

## **Summary of the query Q6/2016/EIS from the Ombudsman of Malta concerning the transposition of relevant EU rules on road safety and access to environmental information into the national legal order in Malta**

Decision

**Case Q6/2016/EIS - Opened on 19/08/2016 - Decision on 18/11/2016**

### **Facts and background**

On 1 July 2016, the European Ombudsman received a letter from the Maltese Commissioner for Environment and Planning concerning the transposition of relevant EU rules on road safety (Regulations 540/2014 [1] and 168/2013 [2] ) and access to environmental information (Directive 2003/4/EC [3] ) into the national legal order in Malta.

### **Legal issues at stake**

The Commissioner referred to his contacts with a local NGO, the relevant EU rules on road safety and access to environmental information, and the Maltese implementing act (Product safety act L.N. 50/2008). He had doubts as to whether the national law is in line with the requirements set out in EU law.

The Maltese Ombudsman requested the European Ombudsman to seek an opinion on the case from the European Commission.

### **Query**

On 19 August 2016, the European Ombudsman decided to open a query procedure in order to seek an opinion of the Commission's services as regards the following:

*How should EU law, which provides that motor vehicles and motorcycles must be in roadworthy condition and meet the same safety standards as when they were first registered, be transposed into the Member States' legislation? Does the Maltese implementing act (Product safety act L.N.*



*50/2008) appear to be in line with the relevant requirements set out in EU law?*

## Commission's reply

On **19 October 2016**, the Commission submitted its response. It explained that Regulation 540/2014 applies from 1 July 2016 onwards to new passenger vehicles (M-category vehicles) and commercial vehicles (N-category vehicles) as well as the replacement silencing systems for those vehicles and lays down the requirements for the type-approval of M and N-category vehicles with regard to their sound level and their registration, sale and entry into service. This Regulation replaced Directive 70/157/EEC, as amended by Directive 2007/34/EC, for new types of vehicles from 1 July 2016 onwards.

In the same way, Regulation 168/2013 sets out, among other issues, the sound test requirements for L-category vehicles which have been applicable as of 1 January 2016. Regulation (EU) No 168/2013 replaces the sound test requirements that were previously set out in Directive 97/24/EC. The sound test procedures are laid down in Regulation (EU) No 134/2014.

The new and stricter noise limits, also introduced by Regulations 540/2014 and 168/2013, concern new vehicles and their replacement silencing systems. Consequently, the current sound level values of new vehicles, measured in accordance with the requirements of these Regulations for their type-approval, will be gradually reduced with the application of those Regulations.

As regards roadworthiness, vehicles are subjected to tests in accordance with Directive 2014/45/EU. For further clarifications on this issue, the Commission invited to address its DG Transport and Mobility, Unit A3, and provided contact details.

The Commission added that driver behaviour may also be a frequent cause for excessive vehicle sound emission. Such issues are related to the enforcement of traffic rules (fines, road side checks, traffic restrictions etc.), which are matters that fall under the competence of the Member States. Therefore, any such cases should be addressed to the competent national authorities.

As regards the way in which the relevant EU legislation should be transposed into the national legal order, the Commission explained that Regulations are directly applicable as such, whereas Directives are binding as to the result to be achieved and need to be transposed into national law. It explained the so-called “transposition by reference” procedure and the relevant conditions that are taken into account [4].

## Feedback

The Commission's reply was forwarded to the Commissioner with an invitation to submit



comments.

On **31 October 2016**, the Commissioner thanked the Ombudsman for having forwarded the Commission's reply to his services. He did not submit any own comments on that reply.

He forwarded to the Ombudsman the comments of the local NGO, which is of the view that the Maltese legislation does not provide for national noise level criteria or a national standard procedure for the replacement and testing of the vehicle exhaust component. Therefore, the Regulations have to be copied-out with effective documentation, to facilitate enforcement and safeguard the end-user health and protect the environment. The methods by which the technical Directives have been transposed into the Maltese legislation do not provide for effective means of information to ensure their effective implementation.

On **10 November 2016**, the Maltese Commissioner confirmed by e-mail that the NGO agrees that the Ombudsman transfer their comments to the Commission for their further handling as an infringement complaint.

## Closing procedure

The Commission had provided an exhaustive reply concerning the interpretation of the relevant provisions. As agreed with the Maltese Commissioner, the Ombudsman transferred the comments of the NGO in question to the Commission, which will deal with them as an infringement complaint.

[1] Regulation (EU) No 540/2014 of the European Parliament and of the Council of 16 April 2014 on the sound level of motor vehicles and of replacement silencing systems, and amending Directive 2007/46/EC and repealing Directive 70/157/EEC, OJ 2014 L 158, p. 131.

[2] Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles, OJ 2013 L 60, p. 52.

[3] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ 2003 L 41, p. 26.

[4] The Commission normally considers that the transposition of a Directive by using the simple method whereby an act of national law declares that the provisions of the Directive are to be regarded as part of the national legal order as from a precise date is possible under specific conditions. These conditions are, first of all, that the Directive is very technical in nature and does not contain any provision leaving margin of discretion to the Member States, so that the Member State does not need to choose between options or have to include any further



precisions to the provisions of the Directive. In addition, the national act transposing "by reference" must allow an effective access to the Directive in the language of the Member State in question and must establish a clear date of entry into force into the national legal order in order to respect the principle of legal certainty. The Commission stated that all these conditions need to be assessed on a case-by-case basis.