



30.1.2015

NOTICE TO MEMBERS

Subject: Petition No 1350/2013 by Thierry Lambin (Belgian) on the dangers inherent in exporting second-hand cars to Romania and Bulgaria

1. Summary of petition

The petitioner lives in Romania and has noticed that many young Romanians drive around in second-hand cars imported from Western Europe. These vehicles are often poorly maintained, making them a danger to road-users. Every year, many young Romanians and Bulgarians die on the roads unnecessarily because of unsafe cars. The petitioner considers that exports to Eastern Europe of second-hand cars which no longer comply with the technical requirements that apply in the West of the EU are a crime. He calls on the European Parliament to take measures to put an end to the many road accidents which are due to the unscrupulous trade in technically defective cars.

2. Admissibility

Declared admissible on 15 April 2014. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 30 January 2015

The Commission's observations

(i) As regards the free movement of goods in the EU - Article 34 of the Treaty on the functioning of the European Union (TFEU)

- The rules governing the free movement of goods in the European Union are enshrined in the Treaty on the functioning of the European Union (TFEU), as supplemented and

interpreted by the case law established by the Court of Justice of the European Union (CJEU).

- Article 34 TFEU states that: *‘Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.’*

Article 36 TFEU states that: *‘The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.’*

- Accordingly, even though second-hand vehicles may benefit from free movement between EU Member States, the latter countries have the option of waiving such free movement by adopting measures aimed at ensuring road safety on their territory.
 - The CJEU has ruled that in the absence of any EU-wide harmonisation measures, it is up to the Member States to decide the level at which they intend to ensure road safety on their territory, whilst taking into account requirements relating to the free movement of goods within the EU (Case C-110/05 *Commission v Italy* [2009] ECR I-519).
 - It is therefore up to the Romanian authorities to take the necessary measures to ensure road safety in their country, including for second-hand vehicles from other EU Member States; such measures must, however, be proportionate to the aim pursued.
- (ii) As regards the roadworthiness of vehicles – Directive 2009/40/EC on roadworthiness tests for motor vehicles and their trailers
- Directive 2009/40/EC on roadworthiness tests for motor vehicles and their trailers lays down the reference framework for checking the roadworthiness of vehicles. The roadworthiness tests carried out must indicate whether the vehicle is safe to be used on the public highway and whether it meets road safety and environmental protection requirements. As regards the situation of imported second-hand vehicles, they must first and foremost be registered in the Member State of importation, before being used on the public roads. Article 5(a) of the Directive provides Member States with the option of requiring that the vehicle be submitted for roadworthiness testing prior to registration. However, the tests in question may only be required in a non-discriminatory manner and therefore should not cover second-hand imported vehicles alone. This option has been retained in the third indent of Article 5(4) of the recently adopted Directive 2014/45/EU (which is a recast of the legislation on roadworthiness tests for motor vehicles), according to which Member States may require additional roadworthiness testing where the holder of the registration certificate of a vehicle has changed.

- As a result, Member States may require a vehicle to be submitted for roadworthiness testing prior to registration, in order to ensure that the vehicle is authorised to circulate on public roads in safe conditions and in accordance with the relevant environmental legislation.

Conclusions

In the Commission's view, with regard to the provisions relating to the free movement of goods between EU Member States, road safety may be a justification for measures restricting such free movement. It is up to Romania to implement appropriate measures to ensure road safety on its territory. Where the measures in question are liable to restrict the free movement of goods between Member States, they should not go beyond what is necessary to achieve the objective of road safety.

EU legislation on roadworthiness tests for motor vehicles and their trailers already stipulates, in a non-discriminatory manner, that Member States may require additional roadworthiness testing prior to the registration of second-hand vehicles. It is up to the Member States to use this option with the aim of improving road safety.'