OPINION OF ADVOCATE GENERAL KOKOTT

delivered on 25 January 2007 [1]

I — Introduction

1. In this case, the Court is asked to rule on how the concept of the *normal residence* of a private individual is to be construed. This question arises in proceedings between Mr Alevizos and the Greek tax authorities on the granting of possible tax exemptions on the importation of his private motor vehicle into Greece. Mr Alevizos, a member of the Greek armed forces, had acquired that vehicle during his two-year period of service at the NATO Headquarters for Southern Europe located in Naples (Italy), and imported it into Greece on his return there in 1997.

2. The concept of normal residence is relevant in this context because Directive 83/183 [2] provides for certain exemptions from excise duty and other consumption taxes on the importation of an individual's personal property from another Member State when that importation is accompanied by the transfer of that individual's normal residence from another Member State to the Member State of importation. Against that background, the parties are in dispute as to whether Mr Alevizos retained his normal residence in Greece during his two-year period of service with NATO or whether he transferred it to Italy and subsequently transferred it back to Greece. Only in the latter case could he be eligible for a tax exemption under Directive 83/183.

1 — Original language: German.

2 — Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals (OJ 1983 L 105, p. 64), as amended by Council Directive 89/604/EEC of 23 November 1989 (OJ 1989 L 348, p. 28).

II — Legal framework

A — *Community law*

1. Directive 83/183

3. The scope of Directive 83/183 is defined in Article 1 as follows:

'1. Every Member State shall, subject to the conditions and in the cases hereinafter set out, exempt personal property imported permanently from another Member State by private individuals from turnover tax, excise duty and other consumption taxes which normally apply to such property.

2. Specific and/or periodical duties and taxes connected with the use of such property within the country, such as for instance motor vehicle registration fees, road taxes and television licences, are not covered by this Directive.'

4. As indicated in Article 2(2) and (3) and Article 5(2) of Directive 83/183, personal property which is eligible for exemption under Article 1 also includes motor-driven road vehicles. However, the exemption on the importation of motor-driven road vehicles is to be granted only if a private individual 'transfers his normal residence to the Member State of importation' (Article 5(2) in conjunction with Article 7(1)(a) of Directive 83/183). [3]

5. Article 6 of Directive 83/183, headed 'General rules for determining residence', is worded as follows:

'1. For the purposes of this Directive, "normal residence" means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

3 — In addition, Articles 2 to 5 in conjunction with Article 7(1)(a) of Directive 83/183 lay down still further conditions for the grant of exemption which, however, are not relevant to the present proceedings.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.

2. Individuals shall give proof of their place of normal residence by any appropriate means, such as their identity card or any other valid document.

3. Where the competent authorities of the Member State of importation have doubts as to the validity of a statement as to normal residence made in accordance with paragraph 2, or for the purpose of certain specific controls, they may ask for any information they require or for additional proof.'

2. Directives 91/680 and 92/12

6. In addition, for the purposes of these proceedings, reference must be made to a number of provisions of Directive 91/680 [4] and Directive 92/12. [5]

7. Article 1(1) of Directive 92/12 provides as follows:

'This Directive lays down the arrangements for products subject to excise duties and other indirect taxes which are levied directly or indirectly on the consumption of such products, except for value added tax and taxes established by the Community.'

8. According to Article 3 of Directive 92/12:

'1. This Directive shall apply at Community level to the following products as defined in the relevant Directives:

4 — Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1).

5 — Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1).

— mineral oils,

— alcohol and alcoholic beverages,

— manufactured tobacco.

2. The products listed in paragraph 1 may be subject to other indirect taxes for specific purposes, provided that those taxes comply with the tax rules applicable for excise duty and VAT purposes as far as determination of the tax base, calculation of the tax, chargeability and monitoring of the tax are concerned.

3. Member States shall retain the right to introduce or maintain taxes which are levied on products other than those listed in paragraph 1 provided, however, that those taxes do not give rise to border-crossing formalities in trade between Member States.

Subject to the same proviso, Member States shall also retain the right to levy taxes on the supply of services which cannot be characterised as turnover taxes, including those relating to products subject to excise duty.'

9. Article 23, which forms part of Title V ('Exemptions') of Directive 92/12, provides in paragraph 3:

'The provisions on excise duty laid down in the following Directives shall cease to apply on 31 December 1992:

...

— Directive 83/183/EEC ...,

...'

10. Article 2(2) of Directive 91/680 provides:

'The provisions on value added tax laid down in the following Directives shall cease to have effect on 31 December 1992:

...

— Directive 83/183/EEC ..., as amended by Directive 89/604/EEC ...'.

B — *National law*

1. Law No 2127/1993

11. Directive 92/12 was implemented in Greece by Law No 2127/1993.[6] Article 75 of that Law reads as follows:

'Motor vehicles and motorcycles which meet the conditions set out in Articles 9 and 10 of the EEC Treaty and are sent or transported into the country from other Member States of the Community shall be subject to the excise duty stipulated for equivalent imported or domestically manufactured vehicles.'

12. Article 83 of Law No 2127/1993 further provides:

'Partial or total exemption from excise duty as provided for by the provisions in force at any given time for vehicles imported permanently from third countries shall also apply, subject to the same terms and conditions, to the vehicles referred to in Article 75.'

2. Order D.245/11

13. Directive 83/183 was transposed into Greek law by Order D.245/11 of the

6 — FEK A' 48.

Ipourgos Ikonomikon (Minister for Economic Affairs) of 1 March 1988 [7] as amended by Article 15(1) of Law No 2187/1994. [8] Article 2(1)(c) of Order D.245/11 contains a definition of normal residence which corresponds in its wording to that in Article 6 of Directive 83/183. Article 3(1) of that order provides:

'Without prejudice to Articles 4 to 12, private property imported by natural persons who are actually transferring their normal residence from another country to Greece shall be exempted from customs duties and other taxes.'

14. Order D.245/11 originally also included a Chapter 8 which contained inter alia the following Article 25:

'1. The exemptions referred to in Article 3 ... shall be granted for personal property imported by Greek nationals having their normal residence in Greece who have left Greece to work abroad, where they remain working as an employee or otherwise for more than two (2) successive years and, when their work is terminated, return to Greece to settle there permanently.

2. The persons entitled to exemption as envisaged by the preceding paragraph shall include ... officers, non-commissioned officers and other ranks of the armed forces ... who remain abroad for more than two (2) consecutive years solely and exclusively for the purpose of carrying out their duties and on termination of the latter return to Greece on transfer or permanently.'

15. Article 25 of Order D.245/11 was, however, repealed by the first sentence of Article 6(13) of Law No 2459/1997 [9] with effect from 1 January 1997, [10] 'but only as concerns means of transport'. The second sentence of that provision also contained a transitional provision, which read as follows:

'For passenger vehicles that were owned by such persons on 31 December 1996, when customs clearance takes place within six (6)

7 — FEK B' 195.

8 — FEK A' 16.

9 — FEK A' 17.

10 — Paragraph 14 provides that Article 6 of Law No 2459/1997 was to take effect on 1 January 1997, 'except in the case of goods and vehicles for which declaration details for customs clearance had been lodged by 31 December 1996 and on the date on which they were lodged met the terms and circumstances stipulated in each case for the grant of exemption'.

months of publication of this Law in the Official Gazette, excise duty shall be calculated on the basis of the coefficients defined in Article 37 of Law No 1882/1990, as last amended.'

16. The latter time-limit was later extended to 31 December 1997. [11]

III — Facts and main proceedings

17. Mr Alevizos was an officer in the Greek air force and has since retired. In the period from 12 July 1995 to 8 August 1997, he served in Naples, Italy, at the NATO Headquarters for Southern Europe located there. During that time, Mr Alevizos's wife and both his children lived with him in Italy, where they had relocated with the approval and at the expense of his employer. On 25 July 1997, the Greek Consulate-General certified that Mr Alevizos and his family would be returning to Greece and also stated that Chapter 8 of Order D.245/11 applied to Mr Alevizos.

18. In December 1996, while still serving at the NATO Headquarters for Southern Europe, Mr Alevizos had purchased in Germany a private motor vehicle, a Mercedes E 200, year of manufacture 1996, [12] which he then registered, initially, in Italy. On Mr Alevizos's return to Greece, the vehicle was eventually transported there and its importation declared to the Greek customs authorities on 12 August 1997.

19. By decision of 28 August 1997, an amount of GRD 4 136 413 in excise duty was imposed on Mr Alevizos in respect of that vehicle in Greece, as provided for in Article 75 of Law No 2127/1993, [13] as was an amount of GRD 1 470 725 — plus a further GRD 50 — in additional special registration tax. Mr Alevizos paid the total amount of GRD 5 607 188 to the Elefsina Customs Office. [14] According to Mr Alevizos himself, the list price of his vehicle on 16 December

11 — Article 32(1) of Law No 2523/1997 (FEK A' 179).

12 — According to Mr Alevizos, the purchase was made under exemption from value added tax pursuant to Article 14(1)(g) and Article 28c(A)(a) and (B)(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), in the version in force at that time.

13 — That excise duty was calculated in accordance with Article 6(13) and (14) of Law No 2459/1997 in conjunction with Article 32(1) of Law No 2523/1997 on the basis of the reduced coefficient as laid down in Article 37 of Law No 1882/1990.

14 — Mr Alevizos points out that he was also obliged to deposit GRD 2 213 450 (EUR 6 495.82) in value added tax in Greece. However, this was refunded to him in December 1997 pursuant to Order D.1633/721 of the Minister for Economic Affairs of 9 December 1997 after the State Legal Service (Νομικό Συμβούλιο του Κράτους) had delivered an opinion to that effect.

1996 was GRD 9 286 361 (EUR 27 252.71). The Customs Office assessed the value of the vehicle on 12 August 1997 for the purpose of taxation at GRD 9 192 029 (EUR 26 975.87).

20. Mr Alevizos is now taking legal action against the tax decision of 28 August 1997. Since he was unsuccessful in his main submissions both at first instance before the Diokitiko Protodikio Athinon [15] and on appeal before the Diokitiko Efetio Athinon, [16] his case is now pending before the court hearing appeals on points of law, the Simvoulio tis Epikratias, [17] which is the referring court.

IV — Reference for a preliminary ruling and proceedings before the Court of Justice

21. By judgment of 30 June 2005, the Simvoulio tis Epikratias stayed its proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Are civil servants and officers, non-commissioned officers and other ranks of the armed forces, the public security forces and the harbour police corps covered, like other workers, by Article 6 of Council Directive 83/183/EEC and capable of acquiring "normal residence" in another country where they live for at least 185 days in each calendar year in order to carry out an official task of a definite duration, or do they continue, even during the period of their assignment in the other country, to have their normal residence in Greece, irrespective of whether they have transferred their personal and occupational ties to the other country?'

22. In the proceedings before the Court, Mr Alevizos, the Greek Government and the Commission of the European Communities submitted written and oral observations.

V — Assessment

23. By its question, the referring court asks essentially whether members of the armed forces of a Member State who are posted for a fixed period to another Member State, where they live for at least 185 days in each

15 — Administrative Court of First Instance, Athens.

16 — Administrative Appeal Court, Athens.

17 — Council of State.

calendar year in order to carry out their official task, take up normal residence within the meaning of Article 6 of Directive 83/183 in the latter Member State.

24. This question is relevant to the main proceedings primarily because the Greek legislature has repealed a special provision which formerly existed under national law, [18] which exempted inter alia members of the Greek armed forces, on their return from service abroad, from customs duties and other taxes even when they served abroad for more than two years and irrespective of whether they transferred their normal residence.

25. An officer in the Greek air force such as Mr Alevizos can now enjoy exemption from excise duty within the meaning of Directive 83/183 only if, during his two-year period of service at the NATO Headquarters for Southern Europe, he took up normal residence in Italy and subsequently transferred it back to Greece.

26. However, in order to provide the referring court with all the elements which may be of assistance to it in adjudicating on the main proceedings, it is first necessary to examine whether a case such as that of Mr Alevizos can fall within the scope of Directive 83/183 at all (see Section A below). Only then can decisive importance attach to the concept of normal residence used in that directive, which the Court is here asked to interpret (see Section B below). In conclusion, some observations on the fundamental freedoms are also called for (see Section C below).

A — *The scope of Directive 83/183*

1. Scope *ratione temporis*

27. The parties to the proceedings before the Court dispute, firstly, the scope *ratione temporis* of Directive 83/183. While Mr Alevizos and the Commission assume that a case such as this is covered *ratione temporis* by Directive 83/183, the Greek Government takes the view that any relevant provisions of that directive were no longer in force at all at the material time.

18 — The provision in question was Article 25(2), in conjunction with Article 3, of Order D.245/11 (see above, points 14 and 15 of this Opinion).

28. Specifically, the dispute arises from an amending provision adopted in connection with the creation of the internal market, namely Article 23(3) of Directive 92/12, under which 'the provisions on excise duty' laid down in Directive 83/13 were to cease to apply on 31 December 1992.

29. That provision is certainly not an example of good legislation. The wording of Article 23(3) of Directive 92/12 leaves it unclear exactly which provisions were to cease to apply on the date specified and which goods were to be affected by that change in the law. It also remains unclear whether Directive 83/183 could, from that date onwards, retain any independent scope at all, particularly since the date on which its provisions on value added tax were to cease to have effect had already been fixed a short time beforehand, namely also 31 December 1992. [19]

30. A number of phrases in the preamble to Directive 92/12, to which, in particular, the Greek Government has drawn attention, could support a broad interpretation of the amending provision in Article 23(3) at issue here. Thus, the preamble refers in quite general terms to 'the free movement of goods, including those subject to excise duties' [20] and, moreover, states: '... as a result of the abolition of the principle of taxes on imports in relations between Member States, the provisions on exemptions and allowances on imports cease to apply in respect of relations between Member States; ... these provisions should therefore be abolished and the directives concerned adapted accordingly.' [21] Finally, the preamble refers to 'the abolition of taxes on imports and exemptions on exports in trade between the Member States'. [22]

31. Considered in isolation, those recitals could indeed give the impression that Directive 92/12, and in particular Article 23(3), is aimed at the general repeal of all the provisions on excise duty in Directive 83/183, and for all types of goods.

32. However, that is contradicted by, in particular, the context in which that amend-

19 — See Article 2(2) of Directive 91/680.

20 — First recital in the preamble to Directive 92/12.

21 — Twentieth recital in the preamble to Directive 92/12.

22 — Twenty-third recital in the preamble to Directive 92/12.

ing provision is set within Directive 92/12. Thus, Article 3(1) of Directive 92/12 expressly restricts the scope *ratione materiae* of the directive as a whole to mineral oils, alcohol and alcoholic beverages, and manufactured tobacco. The amending provision in Article 23(3) of Directive 92/12 can likewise meaningfully refer only to those goods. Any extension of its application beyond the sphere of mineral oils, alcohol, alcoholic beverages and manufactured tobacco would be difficult to achieve, even with the aid of the preamble cited above. That is because, while the preamble to a Community measure may explain the latter's content, it cannot be relied upon as a ground for derogating from the actual provisions of the measure in question. [23]

33. In the light of that connection with Article 3(1), it would, moreover, conflict with the principle of legal certainty to extend the application of the amending provision in Article 23(3) of Directive 92/12 to products other than mineral oils, alcohol, alcoholic beverages and manufactured tobacco. The Court has consistently held that the principle of legal certainty is a fundamental principle of Community law which requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly. [24] The principle of legal certainty must be observed all the more strictly in the case of provisions liable to have financial consequences, [25] as is the case with the provisions of Community law concerning excise duties at issue here. [26]

34. Taxpayers, and especially the *private individuals* within the meaning of Directive 83/183 concerned here, certainly cannot be expected to attribute to the amending provision contained in Article 23(3) of Directive 92/12 a prescriptive content extending beyond the direct scope of that directive. On the contrary, taxpayers are entitled to rely on the fact that, for products other than mineral oils, alcohol, alcoholic beverages and manufactured tobacco, the provisions on value added tax of Directive 83/183 continued to apply after 31 December 1992 and that individuals remain entitled

23 — Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 76, with further references.

24 — Of the settled case-law to that effect, see only Case C-110/03 *Belgium* v *Commission* [2005] ECR I-2801, paragraph 30; Case C-255/02 *Halifax and Others* [2006] ECR I-1609, paragraph 72; and Case C-248/04 *Koninklijke Coöperatie Cosun* [2006] ECR I-10211, paragraph 79.

25 — *Koninklijke Coöperatie Cosun* (cited in footnote 24), paragraph 79; see also Case 326/85 *Netherlands* v *Commission* [1987] ECR 5091, paragraph 24; Case C-236/02 *Slob* [2004] ECR I-1861, paragraph 37; and Case C-94/05 *Emsland-Stärke* [2006] ECR I-2619, paragraph 43.

26 — In Mr Alevizos's case, the financial consequences are obvious. For him they involve a total of GRD 5 607 188 which he paid in taxes on the importation of his vehicle. That amount is more than half the value of his vehicle as stated by Mr Alevizos himself (for details in that regard, see point 19 of this Opinion).

to rely on them. Had the Council wished to restrict the application of Directive 83/183 also in respect of categories of products other than those specified in Article 3(1) of Directive 92/12, that would have required an express provision.

35. Moreover, the fact that the prescriptive content of the amending provision in Article 23(3) of Directive 92/12 is restricted to the product categories of mineral oils, alcohol, alcoholic beverages and manufactured tobacco also accords with the spirit and purpose of that directive. Accordingly, the provisions of Community law introduced by Directive 92/12 are to apply only to products which are subject to excise duty *in all the Member States.* [27] That does not mean all products which are subject to a national excise duty, but only the categories of products specifically listed in Article 3(1) of Directive 92/12.

36. Likewise, the regulatory framework of Directive 92/12 is able to ensure that chargeability of excise duties is identical in all the Member States only in regard to mineral oils, alcohol, alcoholic beverages and manufactured tobacco. [28] Directive 92/12 then ensures that each of those products is normally taxed in one Member State but that, at the same time, any double taxation is avoided. [29] In regard to mineral oils, alcohol, alcoholic beverages and manufactured tobacco, progress towards harmonisation is therefore being achieved, [30] which now makes the provisions of the older Directive 83/183, with the exemptions provided for in them, appear at variance with the system.

37. The situation is different, however, in the case of all other products not covered by Article 3(1) of Directive 92/12. In their case, Directive 92/12 did not bring about any such harmonisation; on the contrary, Article 3(3) expressly makes it clear that Member States retain the right to introduce or maintain taxes provided that those taxes do not give

27 — Third recital in the preamble to Directive 92/12.

28 — On this latter point, see Case C-296/95 *EMU Tabac and Others* [1998] ECR I-1605, paragraph 22; Case C-325/99 *Van de Water* [2001] ECR I-2729, paragraph 39; Case C-395/00 *Cipriani* [2002] ECR I-11877, paragraph 41; and Case C-5/05 *Joustra* [2006] ECR I-11075, paragraph 27.

29 — See, in this regard, in particular Articles 5 to 10 and 22 of Directive 92/12.

30 — However, even with regard to products within the meaning of Article 3(1), Directive 92/12 achieves only partial harmonisation; see Case C-434/97 *Commission* v *France* [2000] ECR I-1129, paragraph 17, and Case C-240/01 *Commission* v *Germany* [2004] ECR I-4733, paragraph 40. To the same effect, see the case-law cited in footnote 28, according to which the purpose of Directive 92/12 'is to lay down *a number of* rules on the holding, movement and monitoring of products subject to excise duty' (see, for example, *Joustra*, paragraph 27; emphasis added).

rise to border-crossing formalities. [31] Consequently, the excise duties to which those products are subject and the circumstances in which they are chargeable may still differ considerably from one Member State to another. It is even less possible for Directive 92/12 to ensure that duty is always payable on those products in one Member State, but not in several Member States. In those circumstances, the exemptions in Directive 83/183 in regard to products other than mineral oils, alcohol, alcoholic beverages and manufactured tobacco are not *a priori* obsolete.

38. Nor does the prohibition of border-crossing formalities for those other products, introduced by Directive 92/12, conflict with the continued application of the exemptions as provided for by Directive 83/183 in respect of permanent imports of the personal property of individuals. Such exemptions are in no way replaced by a mere prohibition of any border-crossing formalities, but at most supplemented. The objective pursued by Directive 83/183 of furthering the free movement of persons [32] also continues to apply (Article 3(1)(c) EC) and could be achieved far less effectively if in future individuals, on transferring their normal residence from one Member State to another, no longer enjoyed the tax exemptions under Directive 83/183, but were now only to be exempted from border-crossing formalities as provided for in Directive 92/12. Even more than by such formalities, an individual exercising one of his free movement rights will be burdened, on moving to another Member State, by having to pay duty — possibly a second time — on his possessions, such as equipment, furniture and fixtures or a motor vehicle, when they are imported into the host State.

39. The Court also has not so far excluded continued application *ratione temporis* of the excise duty provisions of Directive 83/183 to products other than mineral oils, alcohol, alcoholic beverages and manufactured tobacco. On the contrary, it has on several occasions dealt *on the merits* with the applicability of Directive 83/183, including in respect of the period after 31 December 1992. [33]

40. Against that background, I conclude that in a case such as this the excise duty

31 — See also, in that regard, the third recital in the preamble to Directive 92/12.

32 — Second recital in the preamble to Directive 83/183.

33 — Thus, in Case C-387/01 *Weigel* [2004] ECR I-4981, paragraphs 46 to 49, and Case C-365/02 *Lindfors* [2004] ECR I-7183, paragraphs 26 to 28, the applicability *ratione materiae* of Directive 83/183 was rejected, but not its applicability *ratione temporis*; however, both cases concerned facts which occurred *after 31 December 1992* (see *Weigel*, paragraphs 26 and 27, and *Lindfors*, paragraphs 11 and 12). See also Case C-138/04 *Commission* v *Denmark*, not published in the ECR, '*Commission* v *Denmark III*', paragraphs 13 to 15, which concerned Treaty infringement proceedings brought in the period *after 31 December 1992*.

provisions of Directive 83/183 have retained their validity and are therefore applicable *ratione temporis.*

2. Scope *ratione personae*

41. In the view of the Greek Government, there is likewise no scope for the application *ratione personae* of Directive 83/183, because Mr Alevizos, as a member of the Greek armed forces, was not a worker within the terms of Article 39 EC. Rather, he was employed in the public service within the terms of paragraph 4 of that provision.

42. I am not convinced by that approach. That is because, even if it were to be assumed that the scope of Directive 83/183 conforms closely to that of freedom of movement for workers, the derogating provision of Article 39(4) EC would not be relevant in a case such as this. It is true that, on the basis of that provision, the Greek public institutions could refuse to allow access to certain posts within their jurisdiction to nationals of other Member States. [34] However, the status of Greek nationals as workers within the meaning of Article 39 EC is completely unaffected by that when, like Mr Alevizos at the material time, they go to another Member State in order to take up a post with an employer other than their previous employer, in particular with an international organisation such as NATO. [35]

43. However, apart from that, the fact of the matter is that Directive 83/183 applies in any case not only to workers within the meaning of Article 39 EC, but also, in terms of its scope *ratione personae*, to all *individuals*. That concept is extremely broad. It can cover, in addition to the category of employed persons, all self-employed persons (albeit only outside their occupational activity) and may, moreover, even extend to persons who are not gainfully employed at all. That impression is also confirmed by a comparison with other language versions of

34 — To that effect, see Joined Cases 389/87 and 390/87 *Echternach and Moritz* [1989] ECR 723, paragraph 14, and Case C-443/93 *Vougioukas* [1995] ECR I-4033, paragraphs 19 and 20. As regards the factual requirements for the application of Article 39(4) EC, see, for example, Case C-47/02 *Anker and Others* [2003] ECR I-10447, in particular paragraphs 57 to 63, with further references.

35 — With regard to the status as workers of officials of international organisations, see most recently Case C-137/04 *Rockler* [2006] ECR I-1441, paragraph 15, and Case C-185/04 *Öberg* [2006] ECR I-1453, paragraph 12; see also Case 152/82 *Forcheri* [1983] ECR 2323, paragraphs 9 and 19; *Echternach and Moritz* (cited in footnote 34), paragraph 11; Case C-209/01 *Schilling and Fleck-Schilling* [2003] ECR I-13389, paragraph 28; and Case C-293/03 *My* [2004] ECR I-12013, paragraph 37.

the directive, in which similarly extensive concepts are used. [36]

44. Both the context in which the concept of individual is used and the spirit and purpose of Directive 83/183 also support a broad construction of the scope *ratione personae* of that legislation. Thus, the intention behind Directive 83/183 is that not only workers, for example, but all people of the Member States should become more aware of the existence of the European Community and benefit from the creation of conditions similar to those in a domestic market. [37] Specifically, the directive is intended to remove hindrances to the free movement of persons in the Community, [38] which in general is taken to mean not only free movement for workers, but also free movement for self-employed persons in the context of their freedom to provide services and freedom of establishment and also — at least according to present-day understanding — free movement for citizens of the Union who are not in gainful employment (Article 18 EC).

45. Members of the armed forces of a Member State, such as Mr Alevizos, also belong to the population of the Community and therefore to the broad category of persons covered by Directive 83/183. [39]

46. Against that background, I conclude that in a case such as the present there is also scope for the application *ratione personae* of Directive 83/183.

3. Scope *ratione materiae*

47. It remains to be established whether taxes such as those levied on Mr Alevizos fall within the scope *ratione materiae* of Directive 83/183. Only then would Mr Alevizos be entitled to rely on the tax exemptions under Article 1(1) of that directive.

36 — Thus, for example, the Danish language version uses the term 'privatpersoner', the Greek refers to 'ιδιώτες', the English to 'individuals', the French to 'particuliers', the Italian to 'privati' and the Dutch to 'particulieren'.

37 — First recital in the preamble to Directive 83/183.

38 — Second recital in the preamble to Directive 83/183.

39 — It may be seen from the Court's case-law that the sphere of the armed forces is not excluded *a priori* from the scope of Community law and that the individuals concerned may rely on Community law unless there are specific grounds for derogation (see, in that regard, Case C-273/97 *Sirdar* [1999] ECR I-7403, paragraphs 15 to 19 and 23 to 27; Case C-285/98 *Kreil* [2000] ECR I-69, paragraphs 15 to 24; and Case C-186/01 *Dory* [2003] ECR I-2479, paragraphs 30 to 36).

48. In the present case, the Court does not have before it any detailed information as to the conditions under which, according to Greek law, excise duty and special registration tax are levied on motor vehicles. I therefore consider premature the Commission's conclusion that Directive 83/183 is *a priori* not intended to cover such taxes.

49. It is not the task of the Court, in proceedings for a preliminary ruling, to interpret national law or to examine its application to the specific case. That is a matter for the national court. However, the Court has jurisdiction to provide the referring court with all the elements of interpretation of Community law which may be of assistance to it in adjudicating on the main proceedings. [40]

50. The scope *ratione materiae* of Directive 83/183 is delimited both positively and negatively in Article 1.

51. Positively, Article 1(1) of Directive 83/183 provides that exemptions are to be granted from excise duty and other consumption taxes which normally apply to such personal property imported permanently from another Member State by private individuals. They are to be construed as including only such excise duties as are *linked to the importation as such*: the chargeable event is thus the importation of the property concerned. [41] That is an expression of the objective pursued by Directive 83/183 of eliminating tax obstacles to the free movement of private individuals who transfer their normal residence from one Member State to another. [42] The directive protects private individuals who have acquired goods in another Member State under the tax conditions applicable there, and who use those goods as their personal property, against any — possibly further — taxation which might arise when they transfer their normal residence to another Member State.

52. Negatively, Article 1(2) of Directive 83/183 excludes from exemption duties and taxes connected with the *use* of personal property, irrespective of whether such duties and taxes are 'specific' or 'periodical'. So far as concerns motor vehicles, fees for their registration and any road taxes, for example, are expressly excluded from the scope of the directive. That is an expression of the principle that Community law does not offer private individuals any guarantee that transferring their residence or activities to another Member State will — apart from the actual

40 — Settled case-law; see only Case C-297/89 *Ryborg* [1991] ECR I-1943, paragraph 21; Case C-107/98 *Teckal* [1999] ECR I-8121, paragraph 33; Case C-262/99 *Louloudakis* [2001] ECR I-5547, paragraph 50 et seq.; and Case C-506/04 *Wilson* [2006] ECR I-679, paragraphs 34 and 35.

41 — *Weigel*, paragraph 47, *Lindfors*, paragraphs 26 to 28, and *Commission* v *Denmark III*, paragraph 13 (all cited in footnote 33).

42 — Second recital in the preamble to Directive 83/183; see also *Commission* v *Denmark III* (cited in footnote 33), paragraph 11.

crossing of the border — be neutral as regards taxation for them; given the disparities in the tax legislation of the Member States, actually living in another Member State may be to the advantage of the person concerned in terms of his taxation or not, according to circumstance. [43]

53. In order to assess whether excise duty falls within the scope of Directive 83/183, the determining factor is the chargeable event; [44] by contrast, the name given to the tax in national law is not as such decisive. [45]

54. If excise duty is levied on a motor vehicle when it crosses the border or as a consequence of that event, that indicates that the primary consideration underlying the taxation is the importation of the vehicle and not so much its future use within the country. In such a case, as a general rule, there is scope for application of the exemption pursuant to Article 1(1) of Directive 83/183. [46]

55. It is more difficult to assess cases where there is only an approximate connection in time between the levying of the excise duty and the transfer of an individual's residence to the Member State concerned, such as, for example, on the registration of his private motor vehicle imported into that Member State.

56. The decisive factor in such cases is whether the excise duty is linked to the importation of the vehicle or merely to its use within the country. In other words, it is a question of establishing whether the excise duty is levied only on vehicles imported from abroad or on all vehicles registered in the Member State concerned. In the former case, private individuals are to be exempted from the excise duty in question pursuant to Article 1(1) of Directive 83/183, whereas, in the latter case they are not. [47]

43 — To that effect, *Weigel*, paragraph 55, and *Lindfors*, paragraph 34 (both cited in footnote 33); see also Case C-403/03 *Schempp* [2005] ECR I-6421, paragraph 45.

44 — *Lindfors*, paragraph 26, and *Commission* v *Denmark III*, paragraph 13 (both cited in footnote 33).

45 — *Lindfors* (cited in footnote 33), paragraph 24.

46 — Levying tax *at the time of entry itself* would, moreover, also be unlawful for another reason: it would be contrary to the prohibition of border-crossing formalities under Article 3(3) of Directive 92/12.

47 — See, to that effect, *Weigel*, paragraph 47, *Lindfors*, paragraphs 25 to 28, and *Commission* v *Denmark III*, paragraphs 12 to 15 (all cited in footnote 33).

4. Interim conclusion

57. As an interim conclusion, the following can therefore be held:

Directive 83/183 applies — including for the period after 31 December 1992 — to all excise duties and other consumption taxes which are levied at the time of the transfer of an individual's residence from one Member State to another on his privately used motor-driven road vehicle where the duty or tax in question is linked to the importation of the vehicle and is not incurred on account of its use within the country. That is also true with regard to members of the armed forces of a Member State.

B — *The concept of normal residence within the meaning of Directive 83/183*

58. If the excise duty and/or special registration tax imposed on Mr Alevizos in Greece was linked to the act of importing his vehicle into Greece, the concept of normal residence within the meaning of Article 6(1) of Directive 83/183 remains to be discussed. That is because, under Article 1(1) in conjunction with Article 5(2) and Article 7(1)(a) of that directive, there is entitlement to tax exemption only if Mr Alevizos transferred his normal residence to Italy for the duration of his period of service with NATO and then transferred it back to Greece on his return.

59. The concept of normal residence is a Community concept, the scope of which may not be altered by the Member States. [48] That concept refers to a person's *permanent centre of interests*; in order to determine this, an overall assessment of all the circumstances of the individual case must be carried out in the light of all the criteria contained in the relevant provision. [49]

60. According to the first subparagraph of Article 6(1) of Directive 83/183, a person's *residence* is the place where that person lives because of personal and occupational ties. Within the meaning of the directive, that place becomes the person's *normal* residence as a result of the fact that the person lives there for at least 185 days in each calendar year.

48 — Case C-9/92 *Commission* v *Greece* [1993] ECR I-4467, paragraphs 8 and 28.

49 — *Ryborg*, paragraphs 19, 20 and 28, with further references, and *Louloudakis*, paragraphs 51, 55 and 57 (both cited in footnote 40). Although both of those judgments were given in regard to Article 7 of Directive 83/182, they can be applied without qualification to Article 6 of Directive 83/183, which is to be interpreted here. Both directives are closely connected with one another and, as evidenced by the recitals in their preambles, pursue the objective of creating conditions similar to those in a domestic market and of eliminating tax obstacles to the free movement of persons. The provisions in question concerning normal residence, laid down in Article 6 of Directive 83/183 and Article 7 of Directive 83/182, are also identical in their wording.

61. Since the latter temporal criterion of 185 days in each calendar year appears to be fulfilled without any problems in this case, only the first-mentioned qualitative criterion, that is, the question of personal and occupational ties, requires more detailed discussion here. [50]

62. It follows from the first subparagraph of Article 6(1) of Directive 83/183 that a person's residence is, in principle, a place where he has both personal and occupational ties. Both kinds of ties must therefore be considered cumulatively. [51] Moreover, that also accords with the spirit and purpose of that provision, which is to determine a person's permanent centre of interests. [52]

63. It is not necessary in that regard for a person to bring together *all* his personal and occupational ties in one particular place. That is apparent from the wording of Article 6(1) of Directive 83/183 alone. According to that provision, the person must live in the place in question only 'because of personal and occupational ties', which does not preclude him from also having such ties in other places in other Member States. [53] Where a person makes use of his right to freedom of movement under the EC Treaty, that person will even, as a rule — at least for a transitional period — have strong ties both in his country of origin and in the host State.

64. It accords with the understanding of residence as a person's centre of interests to determine the focal point if that person has personal and occupational ties in different places simultaneously. [54] It would be frankly contrary to the objective of Directive 83/183, which is to create conditions similar to those in a domestic market and to that end to facilitate the free movement of persons, [55] if the establishment of a person's normal residence in the host Member State were to be made subject to excessively strict requirements and the transfer of *all* personal and occupational ties to that place were always to be demanded.

50 — It is of course the rule in this context also that the Court must provide the referring court only with those elements of interpretation of Community law which may be of assistance to it in adjudicating on the main proceedings (see above, point 49 of this Opinion).

51 — Also to that effect, *Louloudakis* (cited in footnote 40), paragraph 53.

52 — See above, point 59 of this Opinion.

53 — In *Louloudakis* (cited in footnote 40), paragraph 50, reference is also made to the criterion of 185 days in each calendar year, which does not preclude the same person from living in a different place, likewise because of personal and occupational ties, during the remainder of the calendar year.

54 — To that effect, see also *Louloudakis* (cited in footnote 40), paragraph 53.

55 — First and second recitals in the preamble to Directive 83/183. As the Court pointed out in *Commission* v *Greece* (cited in footnote 48), paragraph 6, the interpretation of the concept of normal residence acquires special significance for the achievement of those objectives: the concept 'is fundamental to the system established by Directive 83/182. That is equally true of Directive 83/183'. To the same effect, see *Louloudakis* (cited in footnote 40), paragraph 58.

65. In *Louloudakis*, the Court listed, by way of examples, a number of factors which may provide information as to an individual's permanent centre of interests. They include 'the actual presence of the person concerned and of the members of his family, availability of accommodation, the place where the children actually attend school, the place where business is conducted, the place where property interests are situated, that of administrative links to public authorities and social services, inasmuch as those factors express the intention of that person to confer a certain stability on the place of connection, by reason of the continuity arising from a way of life and the development of normal social and occupational relationships'. [56] If those factors are classified as criteria for personal and/or occupational ties and applied to a case such as the present, the following picture emerges.

66. A member of the Greek armed forces who, with the approval of his employer, completes his service in Italy at the seat of an international organisation, such as the NATO Headquarters for Southern Europe, has *occupational ties* in Italy. Depending on the terms of his employment, it may well be that he also retains occupational ties in his home State of Greece. Thus, the Greek Government observed that, under Greek service regulations, the person concerned is granted unpaid leave for the duration of his service abroad and that he remains obliged to transfer contributions to social security schemes in Greece. In the proceedings before the Court, it was also submitted that Mr Alevizos was 'posted' to NATO — albeit at his own request — by his employer. Those purely administrative ties to his country of origin are, however, far less well developed than the tie of the person concerned to his new place of service, in which his presence in person and the actual completion of his service are demanded. The focal point of the occupational ties of the person concerned therefore lies, during the period of his service abroad, not in his country of origin, Greece, but in the host State.

67. As regards the *personal ties* of the person concerned, it is first and foremost his links with natural persons, that is, with specific individuals, which are decisive. If, during his period of service, the person concerned lives together with his wife and his under-age children in the host State, that is a strong indication that his personal ties have moved there. It is true that, in addition, he may also have personal ties in his home State with, for example, other members of his family. However, the focal point of his personal ties must as a rule be located in the persons with whom he lives permanently in a common household.

56 — *Louloudakis* (cited in footnote 40), paragraph 55.

68. At the same time, it is true that the Court, as already mentioned, has also recognised 'administrative links to public authorities and social services' as possible criteria for determining a person's centre of interests; however, that holds true only in so far as those factors express the intention of that person to confer a certain stability on such ties by reason of continuity and a way of life. [57] Normally it would not be appropriate, in determining the focal point of the personal ties of the person concerned, to give *primacy* to such factors over his ties with specific individuals with whom he lives in a common household. I therefore also consider the Greek Government's reference to the continuing tie between Mr Alevizos and his Greek employer, to his involvement in Greek social security schemes and especially to his Greek nationality to be irrelevant for the purpose of determining the *focal point* of his *personal interests*.

69. For a person in Mr Alevizos's position, both the focal point of his occupational ties and the focal point of his personal ties during his period of service abroad lie, no longer in his home country, but rather in the host State. Consequently, both on taking up his duties abroad and on returning to his home country, there is a transfer of his normal residence within the meaning of Directive 83/183.

70. It should be observed, merely in passing, that, contrary to the view taken by the Greek Government, the second subparagraph of Article 6(1) of Directive 83/183 cannot apply in such a case. That provision presupposes that a person has his occupational ties in a different place from his personal ties and consequently lives in turn in different places situated in two or more Member States. Only then would primacy have to be given to his personal ties in determining normal residence. [58] However, that subparagraph does not cover persons who, like Mr Alevizos, bring together both the focal point of their occupational ties and the focal point of their personal ties in the same place.

71. Consequently, since the aforementioned second subparagraph does not apply to a case such as this, nor does decisive significance attach to whether a person such as Mr Alevizos went abroad only in order to *carry out a task of a definite duration*. That is because this criterion could, at best, be relevant at all in the context of the second subparagraph. Apart from that, however, the only decisive factor is whether the person

57 — *Louloudakis* (cited in footnote 40), paragraph 55.

58 — *Louloudakis* (cited in footnote 40), paragraphs 53 and 60.

concerned lives in a given place for at least 185 days in each calendar year because of personal and occupational ties (first subparagraph of Article 6(1) of Directive 83/183).

72. Therefore, to summarise:

A member of the armed forces of a first Member State who, with the approval of his employer, completes two years of his service with an international organisation in a second Member State where he lives together with his spouse and children for at least 185 days in each calendar year establishes in the second Member State for the duration of that service abroad his normal residence within the meaning of Article 6 of Directive 83/183.

C — *The relevance of the fundamental freedoms to this case*

73. At the hearing before the Court, the Commission submitted in addition that this case should also be assessed having regard to the provisions of the EC Treaty concerning freedom of movement. Although the referring court did not discuss fundamental freedoms in the reference for a preliminary ruling, the Court is free to comment on them in its judgment in order to provide that court with all the elements relevant to the adjudication on the main proceedings. [59]

1. Preliminary remarks

74. National measures in a sphere which is the subject of harmonisation by secondary legislation at Community level should be assessed by reference to the specific provisions of that harmonisation measure and not by reference to primary legislation. It is true that the lawfulness of the secondary legislation itself may be reviewed in accordance with Article 220 et seq. EC in the light of superior primary legislation and must also be interpreted in conformity with primary legislation. However, apart from that, within its particular sphere of application, secondary legislation is the criterion for the assessment of national measures under Community law.

59 — Settled case-law; see only Case C-315/92 *Verband Sozialer Wettbewerb* [1994] ECR I-317, '*Clinique*', paragraph 7; Case C-471/04 *Keller Holding* [2006] ECR I-2107, paragraph 26; and *Lindfors* (cited in footnote 33), paragraph 32.

75. Consequently, in so far as the referring court concludes, following a detailed assessment of the excise duty and special registration tax imposed on Mr Alevizos, that the tax in question is *linked to the importation of the vehicle* and is not due solely by reason of the vehicle's use in Greece, it must apply Directive 83/183 to this case. [60] Recourse to the provisions on freedom of movement is then unnecessary. [61] Nor are Articles 23 EC and 25 EC relevant. That is because the requirements arising from the fundamental freedoms under the EC Treaty in such a case have already been given specific expression in Directive 83/183.

76. However, if the referring court's examination shows that the excise duty or special registration tax, as they were imposed on Mr Alevizos, do *not* fall within the scope *ratione materiae* of Directive 83/183, those taxes must be assessed directly in the light of the provisions of the EC Treaty concerning freedom of movement. [62] Even in the areas of tax legislation which fall within their competence, the Member States must exercise that competence consistently with Community law. [63]

77. Among the free-movement rights enshrined in the EC Treaty, freedom of movement for workers is the assessment criterion applicable to this case. That is because, as already mentioned, Greek nationals are workers within the meaning of Article 39 EC if, like Mr Alevizos at the material time, they go to another Member State in order to take up a post there with an employer other than their previous employer, in particular with an international organisation such as NATO; Article 39(4) EC does not preclude that. [64] Such persons may of course also rely on that fundamental freedom when they return to their country of origin, vis-à-vis the authorities there. [65]

78. If Article 39 EC is relevant as a special provision on freedom of movement, that

60 — In that regard, see above, points 50 to 56 of this Opinion.

61 — *Weigel* (cited in footnote 33), paragraph 43.

62 — *Weigel*, paragraph 50 et seq., *Lindfors*, paragraph 31 et seq., and *Commission* v *Denmark III*, paragraph 16 (all cited in footnote 33).

63 — See, to that effect, for example, the settled case-law on direct taxation (Case C-374/04 *Test Claimants in Class IV of the ACT Group Litigation* [2006] ECR I-11673, paragraph 36, and Case C-446/04 *Test Claimants in the FII Group Litigation* [2006] ECR I-11753, paragraph 35, both with further references) and, specifically regarding the taxation of motor vehicles, Case C-464/02 *Commission* v *Denmark* [2005] ECR I-7929, '*Commission* v *Denmark II*', paragraph 74.

64 — In that regard, see above, point 42 of this Opinion.

65 — Settled case-law; see only Case C-370/90 *Singh* [1992] ECR I-4265, paragraph 23; Case C-19/92 *Kraus* [1993] ECR I-1663, paragraphs 15 and 16; and *Schilling and Fleck-Schilling* (cited in footnote 35), paragraph 27.

precludes application of the general right to freedom of movement for citizens of the Union pursuant to Article 18(1) EC; [66] however, the following observations would in any case also be capable of being applied to the sphere of Article 18 EC.

79. So far as concerns Article 90 EC, [67] no specific indications were given in the proceedings before the Court which would point to *discriminatory* taxation of vehicles imported into Greece from other Member States.

2. Excise duties on personal property against the background of freedom of movement for workers (Article 39 EC)

80. Like all the fundamental freedoms, freedom of movement for workers under Article 39 EC is also a fundamental principle of Community law, [68] which implies both a prohibition of discrimination based on nationality and a prohibition of restrictions. [69]

81. If, as is assumed here, the excise duty and special registration tax imposed on Mr Alevizos were *not* linked to the importation of his vehicle, [70] but were incurred only on account of its use in Greece, they would not give rise either directly or indirectly to *discrimination* against migrant workers on grounds of their nationality, but on the contrary would apply without distinction to all keepers of motor vehicles residing in Greece.

82. It would, however, remain to be discussed whether such non-discriminatory domestic taxes on motor vehicles may involve a *restriction* of the right of migrant workers to freedom of movement, prohibited under Article 39 EC.

83. In that regard, the Court held in *Weigel*, on the one hand, that even non-discrimin-

66 — See, instead of many, Case C-100/01 *Oteiza Olazabal* [2002] ECR I-10981, paragraph 26, and Case C-520/04 *Turpeinen* [2006] ECR I-10685, paragraphs 13 and 17.

67 — The Court also examines that provision in *Weigel* (cited in footnote 33), paragraphs 66 to 81 and 85 to 89.

68 — Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 93.

69 — Case C-190/98 *Graf* [2000] ECR I-493, paragraph 18, and *Weigel* (cited in footnote 33), paragraphs 51 and 52; see also *Bosman* (cited in footnote 68), paragraph 96.

70 — A tax linked to importation would, as already mentioned, have to be assessed in the light of Directive 83/183 (see points 50 to 56 and 75 of this Opinion).

atory internal taxation imposed on privately used motor vehicles is likely to have a negative bearing on the decision of a migrant worker to exercise his right to freedom of movement. [71] On the other hand, however, it pointed out that the EC Treaty offers no guarantee to a worker that transferring his activities to another Member State will be neutral as regards taxation. Given the disparities in the legislation of the Member States in this area, such a transfer may be to the worker's advantage in terms of indirect taxation or not, according to circumstance. [72] I have already drawn attention to that in another connection above. [73]

84. In my view, that case-law gives expression to the fact that the imposition of such non-discriminatory internal taxation does not, as a rule, give rise to any restriction of freedom of movement. [74] Anything else could then apply only *exceptionally* if such a tax, considered objectively, had such a prohibitive effect on a migrant worker [75] that it made it excessively difficult for him to exercise his right to freedom of movement.

85. Whether the tax here in question has such a prohibitive effect needs to be assessed in detail on the basis of objective criteria, which include in particular the rate of duty and the detailed rules for levying it. [76] In that regard, however, the Member State levying the duty must be allowed a wide discretion as regards its form. Thus, even a burden of the order of 50 to 60% of the value of the imported vehicle should not necessarily be regarded as prohibitive. However, a further decisive consideration in this connection is whether, in levying the duty, proper account is taken of the likely residual life of the vehicle in question. This can be achieved by calculating the rate of duty on the basis of the current value of the vehicle (as opposed to the list price for new cars) or by reductions in the rate of duty dependent on the year of manufacture of the vehicle or on the date of its very first registration (as opposed to that of first registration in the Member State concerned). [77]

71 — *Weigel* (cited in footnote 33), paragraph 54 in conjunction with paragraph 53, confirmed in *Commission* v *Denmark III* (cited in footnote 33), paragraph 16.

72 — *Weigel* (cited in footnote 33), paragraph 55; see also *Lindfors* (cited in footnote 33), paragraph 34, and *Schempp* (cited in footnote 43), paragraph 45.

73 — Point 52 of this Opinion.

74 — See my Opinion in Case C-134/03 *Viacom Outdoor* [2005] ECR I-1167, points 64 and 65. To the same effect, Joined Cases C-544/03 and C-545/03 *Mobistar and Belgacom Mobile* [2005] ECR I-7723, paragraph 31.

75 — Also to that effect, my Opinion in *Viacom Outdoor* (cited in footnote 74), points 62 and 63. The idea of the prohibitive character of a tax is also discernible in, for example, Case 31/67 *Stier* [1968] ECR 235, 241, and Case C-47/88 *Commission* v *Denmark* [1990] ECR I-4509, '*Commission* v *Denmark I*', paragraph 12, which concern Article 90 EC (formerly Article 95 of the EEC Treaty) and the free movement of goods.

76 — To that effect, *Commission* v *Denmark III* (cited in footnote 33), paragraph 16, last sentence.

77 — The Court referred to similar considerations in the sphere of application of Article 90 EC in *Commission* v *Denmark I* (cited in footnote 75), paragraph 18, and in Joined Cases C-290/05 and C-333/05 *Nádasdi and Németh* [2006] ECR I-10115, paragraphs 45 to 57.

3. Interim conclusion

86. As an interim conclusion, it can therefore be held that:

A tax on motor-driven road vehicles which is linked not to their importation but to their use within the country and is levied in a non-discriminatory manner does not, as a rule, imply a restriction of freedom of movement for workers under Article 39 EC. The position could be otherwise only exceptionally if such a tax, considered objectively, had such a prohibitive effect on a migrant worker that it made it excessively difficult for him to exercise his right to free movement.

VI — Conclusion

87. In the light of the foregoing observations, I propose that the Court should give the Simvoulio tis Epikratias the following reply:

(1) (a) Directive 83/183/EEC applies — including for the period after 31 December 1992 — to all excise duties and other consumption taxes which are levied on an individual's privately used motor-driven road vehicle when he transfers his normal residence from one Member State to another, if the duty or tax in

question is linked to the importation of the vehicle and is not incurred on account of its use within the country. This also applies to the members of the armed forces of a Member State.

(b) A member of the armed forces of a first Member State who, with the approval of his employer, completes two years of his service with an international organisation in a second Member State where he lives together with his spouse and children for at least 185 days in each calendar year establishes in the second Member State for the duration of that service abroad his normal residence within the meaning of Article 6 of Directive 83/183.

(2) A tax on motor-driven road vehicles which is linked not to their importation but to their use within the country and is levied in a non-discriminatory manner does not, as a rule, imply a restriction of freedom of movement for workers under Article 39 EC. The position could be otherwise only exceptionally if such a tax, considered objectively, had such a prohibitive effect on a migrant worker that it made it excessively difficult for him to exercise his right to free movement.