Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

21 March 2019*

(Failure of a Member State to fulfil obligations — Transport — Directive 96/53/EC — International traffic — Vehicles complying with the limit values for weights and dimensions laid down in that directive — Use of such vehicles, which were registered or put into circulation in one Member State, on the territory of another Member State — Special permit regime — Articles 3 and 7 — 2003 Act of Accession — Transitional arrangements — Point 8.3 of Annex XII)

In Case C-127/17,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 10 March 2017,

European Commission, represented by J. Hottiaux and W. Mölls, acting as Agents,

applicant,

v

Republic of Poland, represented by B. Majczyna, M. Kamejsza-Kozłowska and J. Sawicka, acting as Agents, and by J. Waszkiewicz, expert,

defendant,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Seventh Chamber, acting as President of the Fourth Chamber, K. Jürimäe, C. Lycourgos, E. Juhász and C. Vajda (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 20 June 2018,

after hearing the Opinion of the Advocate General at the sitting on 19 September 2018,

gives the following

* Language of the case: Polish.

Judgment

1 By its application, the European Commission asks the Court to declare that, by requiring transport undertakings to be in possession of special permits in order to be able to use certain public roads, the Republic of Poland has failed to fulfil its obligations under the combined provisions of Articles 3 and 7 of Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic (OJ 1996 L 235, p. 59), as amended by Directive (EU) 2015/719 of the European Parliament and of the Council of 29 April 2015 (OJ 2015 L 115, p. 1) ('Directive 96/53'), read in conjunction with points 3.1 and 3.4 of Annex I to Directive 96/53.

Legal context

EU law

The Act of Accession

2 Article 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33, 'the 2003 Act of Accession') provides:

'From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act.'

3 Article 10 of the 2003 Act of Accession provides as follows:

'The application of the original Treaties and acts adopted by the institutions shall, as a transitional measure, be subject to the derogations provided for in this Act.'

4 Under Article 24 of that act:

'The measures listed in Annexes V, VI, VII, VIII, IX, X, XI, XII, XIII and XIV of this Act shall apply in respect of the new Member States under the conditions laid down in those Annexes.'

5 Annex XII to that act is entitled 'List referred to in Article 24 of the Act of Accession: Poland'. Point 8 of that annex, entitled 'Transport policy', states in paragraph 3 that Directive 96/53 is to apply as follows:

'31996 L 0053: Directive [96/53], as last amended by:

— 32002 L 0007: Directive 2002/7/EC of the European Parliament and of the Council of [18 February 2002] [(OJ 2002 L 67 p. 47)].

By way of derogation from Article 3(1) of Directive [96/53], vehicles complying with the limit values of category 3.4 of Annex 1 to that Directive may only use non-upgraded parts of the Polish road network until 31 December 2010 if they comply with Polish axle-weight limits. As from the date of accession, no restrictions may be imposed on the use, by vehicles complying with the requirements of Directive

[96/53], of the main transit routes set out in Annex I to Decision [No] 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network [(OJ 1996 L 288, p. 1)].

Poland shall adhere to the timetable set out in the tables below for the upgrading of its main road network, as contained in Annex I to Decision [No 1692/96]. Any infrastructure investments involving the use of funds from the [EU] budget shall ensure that the arteries are constructed or upgraded to a load bearing capacity of 11.5 tonnes per axle.

In line with the completion of the upgrading, there shall be a progressive opening of the Polish road network, including the network as contained in Annex I to Decision [No 1692/96], for vehicles in international traffic complying with the limit values of the Directive. For the purpose of loading and unloading, where technically possible, the use of non-upgraded parts of the secondary road network shall be allowed during the entire transitional period.

…’

6 The timetable for upgrading the Polish main road network, referred to in the third subparagraph of point 8.3 of Annex XII to the 2003 Act of Accession, is set out in eight tables covering the period from 1 January 2004 to 1 January 2011.

Directive 96/53

7 Directive 96/53 establishes common standards for the weights and dimensions of commercial road vehicles used in international traffic and common standards for the dimensions of such vehicles used in national traffic.

8 Recitals 3 to 5, 7, 11 and 12 of that directive state:

‘(3) ... differences between standards in force in the Member States with regard to the weights and dimensions of commercial road vehicles could have an adverse effect on the conditions of competition and constitute an obstacle to traffic between Member States;

(4) ... under the principle of subsidiarity, action should be taken at Community level in order to remove this obstacle;

(5) ... the abovementioned standards reflect a balance between the rational and economical use of commercial road vehicles and the requirements of infrastructure maintenance, road safety and the protection of the environment and the fabric of [life];

…

(7) ... additional technical requirements related to the weights and dimensions of vehicles may apply to commercial vehicles registered or put into circulation in a Member State; … these requirements must not constitute an obstacle to the circulation of commercial vehicles between Member States;

…

(11) ... in implementation of the internal market, the scope of this Directive should be extended to national transport in so far as it concerns characteristics that significantly affect the conditions of competition in the transport sector and in particular the values relating to the maximum authorised length and width of vehicles and vehicle combinations intended for the carriage of goods;

(12) ... for the other vehicle characteristics, Member States are authorised to apply in their territory different values from those laid down in this Directive only to vehicles used in national traffic.'

9 Article 1(1) of Directive 96/53 provides:

'This Directive applies to:

(a) the dimensions of motor vehicles in categories M2 and M3 and their trailers in category 0 and motor vehicles in categories N2 and N3 and their trailers in categories 03 and 04, as defined in Annex II to Directive 2007/46/EC of the European Parliament and of the Council [of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263 p. 1)].

(b) the weights and certain other characteristics of the vehicles defined in (a) and specified in [point 2 of] Annex I to this Directive.'

10 Article 2 of Directive 96/53 states:

'For the purposes of this Directive:

…

– "maximum authorised weight" shall mean the maximum weight for use of a laden vehicle in international traffic,

– "maximum authorised axle weight" shall mean the maximum weight for use in international traffic of a laden axle or group of axles,

– "indivisible load" shall mean a load that cannot, for the purpose of carriage by road, be divided into two or more loads without undue expense or risk of damage and which owing to its dimensions or mass cannot be carried by a motor vehicle, trailer, road train or articulated vehicle complying with this Directive in all respects,

…'

11 Under Article 3(1) of that directive:

'A Member State may not reject or prohibit the use in its territory:

– in international traffic, of vehicles registered or put into circulation in any other Member State for reasons relating to their weights and dimensions,

– in national traffic, of vehicles registered or put into circulation in any other Member State for reasons relating to their dimensions,

provided that such vehicles comply with the limit values specified in Annex I.

This provision shall apply notwithstanding the fact that:

(a) the said vehicles are not in conformity with the requirements of that Member State with regard to certain weight and dimension characteristics not covered by Annex I;

(b) the competent authority of the Member State in which the vehicles are registered or put into circulation has authorised limits not referred to in Article 4(1) exceeding those laid down in Annex I.'

12 Article 7 of that directive is worded as follows:

'This Directive shall not preclude the application of road traffic provisions in force in each Member State which permit the weight and/or dimensions of vehicles on certain roads or civil engineering structures to be limited, irrespective of the State of registration of such vehicles or the State where such vehicles were put into circulation.

This includes the possibility to impose local restrictions on maximum authorised dimensions and/or weights of vehicles that may be used in specified areas or on specified roads, where the infrastructure is not suitable for long and heavy vehicles, such as city centres, small villages or places of special natural interest.'

13 Annex I to Directive 96/53 is entitled 'Maximum weights and dimensions and related characteristics of vehicles'.

14 Point 3 of that annex is entitled 'maximum authorised axle weight of the vehicles referred to in Article 1(1)(b) (in tonnes)'. Points 3.1 and 3.4 state:

'…

3.1	*Single axles* Single non-driving axle	10 tonnes

…

3.4	*Driving axle*	
3.4.1	Driving axle of the vehicles referred to in 2.2.1 and 2.2.2	11.5 tonnes
3.4.2	Driving axle of the vehicles referred to in points 2.2.3, 2.2.4, 2.3 and 2.4	11.5 tonnes

…'

Decision No 1692/96

15 Decision No 1692/96 was replaced by Decision No 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network (OJ 2010 L 204, p. 1), which was replaced by Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010 (OJ 2013 L 348, p. 1).

16 Decision No 1692/96 provided as follows under Article 2, entitled 'Objectives':

'1. The trans-European transport network shall be established gradually by 2010 by integrating land, sea and air transport infrastructure networks throughout the Community in accordance with the outline plans indicated on the maps in Annex I and/or the specifications in Annex II.

2. The network must:

(a) ensure the sustainable mobility of persons and goods within an area without internal frontiers under the best possible social and safety conditions, while helping to achieve the Community's objectives, particularly in regard to the environment and competition, and contribute to strengthening economic and social cohesion;

…'

Polish law

17 Article 41 of the ustawa o drogach publicznych (Law on public roads, Dz. U. No 14, item 60) of 21 March 1985, in the version relevant to the present proceedings ('the Law on public roads'), provides:

'1. Subject to Article 41(2) and (3), the use of vehicles with an authorised single driving axle weight of 11.5 tonnes is permitted on public roads.

2. The Minister właściwy do spraw transportu [Minister for Transport, Poland] shall establish, by way of regulation, the list of:

(1) the national and regional roads on which vehicles with an authorised single axle weight of 10 tonnes may circulate,

(2) the national roads on which vehicles with an authorised single axle weight of 8 tonnes may circulate,

having regard to the need to protect the roads and ensure circulation.

3. Regional roads other than those defined in the first subparagraph of Article 41(2), district roads and municipal roads constitute a road network that may be used by vehicles with an authorised single axle weight of 8 tonnes.'

18 On the basis of Article 41(2) of the Law on public roads, the Minister Infrastruktury i Rozwoju (Minister for Infrastructure and Development, Poland) adopted, on 13 May 2015, the rozporządzenie w sprawie wykazu dróg krajowych oraz dróg wojewódzkich, po których mogą poruszać się pojazdy o dopuszczalnym nacisku pojedynczej osi do 10 t, oraz wykazu dróg krajowych, po których mogą poruszać się pojazdy o dopuszczalnym nacisku pojedynczej osi do 8 t (Regulation on the list of national and regional roads that may be used by vehicles with an authorised single axle weight of 10 tonnes and the list of national roads that may be used by vehicles with an authorised single axle weight of 8 tonnes (Dz. U. of 2015, item 802;'the Regulation of 13 May 2015').

19 Article 2(35a) of the prawo o ruchu drogowym (Law on road traffic, Dz. U. No 98, item 602), in the version relevant to the present proceedings ('Law on road traffic') defines a non-standard vehicle as a vehicle or vehicle combination whose laden or unladen axle weight is greater than the maximum

authorised weights laid down for a particular road by the provisions relating to public roads, or that has dimensions or a total actual laden or unladen weight greater than the authorised dimensions or weights laid down by the provisions of that law.

20 Article 2(35b) of the Law on road traffic defines an indivisible load as a load that cannot be divided into two or more loads without undue expense or risk of damage.

21 Article 64(1) to (3) of that law is worded as follows:

'1. Non-standard vehicles are authorised to circulate subject to compliance with the following requirements:

(1) obtention of a road traffic permit for non-standard vehicles in the corresponding category, issued by the competent authority by means of an administrative decision …

(2) compliance with the road use conditions laid down in the permit referred to in Article 64(1);

(3) where the non-standard vehicle exceeds at least one of the following dimensions, it is driven by an authorised driver:
(a) length: 23 m;
(b) width: 3.2 m;
(c) height: 4.5 m;
(d) total actual weight: 60 tonnes;

(4) particular care on the part of the driver of the non-standard vehicle.

2. The transport, by a non-standard vehicle, of loads other than indivisible loads is prohibited, with the exception of non-standard vehicles authorised to circulate under a category I or category II permit.

3. The dimensions, weight and axle weights of the non-standard vehicles authorised to circulate under permits in categories I to VII and the roads on which those vehicles may circulate are set out in the table in Annex 1 to the present law.'

22 Article 64(a) to (d) of that law lays down the procedure for filing a permit application and for the issuing of permits, for each of the seven categories of non-standard vehicle. Article 64f(1) of that law establishes the upper limit of the fee payable for the issuance of a permit, for each category.

23 In Section 4 of the Law on road traffic, Article 140aa et seq. provide for fines to be levied on non-standard vehicles circulating without a permit or in breach of the requirements set out in the permit issued.

The pre-litigation procedure

24 Following complaints filed by transport undertakings carrying on their activity in Polish territory and the gathering of information from the Republic of Poland as part of an 'EU Pilot' procedure, the Commission sent that Member State a letter of formal notice on 30 April 2015.

25 In that letter, the Commission drew the attention of the Republic of Poland to the fact that a number of provisions of its national legislation failed to comply with its obligations under, on the one hand, Article 3 of Directive 96/53, in so far as almost 97% of the Polish road network was closed to vehicles complying with the weight limits laid down in point 3.1 and/or point 3.4 of Annex I to that directive,

and, on the other hand, Article 7 of that directive, in so far as that Member State had invoked the derogations provided for therein without justifying the reasons why 97% of the Polish road network qualified to benefit from such derogations.

26 By its letter of formal notice, the Commission also called into question the special permit regime under which vehicles complying with the weight restrictions laid down in point 3.1 and/or point 3.4 of Annex I to Directive 96/53 may use infrastructure normally closed to such vehicles.

27 By letter of 29 June 2015, the Republic of Poland replied to the letter of formal notice, disputing the Commission's complaints.

28 Considering the reply of the Republic of Poland of 29 June 2015 to be unsatisfactory, the Commission issued a reasoned opinion on 26 February 2016, contending that the Republic of Poland was failing to fulfil its obligations under the combined provisions of Articles 3 and 7 of Directive 96/53 by restricting the circulation of motor vehicles with a maximum single driving axle weight of 11.5 tonnes to roads forming part of the trans-European transport network and certain other national roads and by subjecting the use of other public roads by those vehicles to a special permit regime.

29 On 26 April 2016, the Republic of Poland submitted to the Commission a request for an extension of the time limit for replying to the reasoned opinion, which the Commission rejected on the grounds that it did not contain specific information on the legislative changes envisaged in order to end the alleged infringement.

30 In its response of 30 August 2016 to the reasoned opinion, the Republic of Poland informed the Commission of its endeavours to, primarily, expand the network of public roads that may be used by vehicles with a single axle weight of 11.5 tonnes, in addition to amending the applicable laws and regulations with a view to reducing the number of sections of national and regional road subject to vehicle weight limits. The Republic of Poland stated that those amendments were to enter into force in May 2017 and February 2018.

31 Since the Commission was not persuaded that the contemplated legislative amendments complied with EU law and did not accept the envisaged time frame for their introduction, it decided to bring the present action before the Court of Justice pursuant to the second paragraph of Article 258 TFEU.

The action

32 In support of its action, the Commission puts forward a single complaint alleging that the Republic of Poland has failed to fulfil its obligations under the combined provisions of Articles 3 and 7 of Directive 96/53 read in conjunction with points 3.1 and 3.4 of Annex I to that directive, in particular by imposing a special permit regime as a condition for use of an excessive number of public roads by vehicles with a maximum driving axle weight of 11.5 tonnes.

33 The Commission claims that the restriction on access to public roads by vehicles and their trailers that are covered by Directive 96/53 and comply with the authorised maximum axle weight, that is to say 10 tonnes for the non-driving axle and 11.5 tonnes for the driving axle, results from a combination of two factors, First, the fact that solely roads that form part of the trans-European transport network and certain other national roads are open to vehicles with a maximum driving axle weight of 11.5 tonnes, apparent from Article 41(2) and (3) of the Law on public roads, and, secondly, the requirement to possess a special permit allowing use of other roads, in accordance with Article 64 et seq. of the Law on road traffic.

34 It is appropriate to assess those two factors in turn.

The restriction of international traffic solely to the roads of the trans-European transport network and certain national roads

35 The Commission claims that the restriction, in international traffic, arising under Polish law, of access to public roads by vehicles and their trailers that are covered by Directive 96/53 and comply with the authorised maximum axle weights laid down in points 3.1 and 3.4 of Annex I to that directive, is contrary to the combined provisions of Articles 3 and 7 of Directive 96/53 read in conjunction with points 3.1 and 3.4 of Annex I to that directive. In addition, the Commission challenges the argument of the Republic of Poland to the effect that such a restriction may be justified on the basis of the transitional arrangements laid down in point 8.3 of Annex XII to the 2003 Act of Accession.

36 That first part of the Commission's complaint must be assessed in the light of the abovementioned provisions of Directive 96/53 and Annex XII to the 2003 Act of Accession.

The alleged breach of Article 3(1) of Directive 96/53

– *Arguments of the parties*

37 The Commission claims that the restriction, in international traffic, of access, by vehicles whose maximum single non-driving axle weight or driving axle weight complies with the limit values laid down in points 3.1 and 3.4 of Annex I to Directive 96/53, solely to the roads of the trans-European transport network and certain national roads, as provided for under Polish legislation, is contrary to Article 3(1) of Directive 96/53, which establishes a regime for the free movement of such vehicles.

38 In that regard, it claims, in the first place, that, although Article 41(1) of the Law on public roads authorises the circulation of vehicles with a maximum driving axle weight of 11.5 tonnes on all public roads, Article 41(2) and (3) of that law introduces exceptions that render Article 41(1) ineffective.

39 Under the derogations in Article 41(2) and (3), the use of the national and regional roads included in the list to be adopted by the Minister for Transport is restricted to vehicles with an authorised single axle weight of 10 or 8 tonnes, and the use of other regional roads, district roads and municipal roads is restricted to vehicles with an authorised single axle weight of 8 tonnes. The Commission notes that the lists referred to in Article 41(2) of the Law on public roads have been adopted and are set out in the Regulation of 13 May 2015.

40 The Commission claims that, on account of those derogations, vehicles complying with the maximum authorised weights laid down in Annex I to Directive 96/53, 10 tonnes for the non-driving axle and 11.5 tonnes for the driving axle, are excluded from using almost 97% of the road network.

41 In the second place, the Commission challenges the argument of the Republic of Poland to the effect that only the roads with the most international traffic, that is to say, cross-border traffic on the trans-European road network, are subject to the requirements of Directive 96/53.

42 The Commission notes, first, that sections of roads affording access to large cities that are involved in international transport and particularly in loading and unloading, may be sections that do not form part of national roads or the trans-European transport network and those sections are not freely accessible.

43 Secondly, the Commission notes that, contrary to the assertions of the Republic of Poland, Directive 96/53 does not include any restrictions on the requirements set out in Article 3 thereof, in accordance with the objectives of the directive since it came into force, and that the scope of application of the directive remained unaltered after the creation of the trans-European transport network by Decision No 1692/96, which has the same objective, namely facilitating the movement of

goods. The Commission states that, although Article 2 of Directive 96/53 does not contain a definition of international traffic, recitals 3 and 7 of that directive, which refer to the circulation of traffic between Member States, read in the light of recital 12, indicate that that concept should be interpreted as relating to all cross-border circulation irrespective of road type. Any other interpretation would render Article 7 of Directive 96/53 ineffective.

44 In the third place, as regards the arguments of the Republic of Poland based on the condition of the road infrastructure, the Commission notes that, although there is no obligation under Directive 96/53 to rebuild all public roads, Member States are nevertheless required to comply with the criteria in points 3.1 and 3.4 of Annex I thereto.

45 It adds that the Republic of Poland may not justify its failure to comply with the rules laid down in Directive 96/53, concerning the maximum authorised axle weight, by claiming that it is seeking the balance referred to in recital 5, when those rules arise from the need for such balance.

46 The Republic of Poland contends that the first part of the Commission's complaint is based on an erroneous interpretation of Article 3 of Directive 96/53.

47 The Republic of Poland's main argument is that the Commission is wrong to consider that the concept of 'international traffic' relates to the entire road network of the Member States, whereas it actually refers only to cross-border traffic and the roads on which that traffic is concentrated. It maintains that the Commission's broad interpretation of the concept of 'international traffic', which implies that any Member State road, including local roads, is to be open to vehicles with a maximum driving axle weight of 11.5 tonnes, is not apparent from any provision or any recital of Directive 96/53, nor from any debates held with a view to amending the directive. According to that Member State, the Commission's interpretation would undermine the application of the second indent of Article 3(1) of that directive, which limits national traffic on grounds of vehicle dimensions, and would lead to reverse discrimination against vehicles registered or put into circulation in the Member State concerned.

48 The Republic of Poland also invokes the obligation to interpret Directive 96/53 in a manner consistent with Decision No 1692/96, which shares the same objectives, since both instruments became binding concomitantly when the Republic of Poland acceded to the European Union.

49 It thus follows, according to the Republic of Poland, that it has not infringed Article 3 of Directive 96/53 by derogating from the general principle of the free movement of vehicles with a maximum driving axle weight of 11.5 tonnes as regards the use of certain national and local roads, such as regional, district and municipal roads. The choices it has made are intended to achieve the objective set out in recital 5 of that directive. According to the Republic of Poland, it was thereby seeking a balance between the rational and economical use of commercial road vehicles and the requirements of infrastructure maintenance, road safety and the protection of the environment and the fabric of life.

– Findings of the Court

50 It should be recalled that, in accordance with the first indent of Article 3(1) of Directive 96/53, a Member State may not reject or prohibit the use in its territory, in international traffic, of vehicles registered or put into circulation in any other Member State for reasons relating to their weights and dimensions, provided that such vehicles comply with the limit values specified in Annex I to Directive 96/53. According to points 3.1 and 3.4 of that annex, the maximum authorised axle weight for the vehicles concerned is 10 tonnes per single axle or single non-driving axle and 11.5 tonnes per driving axle.

51 More specifically, as regards the concept of 'international traffic' contained in the first indent of Article 3(1) of Directive 96/53, the interpretation of which is disputed by the parties, since that directive provides no definition of the concept, it must be interpreted in the light of its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it is part (see, by analogy, judgment of 20 September 2018, *Carrefour Hypermarchés and Others*, C-510/16, EU:C:2018:751, paragraph 28 and the case-law cited).

52 According to its usual meaning, the concept of 'international traffic' refers to any circulation of vehicles over the territory of at least two different countries. Without further qualification, it carries no connotation of a specific road infrastructure on which that traffic is concentrated.

53 That interpretation is supported by the context in which that concept is used and by the objective pursued by the first indent of Article 3(1) of Directive 96/53. Similarly, neither does the second indent of Article 3(1), which refers to the concept of 'national traffic', contain any precisions regarding a road infrastructure to which such national traffic should be limited.

54 As regards the objective of Directive 96/53, it should be recalled that the first indent of Article 3(1) of that directive seeks, as is apparent from recitals 3 and 4 thereof, to eliminate differences between standards in force in the Member States with regard to the weights and dimensions of commercial road vehicles, which could have an adverse effect on the conditions of competition and constitute an obstacle to traffic between Member States. Moreover, it is apparent from recital 7 of that directive that additional technical requirements may be applied to commercial vehicles registered or put into circulation in a Member State, provided that those requirements do not constitute an obstacle to the circulation of commercial vehicles between Member States. It should be noted that the preamble to Directive 96/53 makes no distinction in relation to that objective on the basis of the type of road on which traffic circulates between Member States.

55 If the common standards for the maximum axle weights of commercial vehicles, as laid down by Directive 96/53, applied only to certain public roads of the Member States, even if such roads were the ones likely to be carrying international traffic, the objective of that directive, which is to remove obstacles to the circulation of commercial vehicles between Member States, could be undermined.

56 The interpretation put forward by the Republic of Poland would mean that, once a commercial vehicle circulating on the territory of at least two Member States left the trans-European transport network or the most important national roads of a Member State, it would lose its hitherto classification as international traffic. As a result, the common standards laid down in Directive 96/53 regarding, inter alia, the maximum axle weights of commercial vehicles, would cease to apply to that vehicle. Rather than promoting the objective of facilitating the circulation of commercial vehicles between Member States, such an interpretation would maintain the obstacles to such circulation.

57 The Republic of Poland may find no support for its interpretation of the concept of 'international traffic', contained in the first indent of Article 3(1) of Directive 96/53, by invoking recital 5 of that directive, which states that the common standards set out in the directive reflect a balance between the rational and economical use of commercial road vehicles and the requirements of infrastructure maintenance, road safety and the protection of the environment and the fabric of life. As the Advocate General noted, in essence, in point 78 of his Opinion, Directive 96/53 seeks to achieve such a balance, inter alia, by setting limit values for the weights and dimensions of commercial vehicles, as specified in Annex I to that directive.

58 That interpretation of the concept of 'international traffic' contained in the first indent of Article 3(1) of Directive 96/53, to the effect that the concept applies without distinction between the types of roads concerned, is not called into question by the three arguments which the Republic of Poland raises on the basis of the legislative context of that provision.

59 First, it maintains that Directive 96/53 must be interpreted in a manner consistent with Decision No 1692/96. Secondly, it claims that the interpretation referred to in the preceding paragraph of the present judgment would undermine the application of the second indent of Article 3(1) of Directive 96/53. Thirdly, it submits that such an interpretation would lead to reverse discrimination against vehicles registered or put into circulation in the Member State concerned.

60 As to the first argument, while it is true that both Directive 96/53 and Decision No 1692/96 contribute to the proper functioning of the internal market, that decision, which aims to develop the trans-European transport network, is not intended to restrict the scope of application of that directive, which itself seeks to facilitate the circulation of road vehicles in the European Union by setting common standards concerning authorised dimensions and weights for such vehicles. In those circumstances, and in view of the absence of any reference, in Directive 96/53, to Decision No 1692/96 or to the concept of 'trans-European transport network', the concept of 'international traffic' contained in the first indent of Article 3(1) of Directive 96/53, cannot be interpreted as being confined to circulation between Member States that is concentrated on the trans-European transport network.

61 As regards the second argument put forward by the Republic of Poland, it is indisputable that the second indent of Article 3(1) of Directive 96/53, unlike the first indent of that article, does not require Member States to apply, in national traffic, the common standards laid down in that directive in relation to the maximum authorised axle weight for the circulation of vehicles registered or put into circulation in any other Member State. However, interpreting the concept of 'international traffic' as applying without distinction between the roads on which such traffic circulates would not render ineffective the second indent of Article 3(1) of Directive 96/53, since that provision is applicable where the starting point and the final destination are in the same Member State, without any distinction being made on the basis of the roads used, which, in such a case, allows a Member State to limit national traffic on grounds of vehicle weight.

62 As regards the third argument of the Republic of Poland, relating to reverse discrimination, it must be observed that, while Member States are authorised, under the first and second indents of Article 3(1) of Directive 96/53, read in conjunction with recital 12 thereof, to apply in their territory, to vehicles used in national traffic, different values from those laid down in that directive for international traffic, as regards the maximum authorised axle weight, that article does not require them to apply such a difference in treatment. In addition, it is apparent from recital 11 of that directive that the differences applied to 'international traffic' and 'national traffic' are justified by the different effects that each of the characteristics concerned by the first and second indents of Article 3(1) are likely to have, in the context of implementation of the internal market, on the conditions of competition in the transport sector.

63 In the light of the foregoing considerations, it is necessary to assess, in view of the points relating to the interpretation of the first indent of Article 3(1) of Directive 96/53 set out in paragraphs 50 to 56 of the present judgment, whether the Commission's complaint is well founded.

64 It must be noted that, although it is true that Article 41(1) of the Law on public roads authorises the circulation of vehicles complying with the maximum driving axle weight of 11.5 tonnes, that rule is nevertheless subject to a number of restrictions, which are set out in Article 41(2) and (3) of that law.

65 Thus, first, it is apparent from Article 41(2) of the Law on public roads that the Minister for Transport is to establish, in accordance with the first subparagraph of that provision, a list of national and regional roads on which vehicles with a maximum 'single' axle weight of 10 tonnes may circulate and, in accordance with the second subparagraph of that provision, a list of national roads on which vehicles with a maximum 'single' axle weight of 8 tonnes may circulate.

66 In that regard, it should be noted that the restrictions laid down in Article 41(2) relate, as the Republic of Poland confirmed in its reply to a question from the Court, to both the driving axle and non-driving axle of a vehicle. It should also be noted that the lists referred to in Article 41(2) have been adopted and are set out in the Regulation of 13 May 2015.

67 Secondly, it is apparent from Article 41(3) of the Law on public roads, that on regional roads other than those defined in the first subparagraph of Article 41(2) of that law, district roads and municipal roads, only vehicles with a maximum 'single axle' weight of 8 tonnes may circulate.

68 It thus follows from Article 41 of the Law on public roads that vehicles complying with the maximum driving axle weight of 11.5 tonnes laid down in point 3.4 of Annex I to Directive 96/53 fall within the scope of all the restrictions emanating from Article 41(2) and (3) of that law, and that vehicles complying with the maximum single axle weight of 10 tonnes fall within the scope of the restrictions emanating from the second subparagraph of Article 41(2) and Article 41(3) of that law.

69 In those circumstances, it must be held that the restrictions, under Polish law, on access to the Polish road network for vehicles complying with the maximum axle weights laid down in points 3.1 and 3.4 of Annex I to Directive 96/53, are contrary to the first indent of Article 3(1) of that directive, read in conjunction with points 3.1 and 3.4 of Annex I thereto.

The alleged infringement of Article 7 of Directive 96/53

– *Arguments of the parties*

70 The Commission claims that the restrictions laid down in Article 41(2) and (3) of the Law on public roads are based on a misconstruction of Article 7 of Directive 96/53, which provides for an exception to the principle of free movement for vehicles with a maximum driving axle weight of 11.5 tonnes. The Commission recalls, first, that the Republic of Poland cannot claim that the restriction in question relates to roads that do not carry international traffic, principally on the ground that no EU act makes a distinction between such roads and roads that do carry international traffic.

71 Secondly, the Commission states that the sole possible derogation from the principle of free movement on all roads may be based only on the roads being unsuitable for use by vehicles with a maximum driving axle weight of 11.5 tonnes. It argues that the criteria to be taken into consideration are the safety of that traffic, the load-bearing capacity of the engineering structures and the volume of road traffic. It notes, in that respect, that Article 7 of Directive 96/53, which establishes a right to derogate from the principle of free movement 'on certain roads or civil engineering structures', must be interpreted restrictively. That being so, the Commission claims that there is no basis for derogations to be applied to 97% of the Polish road network or, more specifically, to all local roads.

72 Lastly, the Commission observes that the restrictions on access to certain Polish public roads are not founded on considerations relating to the condition of the roads or certain sections of the roads, as is apparent from the system for issuing unlimited road use permits.

73 The Republic of Poland, responding in the alternative to that part of the Commission's complaint, contends that that allegation is based on an overly restrictive interpretation of Article 7 of Directive 96/53, which conflicts with the wording of that provision in so far as, first, the scope of application of the first paragraph of Article 7 does not limit the restrictions it provides for to situations where roads or 'certain sections of road' are unsuitable for the vehicles in question, and, secondly, the situations to which the second paragraph refers are merely examples.

74 According to the Republic of Poland, it follows that it is entitled to restrict circulation not only on roads that are unsuitable for use by heavy vehicles, but also on parts of the road network on which, on account of their structure, the circulation of such vehicles would be dangerous, or on account of there being a large number of bridges whose low weight-bearing capacity, with load ratings of between 20 and 30 tonnes, the Commission has overlooked.

75 The Republic of Poland is also of the view that, in relation to a small number of local roads, which have already been adapted for use by vehicles with an authorised single driving axle weight of 11.5 tonnes, the right to impose restrictions arises from the first paragraph of Article 7 of Directive 96/53, on the grounds that there is no practical benefit in allowing such vehicles to use those roads because they are generally sections that are not connected to the rest of the road system and cannot ensure smooth traffic flow.

76 Moreover, the Republic of Poland considers that the Commission cannot claim that 97% of the Polish road network is closed to vehicles with a maximum driving axle weight of 11.5 tonnes, without having regard to the characteristics of that network. That Member State specifies that the national roads, which represent 5% of public roads, carry up to 60% of traffic. The remaining 95% are local roads of which 88% are district and municipal roads. Those roads are used for local requirements and a third of public roads are unmetalled, as is apparent from the official Eurostat statistics cited by the Commission.

– *Findings of the Court*

77 The Commission claims that the Republic of Poland's argument, by which, in essence, it relies on the road infrastructure in question being dilapidated and inadequate in order to justify the restrictions, under national law, on access for vehicles complying with the limit values laid down in points 3.1 and 3.4 of Annex I to Directive 96/53, in accordance with Article 7 of that directive, is based on a misconstruction of Article 7 of Directive 96/53.

78 It should be noted in that regard that, under the first paragraph of Article 7 of Directive 96/53, that directive is not to preclude the application of road traffic provisions in force in each Member State which permit the weight and/or dimensions of vehicles on certain roads or civil engineering structures to be limited, irrespective of the State of registration of such vehicles or the State where such vehicles were put into circulation.

79 The second paragraph of Article 7 of that directive provides examples of scenarios in which the restrictions referred to in the first paragraph of Article 7 may be imposed. Accordingly, that includes the possibility to impose local restrictions on maximum authorised dimensions and/or weights of vehicles that may be used in specified areas or on specified roads, where the infrastructure is not suitable for long and heavy vehicles, such as city centres, small villages or places of special natural interest.

80 Given that Article 7 of Directive 96/53 constitutes an exception to the principle of the free movement of vehicles, as provided for in Article 3(1) of that directive, it must, as noted by the Advocate General in point 79 of his Opinion, be interpreted restrictively.

81 Furthermore, the Court points out that, as stated by the Advocate General in points 93 and 94 of his Opinion, the justification based on the inadequacy of the road infrastructure is envisaged in Article 7 of Directive 96/53, in specific situations, as illustrated by the examples set out in the second paragraph of that article.

82 As is clear from Article 41(2) of the Law on public roads, it is only by way of exception, where a Polish national road is included in the lists referred to in that provision, that vehicles complying with the weight limits laid down in points 3.1 and 3.4 of Annex I to Directive 96/53 may circulate freely on such a road. Likewise, it is only by way of exception, where a Polish regional road is included in those lists, that vehicles complying with the weight limits laid down in point 3.4 of Annex I to Directive 96/53 may circulate freely on such a road, inasmuch as circulation on the other roads that are not included in those lists is precluded.

83 Furthermore, pursuant to Article 41(3) of that law, as regards all other regional roads, district roads and municipal roads, vehicles complying with the maximum axle weights laid down in points 3.1 and 3.4 of Annex I to Directive 96/53 are subject to the circulation restrictions at issue.

84 Moreover, as the Advocate General stated in point 95 of his Opinion, the restrictions on access to public roads, which are based on Article 41 of that law, may be lifted by obtaining, for a fee, a special permit, with the only limitations being a time limit and the exclusion of divisible loads. Thus no consideration is given to the condition of the roads in question.

85 It must be added that, according to the information in the documents before the Court, the restrictions on access to public roads based on Article 41 appear to have far-reaching effects and, therefore, are not limited to 'certain' roads or civil engineering structures, as required by Article 7 of Directive 96/53. According to the statistics for 2015 furnished by the Republic of Poland in the pre-litigation procedure or presented by the Commission in its application, and which have not been contested by that Member State, it appears that, in that year, less than 40% of the road network comprising Polish motorways and national roads and less than 4% of the road network comprising motorways, national roads and the most important regional roads, were open, without restriction, to vehicles with a maximum driving axle weight of 11.5 tonnes. Moreover, according to the information provided by the Republic of Poland in relation to the situation following the entry into force of the rozporządzenie Ministra Infrastruktury i Budownictwa w sprawie wykazu dróg krajowych oraz dróg wojewódzkich, po których mogą poruszać się pojazdy o dopuszczalnym nacisku pojedynczej osi do 10 t, oraz wykazu dróg krajowych, po których mogą poruszać się pojazdy o dopuszczalnym nacisku pojedynczej osi do 8 t (Regulation of the Minister for Infrastructure and Construction on the list of national and regional roads that may be used by vehicles with an authorised single driving axle weight of 10 tonnes and the list of national roads that may be used by vehicles with an authorised single driving axle weight of 8 tonnes) of 21 April 2017, that is to say, after the time material to the present proceedings, only 54.2% of Poland's national roads were open, without restriction, to vehicles with a maximum driving axle weight of 11.5 tonnes.

86 Such restrictions on the application of the rule laid down in the first indent of Article 3(1) of Directive 96/53, which, on account of their scope and general nature, have such far-reaching effects on the principle of the free circulation of vehicles, cannot be justified under Article 7 of that directive, since otherwise the exception under Article 7 would prevail over the rule laid down in Article 3 of that directive.

87 In the light of the foregoing considerations, the Republic of Poland cannot rely on Article 7 to justify, on grounds of a general nature that essentially invoke the dilapidated and inadequate state of the road infrastructure, restrictions applying to different types of road under Polish law.

88 Consequently, the restrictions, under Polish law, on access to the Polish road network for vehicles complying with the maximum axle weights laid down in points 3.1 and 3.4 of Annex I to Directive 96/53 cannot be justified under Article 7 of that directive. Accordingly, taking account also of paragraph 69 above, it must be held that those restrictions are contrary to the combined provisions of Articles 3 and 7 of Directive 96/53 read in conjunction with points 3.1 and 3.4 of Annex I to that directive.

The possibility of invoking the transitional arrangements laid down in point 8.3 of Annex XII to the 2003 Act of Accession

– *Arguments of the parties*

89 The Commission disputes the argument of the Republic of Poland based on point 8.3 of Annex XII to the 2003 Act of Accession, on the ground that the second subparagraph of that provision clearly required roads other than those in the trans-European road transport network to be adapted for international traffic by 31 December 2010, without there being any need to wait for the progressive upgrading of the national road network, in contrast to what had been permitted during the transitional period.

90 In addition, the Commission notes that, from 2004, several thousand kilometres of roads other than national roads or those in the trans-European transport network were upgraded as part of the national programme for the reconstruction of local roads and many of those roads were financed with EU funds. Yet that institution states that none of those local roads have been opened to vehicles complying with the maximum driving axle weight of 11.5 tonnes and no distinctions have been made on the basis of the degree to which those roads have been upgraded. The Commission is also of the view that, in so far as vehicles may use the roads after obtaining a permit, for a fee, the Republic of Poland's plea in defence, invoking the ongoing upgrading of the road network, is unfounded.

91 The Republic of Poland relies, in the alternative, on the transitional arrangements laid down in point 8.3 of Annex XII to the 2003 Act of Accession, which govern matters relating to implementation of Directive 96/53 and Decision No 1692/96. More specifically, the Republic of Poland contends that it is apparent from the third and fourth subparagraphs of point 8.3 that no time limit was set for it to adapt any roads other than those in the trans-European transport network to the maximum load-bearing capacity.

92 It emphasises that, on the one hand, in accordance with the fourth subparagraph of point 8.3 of that annex, the road network was to be opened to vehicles in international traffic progressively and in parallel with completion of the process of upgrading those roads. The Republic of Poland does not share the Commission's view that such an interpretation conflicts with the second sentence of the fourth subparagraph of point 8.3, under which use of the non-upgraded parts of the secondary road network was to be allowed for the purpose of loading and unloading, during the entire transitional period, on the grounds that this is an exception to the principle.

93 On the other hand, the Republic of Poland contests the Commission's argument that its interpretation of the transitional provisions would mean accepting that the opening up of the Polish road network, in accordance with Directive 96/53, would not take place for several decades. It claims that the upgrading work must relate to metalled roads and that, as a result of the work that has already been carried out, 54.2% of national roads are open to the vehicles in question.

94 In that respect, the Republic of Poland notes, first, that approximately 91% of public roads in Poland were built before it acceded to the European Union, that the maximum single axle weight at that time was 10 tonnes for national roads and 8 tonnes for other roads, and that Polish legislation has since been amended in order to comply with obligations under EU law.

95 The Republic of Poland also sets out the characteristics of its road network, as summarised in paragraph 76 above

96 Lastly, it refers to the constant efforts it has made, since its accession to the European Union, to open new national roads, having regard to the requirements of international traffic and the environment, and draws attention to the fact that adapting its entire road network for use by vehicles with a maximum driving axle weight of 11.5 tonnes, something no other Member State has done, would represent a considerable long-term financial burden.

– *Findings of the Court*

97 By its arguments, in order to justify the restrictions, under national law, on access for vehicles complying with the limit values laid down in points 3.1 and 3.4 of Annex I to Directive 96/53, the Republic of Poland relies on the transitional arrangements laid down in point 8.3 of Annex XII to the 2003 Act of Accession, under which it claims it may open roads other than those in the trans-European transport network to international traffic as and when such roads are upgraded and without specifying any time limits in that respect.

98 It should be noted that the second subparagraph of point 8.3 of Annex XII to the 2003 Act of Accession provides, by way of derogation from Article 3(1) of Directive 96/53, that vehicles complying with the limit values set out in point 3.4 of Annex I to that directive may use non-upgraded parts of the Polish road network only if they comply with the axle-weight limits laid down by Poland and prescribes 31 December 2010 as the time limit for that derogation, that is to say over four years prior to the time limit laid down in the reasoned opinion.

99 As regards the upgrading of its main road network, the Republic of Poland was to comply, pursuant to the third subparagraph of point 8.3 of Annex XII to the 2003 Act of Accession, to a timetable set out in eight tables, covering the period from 1 January 2004 to 1 January 2011.

100 Without setting a similar timetable for roads that do not form part of that main road network, the first sentence of the fourth subparagraph of point 8.3 of Annex XII to the 2003 Act of Accession provides that, in line with the completion of the upgrading, there is to be progressive opening of the Polish road network, including the network detailed in Annex I to Decision No 1692/96, to vehicles in international traffic complying with the limit values laid down by Directive 96/53. The second sentence of the fourth subparagraph of point 8.3 of Annex XII states that, for the purpose of loading and unloading, where technically possible, the use of non-upgraded parts of the secondary road network is to be allowed during the entire transitional period.

101 It follows from a combined reading of the second and fourth subparagraphs of point 8.3 of Annex XII to the 2003 Act of Accession that the justification based on the upgrading of the Polish road network, could be invoked by the Republic of Poland, to impose restrictions on access to the Polish road network for vehicles complying with the maximum limit values set out in point 3.4 of Annex I to Directive 96/53, on the basis of the maximum axle weights prescribed under national law, only during the transitional period and within certain limits.

102 The words ‘in line with the completion of the upgrading’ in the fourth subparagraph of point 8.3 of Annex XII to the 2003 Act of Accession, cannot be read in isolation, they must rather be regarded as laying down the circumstances in which the derogation from Article 3(1) of Directive 96/53, contained in the second subparagraph of point 8.3 of Annex XII to the 2003 Act of Accession, ceases to apply. Consequently, the fourth subparagraph of point 8.3 of Annex XII to the 2003 Act of Accession cannot be interpreted as applying beyond the time limit of the derogation set out in the second subparagraph of point 8.3 of Annex XII to that act, namely 31 December 2010.

103 That interpretation of point 8.3 of Annex XII to the 2003 Act of Accession is supported by the context of that provision. It is apparent from Articles 2 and 10 of the 2003 Act of Accession that the Act is based on the principle that the provisions of EU law apply *ab initio* and *in toto* to new Member States

and that derogations are allowed only on a transitional basis in so far as they are expressly provided for by transitional provisions (see, to that effect, judgment of 22 December 2010, *Commission* v *Poland*, C-385/08, not published, EU:C:2010:801, paragraph 54 and the case-law cited). Accordingly, it cannot be accepted, in the absence of an express provision to that effect, that the derogating provisions laid down in point 8.3 of Annex XII to the 2003 Act of Accession were intended to be ongoing.

104 That interpretation is also confirmed by the purpose of point 8.3 of Annex XII to the 2003 Act of Accession, which, as noted by the Advocate General in point 92 of his Opinion, sought to make arrangements for the period from the date of the Republic of Poland's accession to the European Union until 31 December 2010 in order to ensure that the principle laid down by Directive 96/53 could be complied with after that date, bearing in mind, moreover, that that purpose justified European funds being allocated in that regard.

105 In view of the above considerations, it is necessary to reject the Republic of Poland's arguments based on the transitional arrangements laid down in point 8.3 of Annex XII to the 2003 Act of Accession.

106 In view of the foregoing considerations and, in particular, paragraphs 69 and 88 above, the Court must uphold the first part of the Commission's complaint regarding the restriction of international traffic to the roads in the trans-European transport network and certain national roads.

The requirement to be in possession of a special permit to use other roads

Arguments of the parties

107 The Commission claims that the regime prohibiting road use unless a permit is obtained is contrary to Directive 96/53 in so far as it limits and hinders the free movement of vehicles.

108 The Commission observes that, under the restrictive regime covering regional, district and municipal roads, permits must, pursuant to Article 64(1) and (3) of the Law on road traffic, be applied for, for each of those roads, from various authorities for a single journey. It considers that, in the absence of a one-stop shop, and in view of the fees and the time it takes to obtain the permit required, the system in place is costly, time-consuming and such as to discriminate indirectly against non-resident hauliers and hauliers from Member States other than the Republic of Poland. It states that, pursuant to Article 64(2) of the Law on road traffic, category IV permits, which allow vehicles with a driving axle weight of 11.5 tonnes to circulate on national roads, may not be used when transporting divisible loads, whereas such loads comprise the majority of loads carried by road. The work of transport undertakings is therefore complicated by the need to use a large number of lorries. The Commission also invokes a serious restriction on the freedom to provide road services.

109 The Commission argues that the Republic of Poland's argument that the permit regime at issue does not contravene Directive 96/53, given that it is applied benevolently and without restriction or discrimination, is irrelevant in view of the principle of free movement laid down in that directive. Moreover, according to the Commission, that argument reveals that protecting the road infrastructure and controlling the number of vehicles using such infrastructure cannot serve to justify the system put in place by the Polish legislature.

110 Furthermore, the Commission submits that the fact, as noted by the Republic of Poland, that the permits in question are issued without discrimination to all carriers, is irrelevant in assessing the restrictive nature of those permits and the infringement of the provisions of Directive 96/53.

111 The Commission adds that the Republic of Poland cannot maintain that the obligation to obtain a permit is intended to encourage hauliers to use parallel roads, which are more suitable to lorry traffic, since that explanation is contrary to Article 3 of that directive.

112 In addition, the Commission observes, by way of example, that that objective has, as regards national road DK 92 between Berlin (Germany) and Warsaw (Poland), been achieved by other means, namely by levying a fee on lorries, which, unlike the permit regime, is a reasonable traffic management method. It also notes that on some roads, in order to access areas for the loading and unloading of goods, there is no option but to obtain a permit.

113 The Republic of Poland contests the Commission's arguments concerning the requirement to be in possession of a special permit in order to use roads other than those in the trans-European transport network and certain other national roads.

114 The Republic of Poland contends that restricting use of the road network is not contrary to Article 3 of Directive 96/53 and asserts that it is the financial contribution towards the maintenance of roads damaged by the circulation of heavy vehicles, as provided for under Article 64 et seq. of the Law on road traffic, that ensures, in the long term, the free circulation of vehicles with axle loads that do not comply with the technical specifications of the roads in questions.

115 The Republic of Poland notes in that respect that the Commission's description of the permit system is partly inaccurate and states that the permits are issued by the road operator, as regards category I permits, and by the Director-General for National Roads and Motorways, as regards category IV permits for the national roads concerned. Category I permits are issued to the haulier, with a validity period of 1, 6, or 12 months, as requested, and do not specify to which vehicles they relate. Each permit is issued within a maximum of seven working days from the date of submission of the application. The same rules apply to category IV permits, which may also be issued for a 24-month period, within a maximum period of three working days from the date of submission of the application.

116 According to the Republic of Poland, in order to ensure legal certainty for applicants, the fee provided for under Article 64f(1) of the Law on road traffic is capped at a maximum of 240 Polish zlotys (PLN) (approximately EUR 55) for category I permits and PLN 3 600 (approximately EUR 850) for category IV permits. However, the actual amount of the fee, which is set by the Regulation of the Minister for Transport, Construction and the Maritime Economy on the fee payable for the road permit for non-standard vehicles, varies depending on the validity period of each permit. According to that fee schedule, which has not changed since 2012, the least expensive category I permit, with a validity of 12 months, costs PLN 200 (approximately EUR 47), while a category IV permit costs PLN 2 000 (approximately EUR 470) for a validity of 12 months, and PLN 3 000 (approximately EUR 705) for a validity of 24 months.

117 In its defence, the Republic of Poland concludes in that regard that it does not share the Commission's view that the system is costly and time-consuming; rather, the system is transparent and facilitates the circulation of hauliers across the entire network. It also disputes the Commission's contention that there is a prohibition on circulating without a permit, in so far as it is possible to choose the route used for international transportation.

118 In its rejoinder, the Republic of Poland claims that the pleas in law alleging indirect discrimination against hauliers from other Member States and a restriction on the freedom to provide road services are inadmissible since the Commission invoked them for the first time in its reply. It adds that, in any event, those pleas are unfounded since permit applications can be obtained easily via a website, permits are issued for a set period irrespective of the number of transport operations, and the cost of permits is

relatively low in view of the needs of hauliers. It maintains that that transparent, practical system meets the expectations of hauliers and had not been criticised before the complaints made to the Commission.

Findings of the Court

119 As a preliminary point, it should be recalled that, in accordance with settled case-law, the subject matter of an action under Article 258 TFEU for failure to fulfil obligations is determined by the Commission's reasoned opinion; thus that action must be based on the same grounds and pleas as that opinion (judgment of 10 November 2011, *Commission* v *Portugal*, C-212/09, EU:C:2011:717, paragraph 26 and the case-law cited) and, in accordance with Article 127(1) of the Rules of Procedure of the Court, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which came to light in the course of the procedure.

120 In the present case, the Commission raised the argument regarding indirect discrimination against non-resident hauliers and hauliers from Member States other than the Republic of Poland and the argument regarding a restriction on the freedom to provide road services for the first time at the reply stage. In those circumstances, those allegations must be rejected as inadmissible.

121 It should be noted that vehicles complying with the maximum axle weights laid down in points 3.1 and 3.4 of Annex I to Directive 96/53 are regarded as 'non-standard', within the meaning of Article 2(35a) of the Law on road traffic, where their laden or unladen axle weight is greater than the maximum authorised weights, as laid down for a particular road by Polish legislation relating to public roads. The circulation of such vehicles on the relevant roads is subject, pursuant to Article 64(1) of that law, to the obtention, for a fee, of a special permit, which is issued by the competent authority. That said, by virtue of Article 64(2) of that law, the transportation of a divisible load by a 'non-standard' vehicle is, in principle, prohibited.

122 It follows that, on public roads subject to the axle weight limits provided by Polish legislation, the circulation of vehicles complying with the maximum weights laid down in points 3.1 and 3.4 of Annex I to Directive 96/53 is contingent on the obtention of a special permit.

123 Given that the access of such vehicles to public roads subject to the axle weight limits provided by Polish legislation is conditional on the obtention of such a permit and that those restrictions are, as is apparent from paragraphs 69 and 88 above, contrary to Articles 3 and 7 of Directive 96/53, read in conjunction with points 3.1 and 3.4 of Annex I to that directive, that permit system must also be held to be contrary to those provisions, without there being any need to rule on the parties' arguments concerning the practical arrangements for obtaining such permits.

124 In those circumstances, it must be held that, by imposing on transport undertakings a requirement to be in possession of special permits in order to be able to circulate on certain public roads, the Republic of Poland has failed to fulfil its obligations under the combined provisions of Articles 3 and 7 of Directive 96/53, read in conjunction with points 3.1 and 3.4 of Annex I to Directive 96/53.

Costs

125 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if costs have been applied for. Since the Commission has applied for costs and the Republic of Poland has been unsuccessful, the latter must be ordered to pay the costs.

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

1. **Declares that, by imposing on transport undertakings a requirement to be in possession of special permits in order to be able to circulate on certain public roads, the Republic of Poland has failed to fulfil its obligations under the combined provisions of Articles 3 and 7 of Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic, as amended by Directive (EU) 2015/719 of the European Parliament and of the Council of 29 April 2015, read in conjunction with points 3.1 and 3.4 of Annex I to Directive 96/53;**

2. **Orders the Republic of Poland to pay the costs.**

[Signatures]