OPINION OF ADVOCATE GENERAL MENGOZZI
delivered on 11 January 2007 [1]

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1 — Original language: French.

I — Introduction

1. In this case, the Commission of the European Communities, by an action brought on 9 February 2005, seeks from the Court a declaration that, by requiring a transfer licence ('siirtolupa') for the importation and putting into circulation of vehicles lawfully registered and used in another Member State, the Republic of Finland has failed to fulfil its obligations under Articles 28 EC and 30 EC.

II — Legal framework

A — *Community law*

2. Article 28 EC prohibits quantitative restrictions on imports between Member States and all measures having equivalent effect.

3. Under Article 30 EC, prohibitions or restrictions on imports between Member States which are justified in particular on grounds of public security and the protection of health and life of humans are permitted, provided that they do not constitute a means of arbitrary discrimination or a disguised restriction on intra-Community trade.

B — *Finnish legislation*

4. Article 8 of the Law of 11 December 2002 on vehicles (ajoneuvolaki 1090/2002) lays down a general obligation to register a vehicle and have it tested for roadworthiness, subject to certain exceptions provided for by, or under, that Law. Under Article 64 of that Law, exceptions to the obligation to register a vehicle may be provided for by decree in the case of vehicles registered abroad which are to circulate on the road network in Finland only occasionally or temporarily. [2]

5. Article 1 of the Law of 29 December 1994 on vehicle tax (autoverolaki 1482/1994) lays down a general rule according to which that tax ('autovero') must be paid before vehicles are registered or put into service in Finland.

2 — Under Article 12(10) of the Law of 30 December 2003 on the annual vehicle tax (ajoneuvoverolaki 2003/1281), a vehicle used under a transfer licence is also exempt from the annual tax ('ajoneuvovero').

Article 35 of that Law provides for exceptions to the general liability to registration tax in the case of vehicles used temporarily and vehicles used under a transfer licence.

6. The exceptions to the obligation to register a vehicle were laid down in the Decree of 18 December 1995 on the registration of vehicles (asetus ajoneuvojen rekisteröinnistä 1598/1995; 'Decree 1598/1995'), Article 8(2) of which provides that a vehicle registered abroad or a vehicle fitted with temporary number plates may be put into circulation in Finland without a declaration of registration under the conditions laid down in Articles 46 to 48, 48a, 49 to 51, 51a, 51b and 52 to 56 of that decree. The same applies to the circulation of a vehicle for which a transfer licence has been issued.

7. Article 48 of Decree 1598/1995 provides:

'1. The registration authority and the customs administration may, in order for a roadworthiness test to be carried out, for the purposes of the transfer, exhibition, participation in a competition or demonstration in Finland of a vehicle which is not registered in this country, or for another specific reason with a view to the transfer of a vehicle, issue on application a written transfer licence with a view to the vehicle being put into circulation. Transfer numbers (self-adhesive labels) shall be provided when the transfer licence is issued.

2. For that transfer licence to be issued, the vehicle must be covered by a valid motor insurance policy ... and the annual tax ... must have been paid.

3. The transfer licence shall be issued for the period necessary for the circulation of the vehicle. It may not, without very good reason, be issued for a period longer than seven days. Participation in a competition may not be considered to be such a reason.

4. A vehicle may not be used pursuant to a transfer licence if it is not fit to be driven owing to its condition, dimensions or weight.'

8. A fifth paragraph was inserted into that article in 2003 and took effect on 1 January 2004. It provides for an extended transfer

licence which permits an individual to use for his own needs temporarily — for a maximum of three months — a vehicle which he has imported, before registering it for the first time. That provision was in force until 31 December 2005.

9. Article 48a of Decree 1598/1995 sets out the procedure for affixing the transfer numbers (self-adhesive labels) onto vehicles.

10. Article 49 of that decree states that the driver must be in possession of the transfer licence certificate while the vehicle is being driven.

11. Article 21(2) of the Decree of 18 December 2003 on the information held on the Register of Vehicles (valtioneuvoston asetus ajoneuvoliikennerekisterin tiedoista 1116/2003) lists the information concerning the transfer licence which is entered in the Register of Vehicles, that is to say 'the name, the address, and the identification number of the person, undertaking or association holding the licence, the make of the vehicle, the model, the factory serial number, the registration number, the third-party motor vehicle insurance, the date of issue of the licence, the authority issuing it, its travel validity period, its purpose and the payments relating to it, and, where applicable, the itinerary'.

12. Lastly, Article 65 of Decree 1598/1995 lays down the penalties for non-compliance with the provisions of that decree. It states that a police officer, customs officer or border control officer may confiscate the number plates of the vehicle and the transfer licence and self-adhesive labels, and thus immobilise the vehicle. On written authorisation issued by the police, the customs administration or the border control service, a vehicle which has been the subject of such confiscation may be driven to a destination for repair or roadworthiness testing.

13. In summary, in order to put into circulation a vehicle registered and used in a Member State other than the Republic of Finland or not yet registered, a Finnish resident must either register the vehicle in Finland before being able to use it, or apply to the competent Finnish authorities for a transfer licence, which, once granted by those authorities, authorises him to drive for seven days in that State before registering the vehicle and exempts him, for that period, from payment of the corresponding tax. The requirement to obtain a transfer licence also applies where a vehicle of a Finnish resident passes through Finland en route to another Member State. If such a licence is not obtained or the period of its validity expires, the use of the vehicle is prohibited.

III — Pre-litigation procedure

14. Having received a number of complaints concerning the Finnish legislation and the practice of the Finnish authorities relating to the issue of the transfer licence required when importing a vehicle registered abroad, on 17 May 2002 the Commission sent a letter to the Finnish Government asking for clarification of the legislation at issue.

15. Since it did not consider the responses given by the Republic of Finland to be satisfactory, the Commission, on 9 April 2003, issued a letter of a formal notice in which it stated that the obligation on persons residing in Finland who wished to import a vehicle registered abroad to apply for a transfer licence immediately upon crossing the Finnish border, combined with the obligation to reinsure the vehicle in Finland, restricted the free movement of goods and, consequently, infringed Article 28 EC. The Commission also stated that the transfer licence's seven-day validity period was too short and, therefore, contrary to Article 28 EC.

16. Having examined the response given by the Republic of Finland to the letter of formal notice, the Commission, by letter of 16 December 2003, delivered a reasoned opinion, in accordance with Article 226 EC.

17. Having noted that the Republic of Finland had repeated its initial observations and had not adopted measures to comply with the reasoned opinion within the prescribed time-limit, the Commission decided to bring the present action.

IV — Forms of order sought and procedure before the Court

18. The Commission claims that the Court should:

— declare that, by requiring a transfer licence for vehicles lawfully registered and used in another Member State, the Republic of Finland has failed to fulfil its obligations under Articles 28 EC and 30 EC;

— order the Republic of Finland to pay the costs.

19. The Republic of Finland contends that the Court should:

— dismiss the action;

— order the Commission to pay the costs.

20. Having exchanged their written pleadings, the parties presented oral argument at the hearing of 9 November 2006.

V — The failure to fulfil obligations

A — *Summary of the arguments of the parties*

21. The Commission contends, as its principal submission, that the transfer licence system established by Decree 1598/1995 is precluded by Articles 28 EC and 30 EC.

22. The Commission considers the transfer licence procedure to be a regulatory administrative stage which precedes the vehicle registration procedure itself, in cases where a person residing in Finland wishes to import a vehicle lawfully registered in another Member State.

23. The Commission takes the view that the establishment of such a licence exhibits the characteristics of a quantitative restriction on imports or a measure having equivalent effect within the meaning of Article 28 EC, since a person residing in Finland has no statutory guarantee that he can put into circulation there a vehicle lawfully registered in another Member State which he is importing into Finland or transferring via Finland to another State.

24. In its view, it is apparent in particular from the wording of Article 48 of Decree 1598/1995 that the issue of the transfer licence is left to the discretion of the competent authorities, which means that the applicant has no guarantee of obtaining it. That view is further supported by the fact that it is impossible to know with any certainty the criteria on the basis of which the licence is granted.

25. It also points out that the holder of the vehicle must, in general, stop at the Finnish

border in order to apply for a transfer licence and that, in any event, the licence application, even if submitted in advance of crossing the border, requires the person wishing to import the vehicle to go to the customs office and gives rise to costs.

26. The Commission argues that, in any event, in accordance with the case-law of the Court, Article 28 EC precludes national law which maintains a requirement, even a purely formal one, of import licences or any other such procedure.

27. Moreover, in response to the arguments put forward by the Finnish Government to justify the issue of transfer licences on the basis of reasons connected with the effectiveness of fiscal supervision, road safety and keeping the Register of Vehicles up to date, the Commission argues, first, that effective fiscal supervision can be guaranteed by means less restrictive of the free movement of goods and, second, that the transfer licence system can likewise not be justified by reasons connected with road safety, in particular because such a licence is required only for vehicles registered abroad that belong to persons residing in Finland. With regard to the Republic of Finland's argument concerning the need to know the technical characteristics of vehicles not registered in Finland, the Commission adds that recourse to the means provided for by Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles [3] makes it possible to satisfy that requirement on the basis of the registration granted by another Member State.

28. Lastly, in the alternative, the Commission submits that, should the Court find that there is no failure to fulfil obligations in connection with the issue of transfer licences, the seven-day validity period for such a licence is, in itself, contrary to Articles 28 EC and 30 EC, on account of its brevity. It bases that assessment on the judgment in *Cura Anlagen*. [4]

29. In this connection, the Commission points out, in its reply, that a period of seven days is insufficient to carry out all the formalities necessary for registering a vehicle in Finland and to pay the corresponding tax.

30. Moreover, the Commission sees no reason why the Finnish authorities could not amend the current legislation so as to replace the system based in principle on

3 — OJ 1999 L 138, p. 57.

4 — Case C-451/99 [2002] ECR I-3193.

transfer licences valid for a period of seven days with the right to use a vehicle for three months before it is registered in Finland.

31. First of all, the Republic of Finland points out that it has acceded to three international transport conventions (Paris (1923), Geneva (1949) and Vienna (1968)) and that those conventions presuppose that a vehicle used in Finland must be registered in Finland. It also notes that, if a person permanently resident in Finland wishes to use in that State a vehicle registered in another Member State, he must obtain for that purpose a transfer licence authorising the importation of that vehicle and the corresponding self-adhesive labels; temporary or permanent foreign number plates are not acceptable as substitutes for a transfer licence.

32. Next, the Republic of Finland contends, as its principal submission, that the transfer licence system, which is separate from the vehicle registration procedure itself, does not constitute a restriction on imports within the meaning of Article 28 EC.

33. It emphasises that, contrary to the Commission's contention, issue of a transfer licence has no direct connection with the crossing of the border. In its submission, the event giving rise to the obligation to obtain a licence is, on the contrary, the putting into circulation of the vehicle. Consequently, the requirement to obtain a transfer licence applies without distinction to all vehicles not yet registered in Finland.

34. It mentions, in addition to the affordable price of a transfer licence, [5] the speed and simplicity of the procedure for obtaining one, since the licence is issued without a prior roadworthiness test of the vehicle and the applicant is not required to be in possession of the vehicle when he submits the licence application.

35. Furthermore, the Republic of Finland states that the discretion of the competent authorities in relation to issue of a transfer licence is bound by the conditions governing its grant and that the decision of those authorities is not therefore based on an arbitrary assessment, contrary to what the Commission suggests.

36. In the alternative, the Republic of Finland submits that the transfer licence proce-

5 — According to the documents in the file, the price of a transfer licence is EUR 14 per vehicle.

dure is justified in any event, since it is the simplest means of guaranteeing that the objectives of effective fiscal supervision, keeping the Register of Vehicles up to date and maintaining road safety are attained.

37. In this connection, it argues, first, that where a vehicle not registered (in Finland) is driven on Finnish territory there has to be some way of ascertaining without risk of error whether it is a vehicle which is exempt from registration tax or one on which that tax is outstanding. The existence of the transfer licence provides a reliable means of establishing, in relation to vehicles belonging to Finnish residents, the date on which a vehicle was put into circulation, which is the starting point for calculating how long it has been used tax-free, and avoids the large-scale traffic checks on vehicles bearing foreign number plates which would be necessary if the transfer licence did not exist.

38. Second, it maintains that the transfer licence system guarantees that the information on the vehicle being used and on the holder of the corresponding licence is entered in the Register of Vehicles, and that this is essential in achieving the objective of road safety. It adds that the data entered in the register are necessary in the event of an infringement of traffic regulations or an accident, as well as for the purposes of verifying the technical features of the vehicle which have a bearing on road safety. Contrary to what the Commission suggests with reference to Directive 1999/37, that data cannot be properly gathered exclusively from the Register of Vehicles of the Member State in which the vehicle has already been registered. Although Article 9 of that directive refers to the use of an electronic network between the competent authorities of the Member States, the Community has no joint register enabling information on vehicles to be obtained quickly and reliably.

39. Lastly, the Republic of Finland considers that the period of validity of the transfer licence is consistent with the principle of proportionality and is not therefore contrary to Articles 28 EC and 30 EC, in the light, in particular, of the flexibility and simplicity of the licence-issuing procedure, which stem from the fact that there is no prior roadworthiness testing of the vehicles. Moreover, the validity period can be extended on request.

40. It adds that the seven-day validity period applies above all to vehicles imported for sale, vehicles in transit or those which are to be in circulation in Finland for only a short period. In other cases, the Republic of Finland states that transfer licences are generally issued for an extended period of three months, in accordance with Article 48(5) of Decree 1598/1995. It points out, however, that the present action is not

concerned with an extended transfer licence of this kind.

B — *Assessment*

1. The requirement to obtain a transfer licence

(a) Preliminary observations

41. Before the Court, the Commission alleges, as its principal submission, that the Republic of Finland has failed to fulfil its obligations under Articles 28 EC and 30 EC by requiring persons who hold or own vehicles lawfully registered and used in another Member State to apply for a transfer licence in order to put them into circulation in Finland.

42. It is worth making four preliminary remarks with regard to the pre-litigation procedure and the arguments put forward by the parties before the Court before assessing whether or not there has been a failure to fulfil obligations.

43. First of all, I would like to point out that these proceedings do not affect the competence of the Republic of Finland, as recognised in the international conventions cited by it and the case-law of the Court, [6] to impose an obligation of registration, and of payment of the corresponding tax, in respect of vehicles intended for permanent circulation within the territory of that Member State. The proceedings brought by the Commission merely seek a declaration that the requirement to obtain a transfer licence, as a requirement separate from that relating to the registration of vehicles, is contrary to the free movement of goods.

44. Next, it should be noted that, during the pre-litigation procedure, one of the complaints made by the Commission to the Finnish Government was that compulsory reinsurance had to be taken out in Finland on vehicles affected by the transfer licence procedure. However, when it brought its action, the Commission confined the sub-

6 — See, in relation to the free movement of workers, *Cura Anlagen*, paragraphs 41 and 42, and Case C-464/02 *Commission* v *Denmark* [2005] ECR I-7929, paragraphs 75 to 78; see also, in relation to the freedom of establishment, Joined Cases C-151/04 and C-152/04 *Nadin and Nadin-Lux* [2005] ECR I-11203, paragraphs 41 to 43.

ject-matter of the proceedings to the single question of the issue of transfer licences and their period of validity.

45. Moreover, it must be pointed out that the contested Finnish legislation, as interpreted by the parties, does not require that a transfer licence be issued for vehicles registered in another Member State and used temporarily in Finland for the purposes of tourism by nationals of another Member State. The legislation applies only to vehicles registered and used in other Member States which are owned by a Finnish resident, in accordance with the provisions of Decree 1598/1995.

46. Finally, it must be noted that the time-limit for transposing Directive 1999/37 on the registration documents for vehicles, which has been mentioned by the parties before the Court, had not yet expired at the end of the period within which the Republic of Finland was required to comply with the Commission's reasoned opinion. [7] As we know, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in the Member State as it stood at the end of the period laid down in the reasoned opinion. [8] At that time in this case, that is to say on 19 February 2004, there was thus no common or harmonised rule at Community level governing the entry into circulation in the Member States of vehicles registered and used in another Member State which the Commission could have accused the Republic of Finland of having infringed.

47. That said, in the absence of common or harmonised rules, Member States are still required to respect the fundamental freedoms provided for in the EC Treaty, which include the free movement of goods. [9]

48. It is therefore necessary to determine whether the Commission is right to submit that the Republic of Finland has failed to fulfil its obligations under Articles 28 EC and 30 EC by requiring that a transfer licence be obtained for vehicles registered and used in another Member State, under the conditions set out in Decree 1598/1995.

7 — In accordance with Article 8 of Directive 1999/37, Member States had until 1 June 2004 to adopt the measures necessary to comply with that directive, whereas the period within which the Republic of Finland was required to comply with the reasoned opinion, laid down in that opinion, expired on 19 February 2004.

8 — See, inter alia, Case C-110/00 *Commission* v *Austria* [2001] ECR I-7545, paragraph 13; Case C-266/03 *Commission* v *Luxembourg* [2005] ECR I-4805, paragraph 36; and the judgment of 28 September 2006 in Case C-49/06 *Commission* v *Luxembourg*, not published in the ECR, paragraph 6.

9 — See, in this regard, Case C-14/02 *ATRAL* [2003] ECR I-4431, paragraph 58.

49. That examination requires an analysis of whether or not the national legislation at issue constitutes an obstacle to the free movement of goods prohibited by Article 28 EC and, if so, whether it can be justified.

(b) The existence of an obstacle to the free movement of goods

50. In accordance with the Court's case-law, any measure enacted by a Member State which is capable of hindering, directly or indirectly, actually or potentially, intra-Community trade constitutes a measure having an effect equivalent to a quantitative restriction prohibited by Article 28 EC. [10]

51. Accordingly, even if a national measure is not intended to regulate trade in goods between Member States, the determining factor is its effect, be it actual or potential, on intra-Community trade.

52. Moreover, in the absence of harmonisation of the laws of the Member States, national rules which apply without distinction to all products may constitute measures of equivalent effect, unless they affect in the same manner, in law and in fact, domestic products and those from other Member States. [11]

53. In this case, in my view, the provisions of Decree 1598/1995 affect in a different manner, *in law* and *in fact*, the putting into circulation and, consequently, the marketing of vehicles from other Member States.

54. It is true that those provisions show that the event giving rise to the obligation to obtain a transfer licence is not the crossing of the Finnish border, but entry into circulation in Finland. The view could therefore be taken, as the Finnish Government has submitted, that, in principle, those provisions apply without distinction to all vehicles (belonging to Finnish residents) which are not yet registered in Finland.

55. However, *in law*, the provisions make the putting into circulation of vehicles which are in different situations subject to the requirement to obtain a transfer licence, that is to say to a single prior authorisation procedure.

10 — See, inter alia, Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5; Joined Cases C-267/91 and C-268/91 *Keck and Mithouard* [1993] ECR I-6097, paragraph 16; and Joined Cases C-158/04 and C-159/04 *Alfa Vita Vassilopoulos and Carrefour Marinopoulos* [2006] ECR I-8135, paragraph 15.

11 — See, in particular, Case 120/78 *Rewe-Zentral ('Cassis de Dijon')* [1979] ECR 649, paragraphs 6, 14 and 15, and *Keck and Mithouard*, paragraphs 15 and 16.

56. In accordance with the wording of Decree 1598/1995, the requirement to obtain a transfer licence applies both to vehicles marketed in Finland which have not yet been registered *at all* and to those which have already been registered and used in another Member State.

57. While such a requirement may be understandable for vehicles marketed in Finland which have not yet been registered at all, in particular in so far as it ensures that a technical certificate is issued and allows such vehicles to circulate temporarily on Finnish roads, it is, on the other hand, unacceptable, in the absence of justification, to require that a transfer licence be obtained for vehicles already registered and used in another Member State, given that this duplicates their existing registration, which already provides a guarantee that the vehicles have the necessary technical characteristics and are suitable for free circulation in the Community, at least temporarily.

58. In my view, this situation is, ultimately, comparable to those in which the Court has held that national provisions which require that products lawfully manufactured and marketed in a Member State should undergo the same tests as products placed on the market for the first time in another Member State and be approved beforehand in that Member State constitute measures equivalent to a quantitative restriction on imports within the meaning of Article 28 EC. [12]

59. *In fact*, the provisions of Decree 1598/1995 are capable of deterring Finnish residents from buying vehicles in other Member States with a view to importing them and using them in Finland, because of the procedures connected with the issue of a transfer licence and the fact that the vehicle is immobilised when the licence expires.

60. Moreover, the fact that the authorities referred to in Article 48 of Decree 1598/1995 have a power, which, although not arbitrary, is certainly discretionary, to issue that licence lends particular justification to the classification of the transfer licence as a measure having equivalent effect within the meaning of Article 28 EC, since, as the Commission points out, there is no guarantee that vehicles already registered in a Member State will be issued with a transfer licence.

61. As I see it, those findings apply a fortiori to vehicles which are to be used merely to pass through Finnish territory, the owners of which are also required to obtain a transfer licence.

12 — See *ATRAL*, paragraph 62, and the case-law cited there.

62. In the light of the foregoing considerations, I consider that the Commission is right in submitting that the Finnish transfer licence system creates an obstacle to the free movement of goods prohibited by Article 28 EC.

(c) Possible justifications for the obstacle

63. It must now be ascertained whether that measure, in spite of its restrictive effects on intra-Community trade, may be justified on one of the public interest grounds listed in Article 30 EC or by one of the mandatory requirements established by the case-law of the Court.

64. The Court adopts a strict interpretation of the derogations provided for in Article 30 EC, all of which relate to non-economic interests, [13] and states that, in order for a justification to be permissible, it must be established that the contested measure observes the principle of proportionality. [14]

65. In the absence of Community harmonisation, it is for the Member States to determine their own levels of protection for the non-economic interests which they intend to pursue. However, they must show, first, that their rules are necessary in order to attain the objective pursued and, second, that they are also proportionate to that objective.

66. In this case, the Republic of Finland contends that the transfer licence system is justified on grounds relating to road safety and the effectiveness of fiscal supervision. It also refers to the keeping and updating of the Register of Vehicles, without clarifying whether this is an independent ground of justification or forms part of the above-mentioned grounds.

67. It will be noted that, in relation to road safety, the Court has already held that such a justification falls under Article 30 EC [15] and that it also constitutes an overriding reason in the public interest within the meaning of the relevant case-law. [16] With regard to the effectiveness of fiscal supervision, that ground of justification has been deemed to be one of the mandatory requirements recognised by the case-law of the Court. [17] As for the keeping and updating of the

13 — See, to this effect, Case C-120/95 *Decker* [1998] ECR I-1831, paragraph 39.

14 — See, by way of illustration, Case C-314/98 *Snellers* [2000] ECR I-8633, paragraphs 55 and 56, and the case-law cited there.

15 — Case 406/85 *Gofette and Gilliard* [1987] ECR 2525, paragraph 7.

16 — *Cura Anlagen*, paragraph 59, and the judgment of 23 February 2006 in Case C-232/03 *Commission* v *Finland*, not published in the ECR, paragraph 52.

17 — See, in particular, *Cassis de Dijon*, paragraph 8, and Case 176/84 *Commission* v *Greece* [1987] ECR 1193, paragraph 25.

Register of Vehicles, that objective does not seem to me to have an independent function capable in itself of justifying a restriction on the free movement of goods. However, it can be examined in the course of the analysis of the other two grounds of justification put forward by the Republic of Finland.

68. In that analysis, it must be determined whether the Member State has demonstrated that the restrictions are appropriate for securing the attainment of the objectives pursued and do not go beyond what is necessary in order to attain them. [18]

(i) Road safety

69. The Republic of Finland submits, generally, that the requirement to obtain a transfer licence makes it possible to collect information relating in particular to the technical characteristics of the vehicle and its owner. That information, entered in the Finnish Register of Vehicles, is essential for attaining the objective of road safety.

70. I am not convinced by this line of argument.

71. First, the Republic of Finland raises the justification of road safety with reference exclusively to the importance of entering information on the technical characteristics of vehicles and their owners in the register provided for that purpose, without showing that the transfer licence procedure is essential in order to obtain that information.

72. It is clear that the acts of keeping the Register of Vehicles and updating the information entered can be dissociated from the procedure for issuing the transfer licence. There is therefore no link between that procedure and the alleged objective of controlling road safety. Moreover, the Court has already held, in the context of a reference by the Republic of Finland to road safety as justifying an infringement of the free movement of workers, that, in so far as all Member States have a vehicle registration system, it seems possible to identify both the owner of a vehicle and the technical characteristics of that vehicle, irrespective of the Member State in which it is registered. [19]

18 — See, in particular, *ATRAL*, paragraph 64, and the case-law cited there.

19 — *Commission* v *Finland*, paragraph 51.

73. Second, it seems to me that, for the justification based on maintaining road safety to be permissible, the issue of the transfer licence would have to be linked to a roadworthiness test of the vehicle. However, it will be noted first of all that the Republic of Finland does not rely on such a link. [20] Also, such a test could in fact be required only in a manner consistent with Council Directive 96/96/EC of 20 December 1996 on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers. [21] That directive refers to the registration procedure and provides, in particular, that, once a vehicle has undergone a roadworthiness test in a Member State, all of the other Member States are to recognise the certificate issued on that occasion, without that preventing them from requiring additional tests for the purposes of registration in their territory, provided those tests are not already covered by that certificate. [22]

74. Third, vehicles belonging to persons not resident in Finland may circulate freely within the territory of that State without a transfer licence having first to be issued. This shows that the contested measure is not appropriate for the purpose of attaining the objective of ensuring road safety, unless it is accepted that only vehicles registered in other Member States belonging to Finnish residents are dangerous, [23] which appears improbable and does not represent the view of the Finnish Government.

75. Taking into account the foregoing, I consider that the transfer licence provided for by the Finnish legislation at issue cannot be justified on grounds relating to road safety.

(ii) The effectiveness of fiscal supervision

76. The Republic of Finland asserts that it has applied the principle accepted by the Court in its judgment in *Cura Anlagen*, to the effect that the State of residence has competence in the field of vehicle taxation, from which it also infers the competence to adopt exceptions to such taxation. The requirement to obtain a transfer licence, being designed as a temporary exception to the obligation to pay registration tax, should, therefore, be regarded as falling within the scope of the fiscal competence of the Republic of Finland.

20 — See the reply of the Republic of Finland, paragraph 16.

21 — OJ 1997 L 46, p. 1.

22 — See Article 3(2) of Directive 96/96. See also *Cura Anlagen*, paragraph 62, and *Commission* v *Finland*, paragraph 52.

23 — That is to say vehicles which are to be used permanently in Finland and those merely passing through Finland en route to another Member State.

77. That line of argument provides an understanding of the reasons why the Finnish Government submits that any obstacle created by the transfer licence is justified on grounds of effective fiscal supervision. The Finnish Government explains that the transfer licence serves to distinguish vehicles used tax-free from those on which registration tax has been paid, since information concerning the licence holder and the vehicle is entered in the Register of Vehicles and self-adhesive labels are provided for the vehicles themselves.

78. As I have already pointed out, the effectiveness of fiscal supervision is among the overriding reasons in the public interest permitted by the Court in its case-law. However, it must be ascertained whether the requirement to obtain a transfer licence is necessary and proportionate to attain that objective.

79. With regard to analysis of the necessity of the contested measure, that is to say whether the measure is suitable for satisfying the objective pursued, it seems to me appropriate to draw a distinction between the situation of vehicles belonging to Finnish residents which are to be used permanently in Finland and are therefore to be subject to the requirement of registration in that State, on the one hand, and that of vehicles belonging to Finnish residents which are merely passing through Finland en route to another Member State, on the other.

80. In the first situation, the national legislation at issue may address fiscal supervision concerns, in that it makes it possible, through the Register of Vehicles and the self-adhesive labels affixed to the vehicles, to ascertain which vehicles are temporarily exempt from payment of registration tax, the owners of which must pay that tax once the transfer licence has expired.

81. However, in the second situation, it seems to me that the requirement to obtain a transfer licence does not serve the objective of effective fiscal supervision, since it applies to vehicles which are not to be registered in Finland.

82. With regard to whether or not that measure is proportionate in relation to the objective pursued, a question which must be examined solely within the context of the first situation, referred to in point 80 above, I also consider that the objective may be attained by a measure less restrictive of free trade between the Member States.

83. I think it possible to argue, as the Commission does, that the objective of fiscal supervision could be pursued, for example, through a system based on a compulsory prior declaration made on the initiative of the individual, subject, in the event of failure to complete that administrative formality, to

appropriate penalties. The information which would be submitted to the Finnish authorities as part of the prior declaration would allow them to update an electronically networked vehicles register and determine without ambiguity the date on which tax-free use commences. However, the prior declaration would not preclude the Finnish authorities from laying down a reasonable time-limit for tax-free use of the vehicle starting on the date of the prior declaration of entry into circulation.

84. Moreover, the fact that individuals would take their own steps to make the voluntary declaration would be in line with the current practice of transfer licences being applied for by the persons seeking them. However, contrary to the submissions made at the hearing by the Finnish Government, a prior declaration would not be the same as a transfer licence. First, a prior declaration leaves intact the principle of the free movement of vehicles, whereas the rationale behind the transfer licence is a system of authorisation prior to circulation without which the vehicle cannot be driven. Second, as I highlighted in point 60 of this Opinion, transfer licences are issued at the discretion of the competent Finnish authorities, whereas, under a system of prior declaration, the authorities would have to confine themselves to entering the information on the vehicle and its owner or holder in the register provided for that purpose.

85. With regard to the objections raised by the Finnish Government concerning possible difficulties connected with setting up the large-scale traffic checks which would be necessary following abolition of the requirement to obtain a transfer licence, it must first be pointed out that any problems of internal organisation experienced by a Member State do not justify the adoption of measures which are more restrictive of intra-Community trade. Next, it must be pointed out that the electronic networking of the Register of Vehicles among all the competent authorities might satisfy the requirement to be able to identify vehicles which should be registered in Finland without having to rely on large-scale checks on those registered abroad. Furthermore, such networking already exists, as the Republic of Finland confirmed at the hearing.

86. Finally, it must be added that the problem of traffic checks referred to by the Republic of Finland exists just as much under the current transfer licence system and arises in the case of Finnish residents who have failed to apply for a licence. In this regard, it is arguable that the prior declaration system, being less restrictive than the transfer licence system, would increase the number of residents registering the requisite information with the Finnish authorities and, accordingly, reduce any cases of persons seeking to circumvent the system, which cases alone would remain subject to traffic checks.

87. In the light of the foregoing, I am therefore of the view that the transfer licence, as provided for in Decree 1598/1995, does not constitute a measure proportionate to the objective of effective fiscal supervision pursued by the Republic of Finland.

88. Consequently, in relation to the principal submission, I propose that the action for failure to fulfil obligations brought by the Commission should be upheld.

2. The period of validity of the transfer licence

89. The Commission submits in the alternative, should the Court find that the requirement to obtain a transfer licence is justified, that the transfer licence's seven-day validity period is itself contrary to Articles 28 EC and 30 EC, on account of its brevity.

90. The Republic of Finland contests that line of argument. It submits that the transfer licence's seven-day validity period is sufficient to allow the owners of the vehicles at issue to take the necessary steps to register the vehicle.

91. In so far as I consider, as I have said above, that the requirement to obtain a transfer licence is, in itself, an obstacle to the free movement of goods which cannot be justified by the objectives put forward by the Republic of Finland, it is clear that the question concerning the validity period of that licence becomes irrelevant. I shall therefore address this issue in the alternative, in case the Court does not subscribe to the propositions set out above.

92. The analysis must focus on the seven-day period which, according to the wording of Article 48(3) of Decree 1598/1995, is the period for which transfer licences are, in principle, valid, not taking into account the three-month period provided for, by way of exception, in Article 48(5), which does not form the subject-matter of the action brought by the Commission.

93. It should be remembered that, on the expiry of the transfer licence's seven-day validity period, the owner of the vehicle must register or, failing that, immobilise the vehicle.

94. In view of the foregoing consideration, the transfer licence's validity period can be treated in the same way as the period within which an individual should register his vehicle.

95. The Court has held in this regard that, even in the absence of Community legislation on the matter, Member States cannot impose a time-limit that is so short as to make it impossible or excessively difficult to comply with the obligations imposed, having regard to the formalities which must be completed. [24]

96. In the present case, having regard to the formalities which must be completed to register a vehicle in Finland, including the decision of the Finnish tax authorities as to the amount of registration tax payable, which, as even the Republic of Finland concedes, cannot generally be adopted within a period of seven days, the time-limit laid down in Article 48(3) of Decree 1598/1995 seems to be excessively short and manifestly goes beyond what is necessary to attain the objectives pursued by the Finnish legislation.

97. The fact that the Republic of Finland temporarily inserted, with effect from 1 January 2004, a new paragraph 5 into Article 48 of Decree 1598/1995 in order, by way of derogation, to extend the seven-day period to three months shows that it considers a period longer than seven days to be capable of attaining equally effectively the objectives which it seeks to pursue.

24 — *Cura Anlagen*, paragraph 46.

98. In the light of the foregoing, I propose that the transfer licence's seven-day validity period should be found to be disproportionate.

99. I therefore suggest, in the alternative, that the Court, in the event that it considers the requirement to obtain a transfer licence to be justified, should declare that the Republic of Finland has failed to fulfil obligations under Article 28 EC by prescribing, in Decree 1598/1995, a seven-day validity period for that licence.

VI — Costs

100. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Republic of Finland should, in my view, be unsuccessful, I consider that the latter should be ordered to pay the costs.

VII — Conclusion

101. In the light of all of the foregoing, I propose that the Court should:

— declare that the Republic of Finland has failed to fulfil its obligations under Article 28 EC by requiring that a transfer licence must be obtained in order to put into circulation vehicles which are lawfully registered and used in another Member State, as provided for by the Decree of 18 December 1995 on the registration of vehicles (asetus ajoneuvojen rekisteröinnistä 1598/1995);

— order the Republic of Finland to pay the costs.