A certificate of destruction, to be used as a condition for the de-registration of end-of life vehicles, should be introduced. Member States without a de-registration system should set up a system according to which a certificate of destruction is notified to the relevant competent authority when the end-of life vehicle is transferred to a treatment facility.

(17) This Directive does not prevent Member States from granting, where appropriate, temporary deregistrations of vehicles.

(18) Collection and treatment operators should be allowed to operate only when they have received a permit or, in case a registration is used instead of a permit, specific conditions have been complied with.

(19) The recyclability and recoverability of vehicles should be promoted.

(20) It is important to lay down requirements for storage and treatment operations in order to prevent negative impacts on the environment and to avoid the emergence of distortions in trade and competition.

(21) In order to achieve results in the short term and to give operators, consumers and public authorities the necessary perspective for the longer term, quantified targets for reuse, recycling and recovery to be achieved by economic operators should be set.

(22) Producers should ensure that vehicles are designed and manufactured in such a way as to allow the quantified targets for reuse, recycling and recovery to be achieved. To this end the Commission will promote the preparation of European standards and will take the other necessary measures in order to amend the pertinent European vehicle type-approval legislation.

(23) Member States should ensure that in implementing the provisions of this Directive competition is preserved, in particular as regards the access of small and medium-sized enterprises to the collection, dismantling, treatment and recycling market.

(24) In order to facilitate the dismantling and recovery, in particular recycling of end-of life vehicles, vehicle manufacturers should provide authorised treatment facilities with all requisite dismantling information, in particular for hazardous materials.

(25) The preparation of European standards, where appropriate, should be promoted. Vehicle manufacturers and material producers should use component and material coding standards, to be established by the Commission assisted by the relevant committee. In the preparation of these standards the Commission will take account, as appropriate, of the work going on in this area in the relevant international forums.

(26) Community-wide data on end-of life vehicles are needed in order to monitor the implementation of the objectives of this Directive.

(27) Consumers have to be adequately informed in order to adjust their behaviour and attitudes; to this end information should be made available by the relevant economic operators.

(28) Member States may choose to implement certain provisions by means of agreements with the economic sector concerned, provided that certain conditions are met.

(29) The adaptation to scientific and technical progress of the requirements for treatment facilities and for the use of hazardous substances and, as well as the adoption of minimum standards for the certificate of destruction, the formats for the database and the implementation measures necessary to control compliance with the quantified targets should be effected by the Commission under a Committee procedure.

(30) The measures to be taken for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission(7).

(31) Member States may apply the provisions of this Directive in advance of the date set out therein, provided such measures are compatible with the Treaty,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objectives

This Directive lays down measures which aim, as a first priority, at the prevention of waste from vehicles and, in addition, at the reuse, recycling and other forms of recovery of end-of life vehicles and their components so as to reduce the disposal of waste, as well as at the improvement in the environmental performance of all of the economic operators involved in the life cycle of vehicles and especially the operators directly involved in the treatment of end-of life vehicles.

Article 2

Definitions

For the purposes of this Directive:

1. "vehicle" means any vehicle designated as category M1 or N1 defined in Annex IIA to Directive 70/156/EEC, and three wheel motor vehicles as defined in Directive 92/61/EEC, but excluding motor tricycles;

2. "end-of life vehicle" means a vehicle which is waste within the meaning of Article 1(a) of Directive 75/442/EEC;

3. "producer" means the vehicle manufacturer or the professional importer of a vehicle into a Member State;

4. "prevention" means measures aiming at the reduction of the quantity and the harmfulness for the environment of end-of life vehicles, their materials and substances;

5. "treatment" means any activity after the end-of life vehicle has been handed over to a facility for depollution, dismantling, shearing, shredding, recovery or preparation for disposal of the shredder wastes, and any other operation carried out for the recovery and/or disposal of the end-of life vehicle and its components;

6. "reuse" means any operation by which components of end-of life vehicles are used for the same purpose for which they were conceived;

7. "recycling" means the reprocessing in a production process of the waste materials for the original purpose or for other purposes but excluding energy recovery. Energy recovery means the use of combustible waste as a means to generate energy through direct incineration with or without other waste but with recovery of the heat;

8. "recovery" means any of the applicable operations provided for in Annex IIB to Directive 75/442/EEC;

9. "disposal" means any of the applicable operations provided for in Annex IIA to Directive 75/442/EEC;

10. "economic operators" means producers, distributors, collectors, motor vehicle insurance companies, dismantlers, shredders, recoverers, recyclers and other treatment operators of end-of life vehicles, including their components and materials;

11. "hazardous substance" means any substance which is considered to be dangerous under Directive 67/548/EEC;

12. "shredder" means any device used for tearing into pieces or fragmenting end-of life vehicles, including for the purpose of obtaining directly reusable metal scrap;

13. "dismantling information" means all information required for the correct and environmentally sound treatment of end-of life vehicles. It shall be made available to authorised treatment facilities by vehicle manufacturers and component producers in the form of manuals or by means of electronic media (e.g. CD-ROM, on-line services).

Article 3

Scope

1. This Directive shall cover vehicles and end-of life vehicles, including their components and materials. Without prejudice to Article 5(4), third subparagraph, this shall apply irrespective of how the vehicle has been serviced or repaired during use and irrespective of whether it is equipped with components supplied by the producer or with other components whose fitting as spare or replacement parts accords with the appropriate Community provisions or domestic provisions.

2. This Directive shall apply without prejudice to existing Community legislation and relevant national legislation, in particular as regards safety standards, air emissions and noise controls and the protection of soil and water.

3. Where a producer only makes or imports vehicles that are exempt from Directive 70/156/EEC by virtue of Article 8(2)(a) thereof, Member States may exempt that producer and his vehicles from Articles 7(4), 8 and 9 of this Directive.

4. Special-purpose vehicles as defined in the second indent of Article 4(1)(a) of Directive 70/156/EEC shall be excluded from the provisions of Article 7 of this Directive.

5. For three-wheel motor vehicles only Articles 5(1), 5(2) and 6 of this Directive shall apply.

Article 4

Prevention

1. In order to promote the prevention of waste Member States shall encourage, in particular:

(a) vehicle manufacturers, in liaison with material and equipment manufacturers, to limit the use of hazardous substances in vehicles and to reduce them as far as possible from the conception of the vehicle onwards, so as in particular to prevent their release into the environment, make recycling easier, and avoid the need to dispose of hazardous waste;

(b) the design and production of new vehicles which take into full account and facilitate the dismantling, reuse and recovery, in particular the recycling, of end-of life vehicles, their components and materials;

(c) vehicle manufacturers, in liaison with material and equipment manufacturers, to integrate an increasing quantity of recycled material in vehicles and other products, in order to develop the markets for recycled materials.

2. (a) Member States shall ensure that materials and components of vehicles put on the market after 1 July 2003 do not contain lead, mercury, cadmium or hexavalent chromium other than in cases listed in Annex II under the conditions specified therein;

(b) in accordance with the procedure laid down in Article 11 the Commission shall on a regular basis, according to technical and scientific progress, amend Annex II, in order to:

(i) as necessary, establish maximum concentration values up to which the existence

of the substances referred to in subparagraph (a) in specific materials and components of vehicles shall be tolerated;

(ii) exempt certain materials and components of vehicles from the provisions of subparagraph (a) if the use of these substances is unavoidable;

(iii) delete materials and components of vehicles from Annex II if the use of these substances is avoidable;

(iv) under points (i) and (ii) designate those materials and components of vehicles that can be stripped before further treatment; they shall be labelled or made identifiable by other appropriate means;

(c) the Commission shall amend Annex II for the first time not later than 21 October 2001. In any case none of the exemptions listed therein shall be deleted from the Annex before 1 January 2003.

Article 5

Collection

1. Member States shall take the necessary measures to ensure:

- that economic operators set up systems for the collection of all end-of life vehicles and, as far as technically feasible, of waste used parts removed when passenger cars are repaired,

- the adequate availability of collection facilities within their territory.

2. Member States shall also take the necessary measures to ensure that all end-of life vehicles are transferred to authorised treatment facilities.

3. Member States shall set up a system according to which the presentation of a certificate of destruction is a condition for deregistration of the end-of life vehicle. This certificate shall be issued to the holder and/or owner when the end-of life vehicle is transferred to a treatment facility. Treatment facilities, which have obtained a permit in accordance with Article 6, shall be permitted to issue a certificate of destruction. Member States may permit producers, dealers and collectors on behalf of an authorised treatment facility to issue certificates of destruction provided that they guarantee that the end-of life vehicle is transferred to an authorised treatment facility and provided that they are registered with public authorities.

Issuing the certificate of destruction by treatment facilities or dealers or collectors on behalf of an authorised treatment facility does not entitle them to claim any financial reimbursement, except in cases where this has been explicitly arranged by Member States.

Member States which do not have a deregistration system at the date of entry into force of this Directive shall set up a system according to which a certificate of destruction is notified to the relevant competent authority when the end-of life vehicle is transferred to a treatment facility and shall otherwise comply with the terms of this paragraph. Member States making use of this subparagraph shall inform the Commission of the reasons thereof.

4. Member States shall take the necessary measures to ensure that the delivery of the vehicle to an authorised treatment facility in accordance with paragraph 3 occurs without any cost for the last holder and/or owner as a result of the vehicle's having no or a negative market value.

Member States shall take the necessary measures to ensure that producers meet all, or a significant part of, the costs of the implementation of this measure and/or take back end-of life vehicles under the same conditions as referred to in the first subparagraph.

Member States may provide that the delivery of end-of life vehicles is not fully free of charge if the end-of life vehicle does not contain the essential components of a vehicle, in particular the engine and the coachwork, or contains waste which has been added to the end-of life vehicle.

The Commission shall regularly monitor the implementation of the first subparagraph to ensure that it does not result in market distortions, and if necessary shall propose to the European Parliament and the Council an amendment thereto.

5. Member States shall take the necessary measures to ensure that competent authorities mutually recognise and accept the certificates of destruction issued in other Member States in accordance with paragraph 3. To this end, the Commission shall draw up, not later than 21 October 2001 the minimum requirements for the certificate of destruction.

Article 6

Treatment

1. Member States shall take the necessary measures to ensure that all end-of life vehicles are stored (even temporarily) and treated in accordance with the general requirements laid down in Article 4 of Directive 75/442/EEC, and in compliance with the minimum technical requirements set out in Annex I to this Directive, without prejudice to national regulations on health and environment.

2. Member States shall take the necessary measures to ensure that any establishment or undertaking carrying out treatment operations obtains a permit from or be registered with the competent authorities, in compliance with Articles 9, 10 and 11 of Directive 75/442/EEC.

The derogation from the permit requirement referred to in Article 11(1)(b) of Directive 75/442/EEC may apply to recovery operations concerning waste of end-of life vehicles after they have been treated according to Annex 1(3) to this Directive if there is an inspection by the competent authorities before the registration. This inspection shall verify:

(a) type and quantities of waste to be treated;

(b) general technical requirements to be complied with;

(c) safety precautions to be taken,

in order to achieve the objectives referred to in Article 4 of Directive 75/442/EEC. This inspection shall take place once a year. Member States using the derogation shall send the results to the Commission.

3. Member States shall take the necessary measures to ensure that any establishment or undertaking carrying out treatment operations fulfils at least the following obligations in accordance with Annex I:

(a) end-of life vehicles shall be stripped before further treatment or other equivalent arrangements are made in order to reduce any adverse impact on the environment. Components or materials labelled or otherwise made identifiable in accordance with Article 4(2) shall be stripped before further treatment;

(b) hazardous materials and components shall be removed and segregated in a selective way so as not to contaminate subsequent shredder waste from end-of life vehicles;

(c) stripping operations and storage shall be carried out in such a way as to ensure the suitability of vehicle components for reuse and recovery, and in particular for recycling.

Treatment operations for depollution of end-of life vehicles as referred to in Annex I(3) shall be carried out as soon as possible.

4. Member States shall take the necessary measures to ensure that the permit or registration referred to in paragraph 2 includes all conditions necessary for compliance with the requirements of paragraphs 1, 2 and 3.

5. Member States shall encourage establishments or undertakings, which carry out treatment operations to introduce, certified environmental management systems.

Article 7

Reuse and recovery

1. Member States shall take the necessary measures to encourage the reuse of components which are suitable for reuse, the recovery of components which cannot be reused and the giving of preference to recycling when environmentally viable, without prejudice to requirements regarding the safety of vehicles and environmental requirements such as air emissions and noise control.

2. Member States shall take the necessary measures to ensure that the following targets are attained by economic operators:

(a) no later than 1 January 2006, for all end-of life vehicles, the reuse and recovery shall be increased to a minimum of 85 % by an average weight per vehicle and year. Within the same time limit the reuse and recycling shall be increased to a minimum of 80 % by an average weight per vehicle and year;

for vehicles produced before 1 January 1980, Member States may lay down lower targets, but not lower than 75 % for reuse and recovery and not lower than 70 % for reuse and recycling. Member States making use of this subparagraph shall inform the Commission and the other Member States of the reasons therefor;

(b) no later than 1 January 2015, for all end-of life vehicles, the reuse and recovery shall be increased to a minimum of 95 % by an average weight per vehicle and year. Within the same time limit, the re-use and recycling shall be increased to a minimum of 85 % by an average weight per vehicle and year.

By 31 December 2005 at the latest the European Parliament and the Council shall re-examine the targets referred to in paragraph (b) on the basis of a report of the Commission, accompanied by a proposal. In its report the Commission shall take into account the development of the material composition of vehicles and any other relevant environmental aspects related to vehicles.

The Commission shall, in accordance with the procedure laid down in Article 11, establish the detailed rules necessary to control compliance of Member States with the targets set out in this paragraph. In doing so the Commission shall take into account all relevant factors, inter alia the availability of data and the issue of exports and imports of end-of life vehicles. The Commission shall take this measure not later than 21 October 2002.

3. On the basis of a proposal from the Commission, the European Parliament and the Council shall establish targets for reuse and recovery and for reuse and recycling for the years beyond 2015.

4. In order to prepare an amendment to Directive 70/156/EEC, the Commission shall promote the preparation of European standards relating to the dismantlability, recoverability and recyclability of vehicles. Once the standards are agreed, but in any case no later than by the end of 2001, the European Parliament and the Council, on the basis of a proposal from the Commission, shall amend Directive 70/156/EEC so that vehicles type-approved in accordance with that Directive and put on the market after three years after the amendment of the Directive 70/156/EEC are re-usable

and/or recyclable to a minimum of 85 % by weight per vehicle and are re-usable and/or recoverable to a minimum of 95 % by weight per vehicle.

5. In proposing the amendment to Directive 70/156/EEC relating to the ability to be dismantled, recoverability and recyclability of vehicles, the Commission shall take into account as appropriate the need to ensure that the reuse of components does not give rise to safety or environmental hazards.

Article 8

Coding standards/dismantling information

1. Member States shall take the necessary measures to ensure that producers, in concert with material and equipment manufacturers, use component and material coding standards, in particular to facilitate the identification of those components and materials which are suitable for reuse and recovery.

2. Not later than 21 October 2001 the Commission shall, in accordance with the procedure laid down in Article 11 establish the standards referred to in paragraph 1 of this Article. In so doing, the Commission shall take account of the work going on in this area in the relevant international forums and contribute to this work as appropriate.

3. Member States shall take the necessary measures to ensure that producers provide dismantling information for each type of new vehicle put on the market within six months after the vehicle is put on the market. This information shall identify, as far as it is needed by treatment facilities in order to comply with the provisions of this Directive, the different vehicle components and materials, and the location of all hazardous substances in the vehicles, in particular with a view to the achievement of the objectives laid down in Article 7.

4. Without prejudice to commercial and industrial confidentiality, Member States shall take the necessary measures to ensure that manufacturers of components used in vehicles make available to authorised treatment facilities, as far as it is requested by these facilities, appropriate information concerning dismantling, storage and testing of components which can be reused.

Article 9

Reporting and information

1. At three-year intervals Member States shall send a report to the Commission on the implementation of this Directive. The report shall be drawn up on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure laid down in Article 6 of Directive 91/692/EEC(8) with a view to establishing databases on end-of life vehicles and their treatment. The report shall contain relevant information on possible changes in the structure of motor vehicle dealing and of the collection, dismantling, shredding, recovery and recycling industries, leading to any distortion of competition between or within Member States. The questionnaire or outline shall be sent to the Member States six months before the start of the period covered by the report. The report shall be made to the Commission within nine months of the end of the three-year period covered by it.

The first report shall cover the period of three years from 21 April 2002.

Based on the above information, the Commission shall publish a report on the implementation of this Directive within nine months of receiving the reports from the Member States.

2. Member States shall require in each case the relevant economic operators to publish information on:

- the design of vehicles and their components with a view to their recoverability and recyclability,

- the environmentally sound treatment of end-of life vehicles, in particular the removal of all fluids and dismantling,

- the development and optimisation of ways to reuse, recycle and recover end-of life vehicles and their components,

- the progress achieved with regard to recovery and recycling to reduce the waste to be disposed of and to increase the recovery and recycling rates.

The producer must make this information accessible to the prospective buyers of vehicles. It shall be included in promotional literature used in the marketing of the new vehicle.

Article 10

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 21 April 2002. They shall immediately inform the Commission thereof.

When Member States adopt these measures, these shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law, which they adopt in the field governed by this Directive.

3. Provided that the objectives set out in this Directive are achieved, Member States may transpose the provisions set out in Articles 4(1), 5(1), 7(1), 8(1), 8(3) and 9(2) and specify the detailed rules of implementation of Article 5(4) by means of agreements between the competent authorities and the economic sectors concerned. Such agreements shall meet the following requirements

(a) agreements shall be enforceable;

(b) agreements need to specify objectives with the corresponding deadlines;

(c) agreements shall be published in the national official journal or an official document equally accessible to the public and transmitted to the Commission;

(d) the results achieved under an agreement shall be monitored regularly, reported to the competent authorities and to the Commission and made available to the public under the conditions set out in the agreement;

(e) the competent authorities shall make provisions to examine the progress reached under an agreement;

(f) in case of non-compliance with an agreement Member States must implement the relevant provisions of this Directive by legislative, regulatory or administrative measures.

Article 11

Committee procedure

1. The Commission shall be assisted by the committee established by Article 18 of Directive 75/442/EEC, hereinafter referred to as "the Committee".

2. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

4. The Commission, according to the procedure laid down in this Article, shall adopt:

(a) the minimum requirements, as referred to in Article 5(5), for the certificate of destruction;

(b) the detailed rules referred to in Article 7(2), third subparagraph;

(c) the formats relating to the database system referred to in Article 9;

(d) the amendments necessary for adapting the Annexes to this Directive to scientific and technical progress.

Article 12

Entry into force

1. This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

2. Article 5(4) shall apply:

- as from 1 July 2002 for vehicles put on the market as from this date,

- as from 1 January 2007 for vehicles put on the market before the date referred to in the first indent.

3. Member States may apply Article 5(4) in advance of the dates set out in paragraph 2.

Article 13

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 18 September 2000.

For the European Parliament

The President

N. Fontaine

For the Council

The President

H. Védrine

(1) OJ C 337, 7.11.1997, p. 3, andOJ C 156, 3.6.1999, p. 5.

(2) OJ C 129, 27.4.1998, p. 44.

(3) Opinion of the European Parliament of 11 February 1999 (OJ C 150, 28.5.1999, p. 420), Council Common Position of 29 July 1999 (OJ C 317, 4.11.1999, p. 19) and Decision of the European Parliament of 3 February 2000 (not yet published in the Official Journal). Council Decision of 20 July 2000 and Decision of the European Parliament of 7 September 2000.

(4) OJ 196, 16.8.1967, p. 1. Directive as last amended by Commission Directive 98/98/EC (OJ L 355, 30.12.1998, p. 1).

(5) OJ L 42, 23.2.1970, p. 1. Directive as last amended by Directive 98/91/EC of the European Parliament and of the Council (OJ L 11, 16.1.1999, p. 25).

(6) OJ L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 96/350/EC (OJ L 135, 6.6.1996, p. 32).

(7) OJ L 184, 17.7.1999, p. 23.

(8) OJ L 377, 31.12.1991, p. 48.

(Annexes omitted)

Judgment of the Court (First Chamber) of 15 April 2010.

European Commission v French Republic.

Failure of a Member State to fulfil obligations - Directive 2000/53/EC - Articles 5(3) and (4), 6(3) and 7(1) - Defective transposition.

Case C-64/09.

European Court reports 2010 Page 00000

Parties

In Case C-64/09,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 13 February 2009,

European Commission, represented by P. Oliver and J.-B. Laignelot, acting as Agents, with an address for service in Luxembourg,

applicant,

v

French Republic, represented by G. de Bergues and A. Adam, acting as Agents,

defendant,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, E. Levits (Rapporteur), M. Ilešič, J.-J. Kasel and M. Safjan, Judges,

Advocate General: P. Cruz Villalón,

Registrar: R. Grass,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

Grounds

1. By its application, the European Commission requests the Court to declare that, by failing to adopt all the laws and regulations necessary to ensure the correct and complete transposition of Article 2.13, Article 4(2)(a), Article 5(3) and (4), Article 6(3), Article 7(1) and Article 8(3) of Directive 2000/53/EC of the European Parliament and

of the Council of 18 September 2000 on end-of-life vehicles (OJ 2000 L 269, p. 34), the French Republic has failed to fulfil its obligations under that directive.

Legal context

European Union legislation

2. Article 1 of Directive 2000/53, entitled 'Objectives', states that the directive lays down measures which aim, as a first priority, at the prevention of waste from vehicles and, in addition, at the reuse, recycling and other forms of recovery of end-of-life vehicles and their components so as to reduce the disposal of waste, as well as at the improvement in the environmental performance of all of the economic operators involved in the life cycle of vehicles, especially the operators directly involved in the treatment of end-of-life vehicles.

3. Article 2.13 of that directive defines 'dismantling information' as 'all information required for the correct and environmentally sound treatment of end-of-life vehicles. It shall be made available to authorised treatment facilities by vehicle manufacturers and component producers in the form of manuals or by means of electronic media (e.g. CD-ROM, online services)'.

4. Article 4(2)(a) of Directive 2000/53 is worded as follows:

'Member States shall ensure that materials and components of vehicles put on the market after 1 July 2003 do not contain lead, mercury, cadmium or hexavalent chromium other than in cases listed in Annex II under the conditions specified therein'.

5. Article 5(2) to (4) of Directive 2000/53 provide:

'2. Member States shall … take the necessary measures to ensure that all end-of-life vehicles are transferred to authorised treatment facilities.

3. Member States shall set up a system according to which the presentation of a certificate of destruction is a condition for deregistration of the end-of-life vehicle. This certificate shall be issued to the holder and/or owner when the end-of-life vehicle is transferred to a treatment facility. Treatment facilities which have obtained a permit in accordance with Article 6 shall be permitted to issue a certificate of destruction. Member States may permit producers, dealers and collectors on behalf of an authorised treatment facility to issue certificates of destruction provided that they guarantee that the end-of-life vehicle is transferred to an authorised treatment facility and provided that they are registered with public authorities.

Issuing the certificate of destruction by treatment facilities or dealers or collectors on behalf of an authorised treatment facility does not entitle them to claim any financial reimbursement, except in cases where this has been explicitly arranged by Member States.

…

4. Member States shall take the necessary measures to ensure that the delivery of the vehicle to an authorised treatment facility in accordance with paragraph 3 occurs without any cost for the last holder and/or owner as a result of the vehicle's having no, or a negative, market value.

Member States shall take the necessary measures to ensure that producers meet all, or a significant part of, the costs of the implementation of this measure and/or take back end-of-life vehicles under the same conditions as referred to in the first subparagraph.

Member States may provide that the delivery of end-of-life vehicles is not fully free of charge if the end-of-life vehicle does not contain the essential components of a

vehicle, in particular the engine and the coachwork, or contains waste which has been added to the end-of-life vehicle.

The Commission shall regularly monitor the implementation of the first subparagraph to ensure that it does not result in market distortions, and if necessary shall propose to the European Parliament and the Council an amendment thereto.'

6. Article 6(3) of Directive 2000/53 provides:

'Member States shall take the necessary measures to ensure that any establishment or undertaking carrying out treatment operations fulfils at least the following obligations in accordance with Annex I:

(a) end-of-life vehicles shall be stripped before further treatment or other equivalent arrangements are made in order to reduce any adverse impact on the environment. Components or materials labelled or otherwise made identifiable in accordance with Article 4(2) shall be stripped before further treatment;

(b) hazardous materials and components shall be removed and segregated in a selective way so as not to contaminate subsequent shredder waste from end-of-life vehicles;

(c) stripping operations and storage shall be carried out in such a way as to ensure the suitability of vehicle components for reuse and recovery, and in particular for recycling.

Treatment operations for depollution of end-of-life vehicles as referred to in Annex I(3) shall be carried out as soon as possible.'

7. Article 7(I) of Directive 2000/53 provides:

'Member States shall take the necessary measures to encourage the reuse of components which are suitable for reuse, the recovery of components which cannot be reused and the giving of preference to recycling when environmentally viable, without prejudice to requirements regarding the safety of vehicles and environmental requirements such as air emissions and noise control.'

8. Article 8(3) of Directive 2000/53 provides:

'Member States shall take the necessary measures to ensure that producers provide dismantling information for each type of new vehicle put on the market within six months after the vehicle is put on the market. …'

National legislation

9. Directive 2000/53 was transposed into French law by Decree No 2003-727 of 1 August 2003 on vehicle construction and disposal of end-of-life vehicles (JORF of 5 August 2003, p. 13487) ('Decree No 2003-727'), and by the following implementing orders: Order of 24 December 2004 on the provisions relating to the construction of vehicles, components and equipment for the disposal of end-of-life vehicles (JORF of 31 December 2004, p. 22743); Order of 15 March 2005 on the authorisation of operators of facilities for the storage, depollution, dismantling, shearing or shredding of end-of-life vehicles (JORF of 14 April 2005, p. 6688); Order of 6 April 2005 laying down the rules for drawing up the receipt for the acceptance for destruction and the certificate of destruction of an end-of-life vehicle (JORF of 24 May 2005, p. 8915); and Order of 13 May 2005 on the detailed rules governing the payment of compensation to authorised shredders (JORF of 31 May 2005, p. 9716).

10. Article 2 of Decree No 2003-727 provides:

'For the application of the present Decree:

...

3. “Demolishers” shall be understood to mean persons who ensure the acceptance, storage, depollution and dismantling of the vehicles;

4. “Shredders” shall be understood to mean persons who ensure the acceptance, storage, shearing or shredding of the vehicles, both operations being preceded, if necessary, by the depollution and dismantling of the vehicles;

...’

11. Article 4 of that decree provides:

‘End-of-life vehicles may be delivered by their holders only to demolishers or shredders who have been approved pursuant to Article 9 of the present Decree or to collection centres established by the manufacturers.’

12. Article 5 of Decree No 2003-727 provides:

‘Shredders and collection centres, as well as demolishers who have accepted delivery of the vehicles, may not impose any charge on holders who deliver their end-of-life vehicle to the entrance of their facilities unless the vehicle does not have its essential components, in particular the engine and the catalytic converter for vehicles which were so equipped when they were placed on the market, or the bodywork, or if it contains non-approved waste or parts which were added to it and which, by their nature or quantity, increase the cost of treating end-of-life vehicles.’

13. According to Article 6 of Decree No 2003-727:

‘Each manufacturer is required to compensate, for its brand of vehicles, the deficit which the application of Article 5 may entail for an authorised shredder or to take back itself its vehicles under such conditions as it may consider to be appropriate.

The deficit shall be established by a third-party body designated jointly by the manufacturer and the authorised shredder.

The evidence establishing the deficit shall be submitted without delay to the commission referred to in Article 18 of the present Decree together with the manufacturer’s proposals for compensation.

A joint order of the Ministers responsible for transport, the environment, the economy and industry shall lay down the detailed rules for the application of the first two paragraphs of the present Article, including the rules governing separate accounting for the different activities which may be pursued by shredders.’

14. Article 7 of that decree provides:

‘The reuse of the components of end-of-life vehicles shall, where possible, occur in keeping with the requirements of vehicle safety and environmental protection, including the reduction of air and noise pollution. The traceability of the reused components as covered by those requirements must be ensured through the affixing of appropriate marking, where technically possible, in accordance with Articles 11 and 12 of the present Decree.

Subject to the preceding paragraph, the components and materials of end-of-life vehicles should preferably be reused, recovered and, in particular, recycled rather than destroyed, wherever technical and economic circumstances so permit.’

15. Article 13 of that decree provides:

‘Article R. 322-9 of the Highway Code is replaced by the following provisions:

“Art. R. 322-9. – In the event of sale or transfer free of charge of a vehicle for destruction, save for the cases referred to in Article L. 326-11, the owner shall submit the grey card (carte grise) to an authorised demolisher or shredder, after having placed, in a very legible and unalterable manner, the wording ‘sold on ../../.... (date of

the transfer) for destruction' or 'transferred on ../../.... (date of the transfer) for destruction', followed by his signature, and after having torn off the portion provided for that purpose.

In the absence of a grey card, save for the cases referred to in Article L. 326-11, the owner shall submit either an official document proving that the grey card cannot be provided, or proof of ownership in the case of a vehicle which is more than 25 years old.

The authorised demolisher or shredder shall, within 15 days of the date of transfer of the vehicle, provide the owner with a receipt of acceptance for destruction.

Within the same period, the authorised demolisher or shredder shall lodge with the prefect of the département in which the vehicle is registered a copy of the receipt of acceptance for destruction and shall also provide him with one of the documents referred to in the first and second paragraphs of the present Article.

Within 15 days of the shearing or shredding of the vehicle, the authorised shredder shall confirm the destruction to the prefect of the département in which the place of registration is situated by providing him with the corresponding certificate of destruction. The prefect shall then proceed with the registration of destruction and cancellation of the registration.

A joint order of the Ministers responsible for transport, the environment, the interior and industry shall lay down the rules for drawing up the receipt and certificate of destruction.'"

16. Article 15 of Decree No 2003-727 provides:

'Without prejudice to business and industrial secrets, in cooperation with the manufacturers of materials and components used in vehicles, each manufacturer shall, for each type of new vehicle received at national or Community level and within six months after receipt, provide authorised demolishers and shredders with information on:

1. The conditions for dismantling and depollution of the vehicle;

2. The conditions for dismantling, storage and monitoring of components which can be reused;

3. The different components and materials of the vehicles;

4. The location of hazardous substances present in the vehicles.'

Pre-litigation procedure

17. Following a number of complaints, on 12 October 2005 the Commission sent to the French Republic a letter of formal notice in which it stated that, in its view, the French Republic had, first, transposed incorrectly Articles 1, 4(2), 5(3) and (4), 6(3) and 7(1) of Directive 2000/53, secondly, transposed incompletely Article 7(2) of that directive and, lastly, transposed incorrectly and incompletely Articles 2.12 and 2.13, 4(1) and 8(3) of that directive.

18. On 19 December 2005, the French Republic replied to that letter of formal notice, setting out the reasons why it took the view that the Commission's complaints were unfounded.

19. On 12 December 2006, the Commission sent to the French Republic a reasoned opinion reiterating the complaints set out in the letter of formal notice, with the exception of the complaints relating to Articles 2.12 and 7(2) of Directive 2000/53.

20. On 14 February 2007, the French Republic replied to that reasoned opinion, stating that, in its view, the Commission's complaints were unfounded.

21. As it was of the view that, save for those relating to Articles 1 and 4(1) of Directive 2000/53, the complaints remained justified, the Commission brought the present action.

The action

22. The Commission puts forward seven pleas in law in support of its action, namely:

– the incompatibility with Article 2.13 of Directive 2000/53 of the definition of 'dismantling information' introduced in French law;

– the incompatibility with Article 4(2)(a) of Directive 2000/53 of the date fixing the prohibition of hazardous substances;

– the incompatibility with Article 5(3) of Directive 2000/53 of the French system for the cancellation of the registration upon presentation of a certificate of destruction;

– the incompatibility with Article 5(4) of Directive 2000/53 of the system of acceptance of end-of-life vehicles;

– the incompatibility with Article 6(3) of Directive 2000/53 of the non-reproduction of the concept of 'stripping' in the provisions transposing that directive into French law;

– the incompatibility with Article 7(1) of Directive 2000/53 of the interpretation of the expression 'when environmentally viable', as laid down in French law; and

– the incompatibility with Article 8(3) of Directive 2000/53 of the lack of precision concerning the technical means for providing dismantling information.

The first and seventh pleas: incompatibility with Article 2.13 of Directive 2000/53 of the definition of 'dismantling information' introduced in French law and, by way of corollary, incompatibility with Article 8(3) of that directive of the lack of precision concerning the technical means for providing dismantling information

23. The Commission takes the view that Article 15 of Decree No 2003-727 is more restrictive in its scope than Article 2.13 of Directive 2000/53, since the latter provision states that authorised treatment facilities must be provided with 'all information' and not only with a restricted list of information as referred to in Article 15 of that decree. According to the Commission, that incorrect and incomplete transposition of Article 2.13 automatically means that there is an incomplete and incorrect transposition of Article 8(3) of Directive 2000/53, which imposes an obligation as to the means used to provide information.

24. In its statement in defence, the French Republic concedes that a definition, general in scope, of the expression 'dismantling information' is necessary in order to ensure a correct and full transposition of Article 2.13 of Directive 2000/53. It also acknowledges that it is necessary to specify the technical means used to comply with the obligation on manufacturers to provide dismantling information and undertakes to amend the relevant provisions of national law in order to introduce the points of clarification required.

25. Suffice it to note, in this regard, that it is clear from the wording of Article 2.13 of Directive 2000/53 that 'dismantling information' refers to 'all information required for the … treatment of end-of-life vehicles' and that Article 8(3) of that directive must be read in the light of Article 2.13 with regard to the detailed rules governing the provision of such information.

26. It follows that the first and seventh pleas are well founded.

Second plea: incompatibility with Article 4(2)(a) of Directive 2000/53 of the date fixing the prohibition of hazardous substances

27. By its second plea, the Commission submits that Article 4(2)(a) of

Directive 2000/53 has been transposed into French law by Article 3 of Decree No 2003-727 and by the implementing Order of 24 December 2004 on the provisions relating to the construction of vehicles, components and equipment for the disposal of end-of-life vehicles. In the Commission's view, however, the French Republic did not ensure a correct transposition of Article 4(2)(a) inasmuch as, contrary to that provision, it imposed only on vehicles placed on the market as from 31 December 2004, and not to those placed on the market as from 1 July 2003, the obligation to ensure that the materials and components of those vehicles do not contain lead, mercury, cadmium or hexavalent chromium other than in the cases listed in Annex II to Directive 2000/53.

28. In that regard, suffice it to note, as indeed the French Republic itself acknowledges, that, as the provisions of the Order of 24 December 2004 apply only as from 31 December 2004, the obligation laid down in Article 4(2)(a) of Directive 5000/53 was imposed later than the date fixed in that provision. It thus follows that French law did not ensure the correct transposition of Article 4(2)(a) of Directive 2000/53.

29. The second plea is accordingly well founded.

Third plea: incompatibility with Article 5(3) of Directive 2000/53 of the French system for the cancellation of the registration upon presentation of a certificate of destruction

Arguments of the parties

30. The Commission observes that Article 5(3) of Directive 2000/53 gives a precise description of the procedure to be followed for cancelling the registration of an end-of-life vehicle. Thus, in order to ensure consistency between the national approaches for achieving smooth functioning of the internal market and to avoid distortions of competition within the European Union, that provision determines which persons are empowered to issue a certificate of destruction, the addressee(s) of such a certificate and when it must be issued.

31. According to the Commission, the French system, which has, moreover, been discontinued since 15 September 2009, when a new registration system came into effect for all vehicles registered as from that date, did not comply with those specific, detailed instructions in Article 5(3) of Directive 2000/53. By providing in Article 13 of Decree No 2003-727 and in the Order of 6 April 2005 referred to in paragraph 9 of the present judgment that only shredders were empowered to issue a 'certificate of destruction' and that that certificate was to be lodged with the prefect of the département of the place of registration of the vehicle after the latter had been physically destroyed, whilst the holder of the end-of-life vehicle was to receive a 'receipt of acceptance for destruction', French law gave rise to confusion and administrative complications which were at variance with the objective of Directive 2000/53 and undermined its effectiveness.

32. The French Republic takes issue with the Commission's submissions. It states that it did put in place a two-stage procedure permitting better traceability of end-of-life vehicles in order to ensure a higher level of protection.

33. The issuance of a 'receipt of acceptance for destruction', given in the first stage to the holder at the time of transfer of the vehicle to a treatment facility, is, it submits, a necessary condition for the subsequent cancellation of the registration. In a second stage, a document entitled 'certificate of destruction', issued by the shredders, allows confirmation to be made of the destruction of the vehicle and, subsequently, definitive cancellation of the registration.

34. The French Republic accordingly takes the view that the 'receipt of acceptance for destruction' fulfils the function of the 'certificate of destruction' envisaged in Article

5(3) of Directive 2000/53, since issuance thereof guarantees subsequent automatic destruction of the end-of-life vehicle and, conversely, the document entitled 'certificate of destruction', as construed under French law, does guarantee certainty of the actual destruction of an end-of-life vehicle before the vehicle's registration is cancelled.

Findings of the Court

35. In the first place, recital 1 in the preamble to Directive 2000/53 states that the directive seeks to minimise the impact of end-of-life vehicles on the environment, but does not provide for complete harmonisation and thus does not prevent Member States from adopting more stringent protective measures (see, inter alia, Case C-6/03 Deponiezweckverband Eiterköpfe [2005] ECR I-2753, paragraph 27). Such measures must, however, be compatible with the provisions of the EC Treaty and, inter alia, must not frustrate the achievement of the objective pursued in the second instance by that directive, namely to ensure the smooth functioning of the internal market and to avoid distortions of competition in the Union.

36. In that regard, the Court finds, as has been pointed out by the Commission, that Article 5(3) of Directive 2000/53 provides a precise description of the procedure to be followed for cancelling the registration of an end-of-life vehicle, in order to ensure, as stated by recital 2 in the preamble to the directive, coherence between national approaches. In the context of that procedure, a very specific function is given to a key document entitled 'certificate of destruction'.

37. That function of the document cannot be altered. In the mere acknowledgement that the French system affords better traceability of end-of-life vehicles, it is clear that that system was giving the 'certificate of destruction' a function different to that laid down in Article 5(3) of Directive 2000/53. Such an alteration of the function of that certificate is liable to jeopardise the coherence between the national approaches referred to in the preceding paragraph and, consequently, the functioning of the internal market.

38. Likewise, the issue of a document entitled 'receipt of acceptance for destruction' which, in the French Republic's submission, fulfils the function of the 'certificate of destruction' provided for in Article 5(3) of Directive 2000/53 is liable to give rise to confusion capable of undermining the achievement of the objective pursued by that provision.

39. It follows from the foregoing that the third plea is also well founded.

Fourth plea: incompatibility with Article 5(4) of Directive 2000/53 of the system of acceptance of end-of-life vehicles

Arguments of the parties

40. The Commission submits that Article 5(4) of Directive 2000/53, read in conjunction with Article 5(2), provides for an obligation on the part of authorised treatment facilities to accept end-of-life vehicles for destruction free of charge.

41. According to the Commission, the principle that those vehicles are to be accepted free of charge must be construed as meaning that, first, all treatment facilities are obliged to accept completely free of charge the vehicles delivered by the last holder and/or owner and, secondly, all those facilities benefit from a mechanism for compensating the costs incurred by that acceptance, which costs are borne by the manufacturers.

42. By leaving the option open to demolishers to refuse to accept end-of-life vehicles for destruction, and by failing to make provision for compensation for costs of treatment for those demolishers, the French system of acceptance of those costs by

the manufacturers does not, the Commission argues, comply with Directive 2000/53 and is liable to undermine its effectiveness.

43. The French Republic does not agree with that interpretation of Directive 2000/53. In its view, the Union legislature did not intend to oblige all treatment facilities to accept end-of-life vehicles through payment to them of compensation.

44. Admittedly, one of the objectives of Directive 2000/53 is to have all end-of-life vehicles transferred to treatment facilities. In the achievement of that objective, however, free-of-charge acceptances are merely an incentive and only one of a number of possible means by which that objective may be attained.

45. Thus, under French law, the objective of collecting all end-of-life vehicles through an appropriate system of treatment facilities is based not only on incentives but also on punitive measures designed to penalise the abandonment of end-of-life vehicles.

46. In those circumstances, the measures taken under French law, in the spirit of Directive 2000/53, appear to be sufficient for attaining the objective pursued, without it being necessary to require all treatment facilities, and consequently demolishers, to accept end-of-life vehicles.

47. Lastly, the compensation mechanism established by the Order of 13 May 2005 on the detailed rules governing the payment of compensation to authorised shredders is merely the correlation to their obligation of acceptance. Consequently, the Commission is incorrect in its assertion that, in the absence of compensation for demolishers, the provision under French law for acceptance of the costs of treatment by the manufacturers does not comply with the requirements of Directive 2000/53.

Findings of the Court

48. First of all, it is clear from the actual wording of Article 5(4) of Directive 2000/53 that the delivery of an end-of-life vehicle to an authorised treatment facility must be free of charge, the related costs being borne by the manufacturers.

49. It immediately follows that, for any demolisher accepting voluntarily an end-of-life vehicle for destruction, the national system must make provision for a system of compensation for the costs of treatment, in this case the same as that provided for treatment facilities which are obliged under the national system to accept such vehicles.

50. Consequently, it is already clear that, by excluding from the system of compensation provided for in Article 6 of Decree No 2003-727 those demolishers who have accepted a vehicle for destruction, the French Republic has failed to fulfil its obligations under Article 5(4) of Directive 2000/53.

51. As regards the question whether Directive 2000/53 must be interpreted as meaning that demolishers, as treatment facilities, are automatically obliged to accept end-of-life vehicles delivered by the last holder and/or owner, it should be borne in mind that, according to the wording of Article 5(2) of that directive, the Member States are required to take the necessary measures to ensure that all end-of-life vehicles are transferred to authorised treatment facilities.

52. There is nothing either in that wording or in the wording of Article 5(4) of Directive 2000/53 to indicate that that transfer to ‘facilities’ is to be interpreted as meaning that all facilities are obliged to accept end-of-life vehicles.

53. Moreover, recital 7 in the preamble to Directive 2000/53, introducing Article 5(4) of that directive, states that ‘Member States should ensure that the last holder and/or owner can deliver the end-of-life vehicle to an authorised treatment facility without any cost …’.

54. That recital refers to ‘a’ treatment facility and not ‘any’ treatment facility, wording

which corresponds to the French version (‘une’, and not ‘toute’, ‘installation de traitement’) and the German version (‘bei “einer” zugelassenen Verwertungsanlage’, and not ‘jeder’), and therefore lends itself more to the interpretation advocated by the French Republic.

55. That last interpretation also follows from a purposive interpretation of the disputed provision. Since, according to Article 5(2) of Directive 2000/53, one of its objectives is that all end-of-life vehicles should be transferred to treatment facilities, and since the measures adopted for that purpose, apart from the requirement that the acceptance be free of charge as required by Article 5(4) of that directive, come within the competence of the Member States, the directive does not prevent certain treatment facilities from opting whether or not to accept, provided that the number of treatment facilities obliged to accept end-of-life vehicles delivered is sufficient to allow, in practice, for a transfer to such a facility.

56. Thus, by providing for the obligation for shredders and collection centres to accept end-of-life vehicles, on the one hand, and for severe sanctions incurred in the case of abandonment of such a vehicle, referred to in paragraph 65 of the French Republic’s statement in defence, on the other, French law has introduced a system for the acceptance of end-of-life vehicles which cannot be regarded as being incompatible with Article 5(4) of Directive 2000/53.

57. The Court accordingly finds that the fourth plea is well founded in so far as demolishers which have accepted delivery of an end-of-life vehicle for destruction are excluded from the system of compensation provided for in Article 6 of Decree No 2003-727 and that the plea must be rejected as to the remainder.

Fifth plea: incompatibility with Article 6(3) of Directive 2000/53 of the non-reproduction of the concept of ‘stripping’ in the provisions transposing the directive into French law

Arguments of the parties

58. In support of this plea, the Commission submits that Decree No 2003-727 does not reproduce the concept of ‘stripping’ (‘déshabillage’), as employed in Article 6(3) of Directive 2000/53 to designate the first stage of treatment operations. Even though the Commission takes the view that that term, which in the French version is no doubt the result of an infelicitous translation of the English word ‘stripping’, does not lend itself very well in French to usages in relation to a vehicle, it does describe the minimum dismantling operation which is a prerequisite to all other treatment operations, including depollution.

59. The French Republic observes that there is no definition whatsoever of the concept of ‘stripping’. It goes on to observe that the treatment operations listed in Article 6(3) of Directive 2000/53 are merely the minimum treatment obligations which an establishment or undertaking carrying out treatment operations must be in a position to satisfy. Thus, according to the French Republic, that provision is not intended to describe exhaustively the treatment process or to impose on Member States a precise sequence of treatment operations.

60. The French Republic concludes that, as the term ‘depollution’ applies to all treatme nt operations referred to in Article 6(3) of Directive 2000/53, French law, which imposes the principle that depollution must precede all other treatment, has transposed that provision correctly.

Findings of the Court

61. The Court finds, first, that, despite the fact that there is no definition of the concept of ‘stripping’, it is common ground that both stripping operations and depollution operations relate to vehicle components containing hazardous

substances which, in order to reduce any negative impact on the environment, must be dismantled before any other treatment takes place.

62. Secondly, according to the Commission, the criterion which distinguishes vehicle components containing hazardous substances which, in its view, should be 'stripped' from those which should be 'depolluted' is that of the ease of dismantling of those components without endangering the environment. Thus, batteries which can be easily dismantled come within the scope of 'stripping', whilst those which cannot be easily dismantled come within the scope of 'depollution'.

63. In the light of those findings, Article 6(3) of Directive 2000/53 must be interpreted as meaning that 'stripping' is to be regarded as being the operation by which the 'treatment operations for depollution' commence, whilst at the same time forming part of those operations. Consequently, by imposing the principle that depollution must precede all other treatment, without, however, specifying, through the introduction of the term 'stripping', that depollution begins with the dismantling of components which are easy to dismantle, which would appear to be necessary, the French Republic has not failed to comply with its obligations under Article 6(3) of that directive.

64. In those circumstances, the fifth plea must be rejected.

Sixth plea: incompatibility with Article 7(1) of Directive 2000/53 of the interpretation of the expression 'when environmentally viable'

Arguments of the parties

65. The Commission observes that Article 7 of Decree No 2003-727, transposing Article 7(1) of Directive 2000/53, provides that the components and materials of end-of-life vehicles are to be reused, recovered and recycled rather than destroyed 'wherever technical and economic circumstances so permit', whereas Article 7 of that directive gives preference to recycling 'when environmentally viable'.

66. The Commission takes the view that the reference to 'technical and economic circumstances' pursues a different objective to that intended by the Union legislature, with the emphasis, at the time of the choice between recycling and another operation, being not on environmental protection but rather on economic profitability or technical feasibility at the lowest possible cost.

67. The French Republic takes the view that the concept of 'environmentally viable' recycling cannot be accorded legislative weight, as the legal effect of a rule of law depends on the clarity and precision of the obligation resulting therefrom.

68. The French Republic adds that demolishers and shredders are not in a position to foresee the consequences of their actions in relation to 'environmental viability' and, therefore, to determine the circumstances in which they must give preference to recycling. French law has thus introduced a subjective approach to the preference to be given to recycling, as this can be assessed only on a case-by-case basis.

Findings of the Court

69. It must be noted at the outset that the transposition, into French law, of the expression 'when environmentally viable', used in Article 7(1) of Directive 2000/53, is correct if the expression 'wherever technical and economic circumstances so permit', employed in Article 7(2) of Decree No 2003-727, may be considered equivalent to the first expression.

70. In that regard, it must be noted that both expressions call for a case-by-case assessment which, by its very nature, introduces an element of subjectivity.

71. It should also be noted that both expressions are alike in their legal effect, which, as noted by the French Republic, follow from the clarity and precision of the obligation resulting therefrom.

72. As regards the content of the recycling obligation, laid down in Article 7 of Directive 2000/53, on the one hand, and in Article 7 of Decree No 2003-727, on the other, it is clear that the conditions laid down in the latter provision are ultimately economic in nature, as recycling can clearly be envisaged only once it is feasible in technical terms.

73. It follows that the content of the two expressions, referred to in paragraph 69 of the present judgment, can be regarded as equivalent only if the concept of 'environmental viability' is equivalent to that of 'economic feasibility'.

74. Even though it may be accepted that the two concepts have certain aspects in common, it is clear that they are not equivalent.

75. The sixth plea is accordingly well founded.

76. In the light of the foregoing, the Court finds that, by failing to adopt all the laws and regulations necessary to ensure the correct and complete transposition of Article 2.13, Article 4(2)(a), Article 5(3) and (4), in so far as, for the latter paragraph, demolishers which have accepted delivery of an end-of-life vehicle for destruction are excluded from the system of compensation for costs of treatment, Article 7(1) and Article 8(3) of Directive 2000/53, the French Republic has failed to fulfil its obligations under that directive.

Costs

77. Under Article 69(3) of the Rules of Procedure, the Court may order that the costs be shared or that the parties bear their own costs, if each party succeeds on some and fails on other heads.

78. In the present case, as the Commission and the French Republic have each failed on a number of heads, each must be ordered to bear its own costs.

Operative part

On those grounds, the Court (First Chamber) hereby:

1. Declares that, by failing to adopt all the laws and regulations necessary to ensure the correct and complete transposition of Article 2.13, Article 4(2)(a), Article 5(3) and (4), in so far as, for the latter paragraph, demolishers which have accepted delivery of an end-of-life vehicle for destruction are excluded from the system of compensation for costs of treatment, Article 7(1) and Article 8(3) of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles, the French Republic has failed to fulfil its obligations under that directive;

2. Dismisses the action as to the remainder;

3. Orders the European Commission and the French Republic to bear their own respective costs.